When duty turns deadly

Police shootings:
There has been an “uptick” in the use of justified deadly force in New Hampshire.

By SHAWNE K. WICKHAM

New Hampshire Sunday News

Twenty people have been shot and killed by police in New Hampshire since 2000; 19 others have been wounded. Eleven of those fatal shootings were in the past three years.

And in nearly all of the cases, investigators found the shootings to have involved justified use of deadly force by the officers involved.

That’s typical, according to Charles Reynolds, a retired New Hampshire police chief who is a national expert in the use of deadly force by police.

The standard for determining whether the use of deadly force by police is justified is not based on hindsight or the officer’s motives, Reynolds said. “It’s based upon what he or she was confronted with at that time, and whether another officer would reasonably conclude that that was an appropriate thing to do.”

> See Police, Page A14

Article Continued Below

See POLICE on Page A14

Police

Continued from Page A1

That’s why police officers are rarely charged, he said. “That’s not a complicated decision to make because it has to be pretty egregious; it has to be pretty outside the realm of acceptance for there to be a prosecution that’s going to be sustained against a police officer.”

But Reynolds said investigators need to clearly explain how they came to their conclusions in such cases.

“The conduct may be lawful, it may be legal, but in the eyes of the public, it’s not legitimate,” he said. “And it’s not legitimate if it’s not explained to them.”

He criticized the New Hampshire Attorney General’s Office for not being more forthcoming during its investigations of such incidents.

“When one of these events occurs, the public has to be given assurances that it is being thoroughly investigated, and they have to be, from time to time, apprised of the investigation,” he said. “This cloak of secrecy just exaggerates their
idea that something is amiss here."

**No ‘cloak of secrecy’**

Senior Assistant Attorney General Jeffery Strelzin said prosecutors and investigators are limited by the rules of professional conduct in what they can say about any open case.

“Obviously,” he added, “no agency can effectively conduct a criminal investigation if it divulges the evidence it gathers before the investigation is complete.”

Once an investigation into an officer-involved shooting is finished, the Attorney General’s Office issues “very detailed” reports that are made public, Strelzin said. The office posts its reports on all officer-involved shootings on its website. Strelzin said he’s found that most people who question the findings in such cases have not read those reports.

“Given all that, it is clear there is no ‘cloak of secrecy’ at play in these cases,” he said.

Strelzin, who is chief of homicide, said the public needs to understand that police officers “have the absolute right to protect themselves.”

“There’s a lot of talk about ‘stand your ground,’” he said. “‘Stand your ground’ applies to law enforcement as well as private citizens.”

**Increase in numbers**

According to a list provided by the Attorney General’s Office, there were one or two police-involved shootings a year between 2002 and 2010. Then, in 2011, there were seven shootings, five of them fatal; in 2012, there were four, two of them fatal; and in 2013 six, three fatal.

Strelzin said it’s too early to call that a worrisome trend.

“Yes, there’s been an uptick, but is it a trend? That’s something you can only answer when you look back from the future,” he said.

“When I look at that chart, what it says to me is: Law enforcement is a dangerous profession,” he said. “A person who’s faced with a deadly-force situation has to make these split-second decisions to save themselves or others.”

For comparison, since 2000, there have been 35 officer-involved shootings in Vermont, and 83 in Maine, including 16 in which no one was injured.

After decades in law enforcement in New Hampshire, Reynolds spent seven years in Northern Ireland working for an oversight commission on police reforms. He now monitors compliance with federal court orders for police departments that were investigated by the U.S. Justice Department for alleged violations of constitutional rights; most involve the use of force.

Transparency is especially critical, Reynolds said, when the person shot by police was unarmed, as was the case in fatal shootings in Weare and Manchester last year. *(See related story)* “Anytime you have a shooting situation where there’s no gun involved, you really need to do that case expeditiously because there is going to be elevated public concern,” Reynolds said.

While it’s rare for a police officer to face criminal charges, Reynolds said, “it’s not uncommon that you find in those situations that officers make tactical mistakes.”

That’s why it’s critical for a police agency to do its own administrative investigation to see whether all policies,
procedures and training were followed, he said. Under the so-called “Garrity protection,’’ officers involved in such reviews are required to answer all questions, but “those answers are excluded from use in a criminal prosecution,” he said.

Weare Police Chief John Vellecca recently told the New Hampshire Union Leader he is conducting an internal review of the fatal shooting of an alleged drug dealer by a Weare officer on Aug. 14, 2013. The Attorney General’s Office ruled that the shooting was not justified, but no criminal charges were filed.

Under state law, a police officer is justified in using deadly force when he “reasonably believes” it’s necessary to defend himself or others from deadly force.

Deadly force is also justified if the officer is trying to arrest, or prevent the escape of, someone he “reasonably believes” has committed a felony involving force or violence; is using a deadly weapon to try to escape; or is likely to endanger or seriously injure someone unless apprehended quickly, according to RSA 627:5.

Typically, in such cases, Strelzin said, “it’s the other person’s fault for creating that situation.”

“They make the choices to engage in the behavior, and they make the choices to elevate the situation to a deadly-force situation.”

Candace McCoy, a professor at John Jay College of Criminal Justice in New York City, said police need more training in “strategies of not placing themselves in the position to be in danger.”

Police agencies also need to review closely any shooting that does occur, she said. “Look at it and say, how can we do better? Even if it’s justified, how can we do better?”

Reynolds, too, said there should be ongoing training that emphasizes “the restraints on force as much as the authority to use it.”

“A big component of use-of-force training is this whole notion of de-escalation when they’re confronted with a situation, making sure the officer does what’s necessary to try to lower the temperature instead of raising it,” he said.

Strelzin said most officers in New Hampshire will never encounter a deadly-force situation. And when they do, he said, “they’re devastated by it.”

“They know they’ll face criminal investigation by our office, then maybe civil lawsuits. It’s not something a police officer wants to be involved in.”

Reynolds agreed: “No police officer goes to work any day with the idea they’re going out to shoot somebody.”

And he said he’s found that officers in New Hampshire compare favorably with those in some of the country’s biggest departments. But because deadly-force situations are rare here, police may be less prepared to deal with them when they do arise, he said.

Reynolds, a former president of the International Association of Chiefs of Police, suggested the state chiefs association could serve as a vehicle for “a frank, critical debriefing” whenever an incident does occur, so other agencies can learn from it.

“There should be some teaching moments and some training derived from each of these shootings,” he said.