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Testimony of Attorney General Frey in Support of
LD 1480, *An Act Regarding the Review of Law Enforcement Use of Deadly Force*.
May 7, 2021

Senator Carney, Representative Harnett and members of the Judiciary Committee, I am Aaron M. Frey, I live in Bangor, and I am honored to serve as Maine's Attorney General. I am testifying in support of LD 1480, *An Act Regarding the Review of Law Enforcement Use of Deadly Force*.

This legislation does two things: it establishes a timeframe for the Office of the Attorney General to complete an investigation into the use of deadly force by law enforcement and it amends public access laws with respect to the release of video recordings depicting the use of deadly force by law enforcement.

First, I support establishing a reasonable length of time to complete an investigation into an incident of use of deadly force by law enforcement and submit findings of that investigation for examination by the Deadly Force Review Panel. Investigation into the use of deadly force by a law enforcement officer requires multiple interviews, evidence collection and analysis, law enforcement review, prosecutorial review for a legal determination of whether the shooting was justified and a review by me. These investigations should be completed no sooner and no later than required for a full review. That said, we are hopeful a case can be properly addressed and forwarded to the Deadly Force Review Panel within the timeframes outlined in LD 1480.

As for the current backlog, this has been a concern in my office for some time. Last year, we considered a number of different strategies to address this. After significant deliberation, I changed how cases are being worked through the office. I published this revised process in February, which I am attaching to this testimony.

Second, with respect to the release of video recordings of the use of force incidents by law enforcement, I am generally supportive of providing more prompt access. However, I suggest a more tailored approach than what is currently set forth in LD 1480 because there are legitimate interests to balance against unrestricted release of this material. For example, integrity of an investigation and privacy interests may weigh against immediate, unredacted release of video. It should be a case-by-case assessment that may be guided by more specific requirements than presently contained in 16 MRS § 804.

I have spoken with the sponsor, and I appreciate the Representative's willingness to discuss a more calibrated amendment. Meetings over this past week have been productive in narrowing the distance between different points of view, but there was not enough time to arrive at a joint proposal. With a little more time, and with the benefit of input from this public hearing, I expect that a proposal could be ready by work session.

Statement of the Attorney General Regarding Decisions in Law Enforcement Use of Deadly Force Incidents

In the event a law enforcement officer uses deadly force, a protocol is in place that the Office of the Attorney General's (OAG) Investigation Division be immediately notified. Upon notification, investigators from the OAG are dispatched to the scene to take control of a full investigation. While there is a lead investigator from the OAG, this work may involve one or more investigators from the OAG with assistance from other agencies. Investigations into use of deadly force by law enforcement involves interviews, collection of physical evidence, and review of any work done by other agencies (e.g., Medical Examiner's Office or Maine State Police Crime Lab).

Once the investigation is complete, it is reviewed by the Chief of the Investigation Division for completeness. From there, the investigation is presented to both the Chief of the Criminal Division and the Attorney General for legal analysis and decision.

Once a decision is made, the OAG issues a letter to the Chief of the employing agency responsible for the officer(s) who deployed deadly force. This letter outlines the evidence, the legal standards involved, and findings. While there has been some variance in the past as to who issues this letter on behalf of the OAG, my practice has been to issue the letters over my name. This letter is also made available to the public.

While the investigations into the use of deadly force by law enforcement are undertaken immediately upon notification, the review of these cases for determination by the Attorney General has historically been made in chronological order. Under this practice, when I took office in January 2019, the first case presented for my consideration involved an incident that occurred on June 7, 2017.

There are several deadly force cases that have not yet been finally addressed and my office is keenly aware of the impacts of this backlog. These impacts include, but are not limited to, delayed access to complete public inspection, delayed opportunity for closure for family members, delayed decisions for law enforcement involved in the incident, and diminished opportunity for meaningful review by the Deadly Force Review Panel.

Mindful of these concerns, discussions have been underway in my office on how to bring these cases up to date. After significant deliberation, I have established that cases will run on one of three different tracks. First, we will continue a track reviewing cases in chronological order. Second, we are initiating a second track that begins with the first case occurring in 2020. The third track will be all new cases that develop with the first case on this track being the use of deadly force that occurred on December 18, 2020.

By revising how these cases are reviewed after they are investigated, I expect the office will be able to more timely address the backlog, provide more timely resolutions for consideration by interested parties, and provide better information about how long these cases should be taking to work through the process to finality. Since the cases will not necessarily be reviewed in chronological order, the length of time it takes to publicly

render a decision should in no way be construed as a comment on whether the use of force was justified or not.

I do want to take this opportunity to highlight my commitment to ensuring there is an impartial investigation into the use of deadly force by law enforcement and provide transparency into the investigation of these cases by my office. In furtherance of this commitment, upon taking office, there were a number of letters issued by the office that had not been publicly posted. I immediately directed that all letters be posted for public inspection on the OAG website and I have immediately published my letters upon their issuance. I was actively involved in the establishment of the Deadly Force Review Panel and have worked with other talented individuals to develop that panel. Finally, I have maintained an open door and have had multiple discussions with members of the Maine Legislature who have contacted me on this topic.

Aaron M. Frey
Attorney General
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