



State of North Carolina
General Court of Justice
Twenty-Sixth Prosecutorial District
MECKLENBURG COUNTY

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Officer-Involved Shooting Protocol for Non-Fatal Incidents

When a law enforcement officer shoots a person in Mecklenburg County, a very specific protocol is followed to review the case. Confrontations between police and citizens in which deadly physical force is used are among the most important events that the District Attorney's Office must handle. These cases deserve special attention and handling at all levels. They have potential criminal, administrative and civil consequences. These cases can also have a significant impact on the relationship between law enforcement officers and the community they serve. It is important that a formal protocol be in place in advance for the handling of these cases. The following will assist the community in understanding the District Attorney's protocol, as well as the law and other issues related to the investigation and review of officer-involved shootings.

This protocol is designed to ensure that a professional, thorough, impartial and transparent review is conducted of every officer-involved shooting in Mecklenburg County.

This protocol has been designed to be as transparent as legal and ethical standards will permit without negatively impacting the criminal, administrative or civil procedures. The North Carolina State Bar's Rules of Professional Conduct limit the information that can be released by prosecutors prior to the conclusion of the investigation or any concurrent civil proceedings.

Officer-involved shooting cases always present the difficult issue of balancing the rights of the involved parties and the integrity of the investigation with the public's right to know and the media's need to report the news. The criminal investigation and the administrative investigation that follow such an event can never keep pace with the speed of media reporting. This creates an inherent and unavoidable dilemma. Because prosecutors are severely restricted in releasing information before the investigation is concluded or when civil litigation is likely, there is the risk that information will come from sources who may provide inaccurate accounts, speculative theories, misinformation or disinformation that is disseminated to the public while

the investigation is progressing. This is an unfortunate byproduct of these conflicted responsibilities that has the potential to cause irreparable damage to individual and agency reputations. The District Attorney's Office is committed to openly communicating about the decision-making process in these cases when legal and ethical rules allow prosecutors to do so. The office is sharing this protocol with the public in an effort to be as transparent as possible and to help the community understand how these cases are investigated and reviewed.

The Role of the District Attorney under North Carolina Law

The District Attorney (DA) for the 26th Prosecutorial District is a state official and as such is independent of City or County governments within the prosecutorial district. The DA is the chief law enforcement official of the 26th Judicial District, the boundaries of which are the same as the County of Mecklenburg. The DA has no administrative authority or control over the personnel of police agencies within the jurisdiction. That authority and control resides with each City or County government.

Pursuant to North Carolina statute, one of the DA's obligations is to advise law enforcement agencies within the prosecutorial district. The DA does not arrest people or conduct criminal investigations. Law enforcement agencies conduct criminal investigations, and when police charge a person with a crime, the DA decides whether or not to prosecute the charged crime. Generally, the DA does not review police decisions not to charge an individual with a crime. However, in officer-involved shooting cases, the DA reviews the complete investigative file of the investigating agency. The DA then decides whether he agrees with the decision of the police. If the DA concludes that uncharged conduct should be prosecuted, the case will be submitted to a Grand Jury.

The Role of the District Attorney during the Investigation

When any officer-involved shooting occurs within Mecklenburg County, the investigating police agency immediately notifies the District Attorney's Office Homicide Team Supervisor, who in turn immediately notifies the District Attorney. A senior member of the District Attorney's Office will immediately begin to monitor the investigation. If the District Attorney does not personally monitor the investigation, his personnel will advise him throughout the investigative process. The DA or his designee(s) will respond to the scene of the shooting and then to police headquarters to monitor and observe the investigation and provide legal advice to the investigating agency as needed.

The District Attorney and his designees have complete access to every part of the investigation. They are able to see every witness interview, inspect every piece of evidence and have access to the scene where the incident occurred. The District Attorney or his designees do not personally interview witnesses or handle evidence. To do so would make the prosecutor a witness in the case.

Review of the Investigative File

In most officer-involved shootings, the District Attorney will complete his review of the entire investigation within 90 days from receipt of the complete investigative file barring extraordinary circumstances that require additional time. As part of the review process, a non-fatal officer-involved shooting case is presented to the Crimes against Persons Team.¹ Attendance at the presentation is required of all available team members. For the case to be presented, a quorum of at least five team members must exist. In the event that there are not five members of the Crimes Against Persons Team available, the Deputy District Attorney or any Assistant District Attorney (ADA) who has participated in officer-involved shooting presentations in the past may attend and count toward a quorum. The elected District Attorney shall not be counted toward the quorum requirement. The panel will then make a recommendation to the DA about whether or not charges should be sought.

