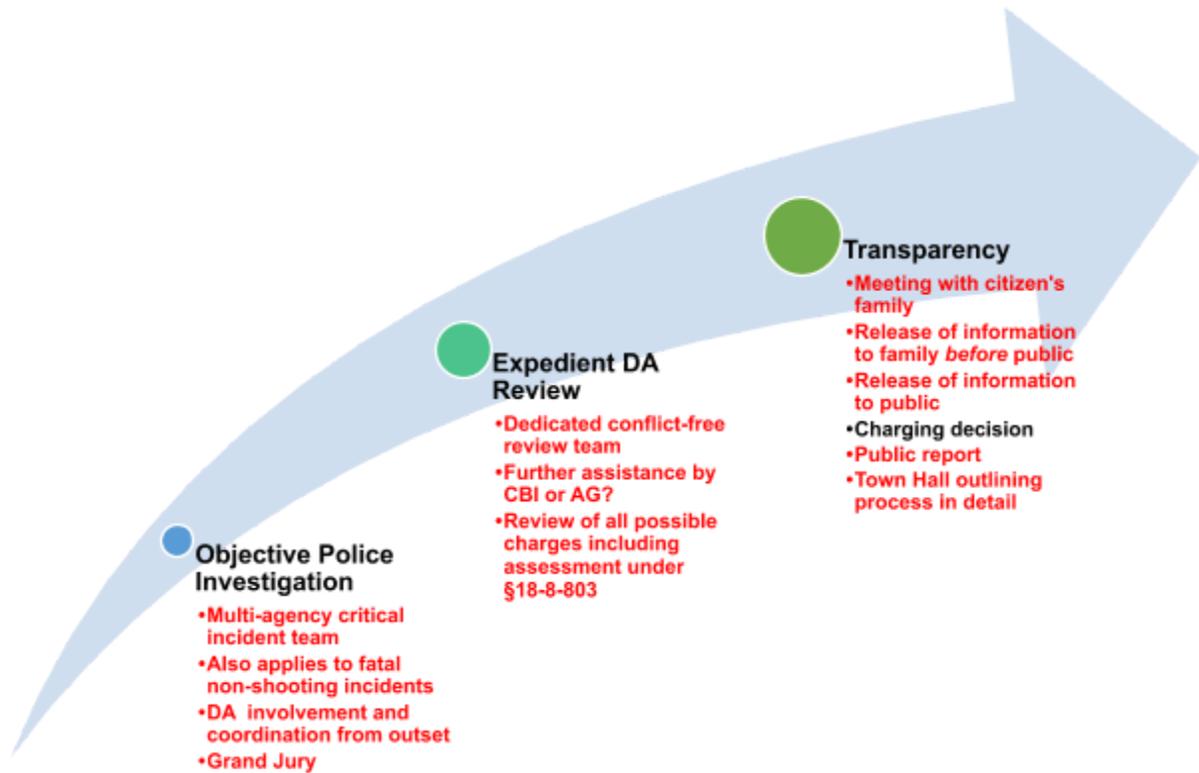


POLICE REFORM AND ACCOUNTABILITY
18TH Judicial District Attorney

Officer-involved shooting investigations



- Thorough
- Objective
- Involve outside agencies
- Transparent
- Credible
- Unbiased
- Ensure public confidence
- Fair to citizen and officer

To ensure integrity and renew public confidence, officer involved shooting and lethal non-shooting investigations must exceed legal standards and give meaning to the *spirit* behind the law. Police-citizen use of force encounters, especially when deadly force is used, are of paramount public concern. As the legislature found when the law was passed in 2015, the investigation of these incidents must be objective, thorough, and transparent to ensure public confidence in the outcome.

****Now more than ever, the District Attorney must ensure that everyone in the community has confidence and trust in the review and oversight of police conduct****
REAL Police Accountability and REAL Reform in the 18th Judicial District

On May 26th 2020, and in the ensuing weeks, through a blatant display of police brutality in Minnesota and subsequent police acts of violence against peaceful protesters around the country, we saw the indelible example of the deterioration of police relations with Black and Brown communities in America.

As a prosecutor and a candidate for District Attorney of Colorado's largest judicial district - a district in which more than 240,000 Black and Brown citizens reside, I recognize that the frustration and anger being expressed is directed at the entire justice system and requires the intentional transformation of that system from within. I also recognize that when our community screams for justice, we as leaders in the justice system must listen and take remedial *and durable* action.