If, at any time during this process, the DA believes that further information or investigation is needed from the investigating agency or that an investigation should be conducted by another independent law enforcement agency such as the State Bureau of Investigation (SBI), the DA in his sole discretion will make the request. Once the DA is satisfied that all relevant information has been provided to his office and that a proper and thorough investigation has been conducted, the DA or his designee will write a letter to the chief or other leader of the law enforcement agency that employed the officer who discharged his or her weapon. The letter will either inform the agency that the DA agrees with the agency's charging decision or that the DA disagrees with the charging decision and will seek the appropriate remedy. Letters regarding non-fatal officer-involved shootings that pertain to pending criminal cases will not be released to the public by the District Attorney's Office. Information in these letters could have a substantial likelihood of heightening the public condemnation against a defendant and affect this defendant's ability to receive a fair trial in Mecklenburg County.

¹ The Crimes against Persons Team is comprised of approximately 15 Assistant District Attorneys who are among the most experienced in the District Attorney's Office and routinely litigate issues surrounding the law of self-defense and the use of deadly force.

Standard of Review

The same standard that is used in all criminal cases in Mecklenburg County is applied to the review of officer-involved shootings. The analysis involves reviewing the totality of the facts developed in the criminal investigation and applying the pertinent law to those facts.

For criminal charges to be pursued, the District Attorney must find that there is a reasonable likelihood that all elements of the crime charged can be proven beyond a reasonable doubt to 12 unanimous jurors at trial after considering reasonable defenses. If this standard is met, criminal charges will be pursued.

Criminal liability is established only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by North Carolina law and that the offense was committed without any legally recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or murder in North Carolina, there are certain circumstances in which the use of physical force – deadly or otherwise – is justified. As there is generally no dispute that the officers intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Therefore, the question presented in most officer-involved shooting cases is whether, at the instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for knowingly or intentionally shooting another, the State must prove beyond a reasonable doubt that the officer either did not really believe he or another was in imminent danger, or, if he did hold such a belief, that this belief was unreasonable in light of the circumstances.

General Comments

The great majority of officer-involved shootings in Mecklenburg County – and throughout the country – ultimately result from what is commonly called the split-second decision to shoot. It is this split-second time frame that typically defines the focus of the criminal review decision, not the string of decisions along the way that placed the participants in the life-or-death final frame.

When a police-citizen encounter involving a citizen armed with a deadly weapon reaches this split-second window, the circumstances of the incident often prevent prosecutors from proving criminal liability on the part of the officer under the required legal levels of proof. The fact that

no criminal charges are filed does not mean that the District Attorney's Office believes that the matter was in all respects handled appropriately from an administrative or tactical viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt unanimously to a jury. This is the limit of the District Attorney's statutory authority in these matters. For these reasons, the fact that a shooting may be controversial does not mean it has a criminal remedy. And the fact that the District Attorney may feel the shooting was avoidable or that the officer didn't follow expected procedures or norms does not make it criminal. In these circumstances, remedies (if any are appropriate) may be pursued by administrative or civil means. The District Attorney has no administrative or civil authority in these matters. Those remedies are primarily in the purview of City and County governments, police departments and private civil attorneys.

The National District Attorneys Association's *National Prosecution Standards* states in pertinent part: A prosecutor should file only those charges which he "reasonably believes can be substantiated by admissible evidence at trial."² The prosecutor should not attempt to utilize the charging decision for the sole purpose of leveraging a guilty plea to lesser charges. The standards also indicate that factors which should not be considered in the charging decision include:

The prosecutor's individual or the prosecutor's office rate of conviction; Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office; Political advantages or disadvantages that a prosecution might bring to the prosecutor; Characteristics of the accused that have been recognized as the basis of invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime.³

Because of the difference between the criminal, administrative and civil standards, the same facts can fairly and appropriately lead to a different analysis and different results in these three uniquely different sectors. While it may not be appropriate to file criminal charges in any given officer-involved shooting case, administrative action may be very appropriate. The legal levels of proof and rules of evidence that apply in the realm of criminal law are imprecise tools for examining and responding to the broader range of issues presented by officer-involved shootings. Issues related to the tactical and strategic decisions made by the officer leading up to the split-second decision to shoot are most effectively addressed by individual police departments through use of force review boards and an administrative review of the shooting.

² National District Attorneys Association's *National Prosecution Standards, Third Edition, 4-2.2*

³ National District Attorneys Association's *National Prosecution Standards, Third Edition, 4-1-4*