We know the prosecution of the Minneapolis officers, no matter the result, will not cure the problem. In fact, we know from subsequent police responses across the country, from Buffalo to right here in Denver, that even under the spotlight of unanimously condemned police brutality, the indifference of some to community suffering still exists. Simply put, while prosecution of bad cops is necessary, we cannot achieve systemic change and community safety through prosecuting misconduct one case at a time.

While recent steps by our community and government leaders demonstrate action and will have some effect, they will not impact the underlying culture, and therefore will do little to change systemic bias. For reform to work, the solution must do more than temporarily quell the outrage. Our community is crying out for a plan immediate transformation, our community is calling out for real progress as a result of real justice.

While 2020 legislation will lead to more transparency and accountability, I believe the community should expect more. I believe increased accountability will lead to a stronger police-community relationship. As such, I have set forth protocols which will give the community more information about *all* police use of force incidents in the jurisdiction. A few highlights of the policy are:

- Directive to all police agencies to use the true multi-agency approach of an expert, objective, and conflict-free Critical Incident Team (CIT) to investigate shootings.
- Directive that the police agency involved in the shooting never leads the investigation and takes a subordinate role if their participation is needed.
- Prioritizing use of force investigations within the DA's Office for immediate review by a specialized internal prosecution team with strict timelines for progress.
- Reviewing media recordings with an eye towards release as soon as possible, after first giving the citizen – or the citizen's family in fatal shootings – an opportunity to review the recordings with the District Attorney and investigative team.
- Reviewing officer use of force incidents where bodily injury is caused by the officer(s) without the use of a firearm, and either issuing justified use-of-force reports or submitting cases for possible excessive force-related charges, pursuant to §18-8-803, C.R.S.

I. POLICE ACCOUNTABILITY. Ensuring the thorough, objective, expedient and transparent investigation of officer involved use of force incidents.

By law, officer-involved use of force investigations require only that each police agency and the District Attorney develops “protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office . . .” Currently, some agencies choose to assume a primary role in investigating their own officers and choose just one other agency to assist in those investigations.

While the above practice technically complies with the law, it also disregards the legislative declaration that preceded the 2015 law - namely that:

- It is in the public interest to guarantee that thorough and objective reviews are conducted.
- Including outside agencies in an investigation promotes and encourages a level of transparency and objectivity that provides increased credibility to the final outcome.
- Including outside agencies eliminates any real or perceived biases, which strengthens public confidence in the outcomes of the investigation.

- Public confidence in the process is critical to the overall efficacy of the criminal justice system.
- Confidence in the process is as equally important to the officer involved as well as it is to any suspect or other citizen involved; and
- Everyone involved is entitled to know that the investigation and final determination of the matter will be made in a fair and just manner.

Repairing the relationships between police and the communities they serve is a critical step toward reform and decreasing systemic bias. A lack of transparency and actual or perceived accountability in police and citizen encounters erodes trust and confidence in the criminal justice system overall. The investigation of incidents involving police use of force against community members is at the forefront of the issues needing to be addressed to ensure public safety and fairness in our criminal justice system.

1. ***Officer involved use of force – shootings involving injury or death - investigation and prosecution.***

a. Goal: Accountability, expediency and equal treatment for police officers who commit crimes against community members.

b. Plan: I will require all local police agencies to adhere to the letter and spirit of the laws regarding police and citizen encounters, including multi-agency, objective investigations into officer-involved shootings pursuant to §16-2.5-301, C.R.S. On cases where a true multi-agency and objective review was performed, the DA will conduct a thorough and expedient review of the investigation, and either file charges or issue a public report, pursuant to §20-1-114, C.R.S., indicating why no charges will be filed. In cases on which a less than thorough or objective review is completed, I will consider an independent investigation by the District Attorney's office and/or use of the Grand Jury.

- Consistent with the authority in §20-1-114, C.R.S., I will advise all local police agencies to take part in a multi-agency Critical Incident Team (CIT) that will complete an objective review and investigation of each officer involved-shooting incident. No agency who is involved in a shooting in the 18th Judicial District should operate outside of the parameters of the existing CIT's protocols.
- I will advise the same approach be taken by the CIT on fatal non-shooting citizen encounters.
- If resources require the involved agency's involvement, I will advise the involved agency to take a *subordinate role* in the investigation, to maintain optimal objectivity, transparency, and to increase public confidence in the result.
- I will look skeptically upon any investigation that does not adhere to the spirit, as well as the letter of the law, and will authorize whatever additional investigation I deem necessary to ensure objectivity, fairness, and public confidence, up to and including Grand Jury investigation.

- Upon any officer-involved shooting or fatal non-shooting encounter, I will order an internal prosecution team to prioritize the investigation and regularly consult with me regarding the possibility of the release of any information to the public.
- The citizen – or citizen’s family in fatal incidents - will be permitted to review any video footage that exists within the boundaries of the law.
- Before any media is released to the public, I will meet with the citizen/citizen’s family to discuss the nature and extent of the contemplated release of information.

2. ***Officer involved use of force – shootings without injury – use of physical force causing injury - investigation and prosecution.***

a. Goal: Accountability and transparency of officer involved incidents with the community where a firearm is discharged by the officer(s) without injury, or when physical injury is caused by the officer(s) without the use of a firearm.

b. Plan: While there is currently no legal requirement for review of officer involved shootings that do not result in injury, or officer-involved use of force causing injury without discharge of a firearm, these cases involving police use of force should be reviewed even when no charges are sought by the police. Currently, the district attorney will only see these types of cases if charges are filed against the community member upon whom force was used. Through collaboration with the local police agencies, I will establish protocols for the district attorney to review all cases in which any police officer uses force and causes injury to a community member.

- I will dedicate District Attorney investigator resources to the review and evaluation of any police use of force incident against a community member which involves injury. The investigator will determine whether charges are appropriate and will complete a report outlining the findings or submit the case to a prosecutor for consideration of charges.
- In any case submitted to the District Attorney for charges in which any officer used what appears to excessive force, the intake lawyer will forward the case to the investigations chief to assign a reviewing investigator. The investigator will determine whether charges are appropriate and will complete a report outlining the findings or submit the case to a prosecutor for consideration of charges.

3. ***Police officer prosecutions for use of force.***

a. Goal: Accountability through holding officers accountable pursuant to §18-8-803, and holding them to the same standard as all citizens when they break the law.

b. Plan: Dedicated prosecution teams will review all officer use of force incidents, direct additional investigation where necessary. The team will either issue a justified use of force report or, if the conduct gives rise to charges, the team will file and prosecute the case.

- Any case involving allegations of criminal police conduct will be reviewed by the chief deputy district attorney assigned to the office's internal critical incident team. The chief deputy will then consult with the District Attorney about the sufficiency of proof and the procedural course of the case.
- The team will either issue a justified use of force report or, if the conduct gives rise to charges, the team will file and prosecute the case.
- The District Attorney will decide whether to resolve an officer-involved criminal use of force case short of trial, including determining the terms of any potential disposition of the case.
- On any criminal use of force case that is resolved prior to trial, a summary of the case and reasons for the disposition will be made public within one week of the final disposition of the case.

4. Civilian oversight.

- a. Goal: Reducing incidents of police-citizen and citizen-police violence, through review of police policy and practices and use of force incidents, with focus on ensuring that proper discipline occurs, lessons are learned, and improvements are made - all of which benefit the overarching goals of community-based policing.
- b. Plan: There are inherent limits to a system in which law enforcement investigates and disciplines itself. Those limitations cannot be mitigated by constricted oversight measures. Each jurisdiction should have a civilian oversight or independent monitor board on which citizens sit in good faith to improve citizen police relations and make recommendations for change including discipline, mediation, and corrective training.
 - While prosecutors do not typically sit on such boards, I will support the creation and implementation of such entities across the district, and I will offer whatever professional support is desired.
 - Through collaboration with a civilian oversight board, ideas for additional police training programs regarding racial bias, de-escalation, and many other subjects emerge and can be adopted.

This policy statement addressing the investigation, prosecution and oversight of officer involved use of force incidents, is but one important step toward the transformation of the criminal justice system in the 18th Judicial District. I will work with local police and the current multi-agency CIT to ensure that these processes are implemented and to revise and update the policy as needed.

Matt Maillaro
Candidate for District Attorney

