

The Charlotte Observer

Should CMPD investigate its own officers after police shootings? Mayor, critics say no.

Ames Alexander and Fred Clasen-Kelly

October 21, 2016

In the wake of violent protests calling for more police transparency, Charlotte Mayor Jennifer Roberts says the Charlotte-Mecklenburg Police Department should no longer investigate its own officers in police shootings.

CMPD is the only police department in North Carolina that routinely conducts its own probes into all officer shootings, law enforcement officials say. Other departments call in the State Bureau of Investigation for all fatal shootings.

It's uncertain whether Roberts' call to reverse the department's longstanding practice will gain traction but community activists support the idea and national experts recommend such independent reviews.

"I am an advocate for independent review of all officer-involved shootings," Roberts told the Observer. "I think it's important to build public trust."

Public distrust was on angry display when violent protests broke out in the streets of Charlotte after police shot and killed Keith Lamont Scott on Sept. 20.

No independent investigative agency was on the scene until two days after the shooting. CMPD investigators interviewed the officers who were involved and collected evidence. The SBI wasn't brought in until Scott's family members requested an independent investigation.

Most police shootings in Charlotte get no independent scrutiny. In recent years, the SBI has investigated about a third of CMPD's fatal police shootings. The state agency gets involved in such probes only in cases where the families of shooting victims ask it to investigate.

National experts recommend independent reviews. In a 2015 report, the President's Task Force on 21st Century Policing urged law enforcement agencies to mandate independent investigations in police shootings. CMPD has been studying the recommendations.

CMPD chief Kerr Putney and other department leaders refused to be interviewed about their investigations into police shootings.

But supporters say CMPD's investigations are thorough and professional. They say the 1,900-officer department is better staffed than the SBI, and therefore better equipped to provide the timely response that is critical to criminal investigations – particularly during the first 48 hours.

“Putting a number of boots on the ground within minutes and hours is extremely important to me to securing a scene and making sure no rock is left unturned,” said Mecklenburg County District Attorney Andrew Murray. “As of right now, it is not my opinion that they (the SBI) have adequate resources to handle all of our matters.”

Jim Coman, a former SBI director and senior deputy attorney general for North Carolina, said that in about a half-dozen cases in recent years, the Mecklenburg County district attorney quietly asked him to review the local investigations into police shootings.

“I never had any criticisms when they asked whether they were making the right call,” Coman said. “The investigations were first class ... When I saw their work product, you could say they made a believer out of me.”

Others, however, say it is difficult for agencies like CMPD to objectively police themselves. In recent years, a number of states – including New York, Connecticut and Illinois – have taken steps to eliminate conflicts and ensure independent investigations of police shootings.

“It is dangerous for any organization to critique itself,” said the Rev. Rodney Sadler, a leader for the Charlotte Clergy Coalition for Justice, one of the groups involved in the recent protests. “You have a subjective bias.”

Charles Monnett, a Charlotte lawyer who is representing the Scott family, also helped represent the relatives of Jonathan Ferrell, an unarmed man who in 2013 was shot to death by police officer Randall “Wes” Kerrick.

After examining the interviews that CMPD conducted while investigating the Ferrell shooting, Monnett said the officers involved weren’t always subjected to rigorous questioning.

“There were inconsistencies in their statements that no one seemed to explore,” he said.

Independent investigations would help ease the minds of an increasingly skeptical public, Monnett said.

“The public is clearly less willing to accept what police say at face value,” he said. “They are demanding a higher level of proof.”

‘Credibility gap’

On Aug. 29, in east Raleigh, police shot an armed 24-year-old man to death. The Raleigh Police Department immediately asked the SBI to investigate.

That’s how it works in other North Carolina cities.

But not Charlotte. Here, when an officer shoots and kills someone, CMPD treats it as a homicide investigation.

Staff with the Mecklenburg County District Attorney’s Office monitor the investigation. They listen in on interviews, review evidence and can call for an SBI investigation if they’re not satisfied.

After watching CMPD's investigations, Murray says he is impressed with the department's professionalism.

"CMPD, I believe, understands that a badge doesn't make a difference for someone who should be held accountable," the district attorney said.

Under a state law passed in 2007, families of victims can request an SBI investigation, too.

But that usually doesn't happen. Since January 2011, there have been 13 fatal police shootings in Charlotte. Of those, four were investigated by the SBI, according to Bill Stetzer, who heads the homicide team for the county district attorney's office.

When SBI agents do investigate, they often aren't asked to get involved until days or weeks after the shooting. Those delays create problems, experts say. SBI investigators aren't able to observe the crime scene firsthand. The memories of some witnesses fade. Other witnesses become harder to find, or less willing to cooperate.

"It's not an impossible deficit, but it's a challenging one," said SBI Director Robert Schurmeier, who previously worked as CMPD's deputy chief of investigations.

The 2007 law was spurred by one former legislator's concern that Charlotte's police shooting investigations left a "credibility gap."

Charlotte-Mecklenburg police opposed the legislation. A police attorney said at the time that it made no sense to begin investigations long after a shooting.

Few officers disciplined

Former CMPD Commander Eddie Levins said the community is fortunate the department investigates its own officers after police shootings.

The SBI lacks the budget and manpower to conduct probes in Charlotte and across the state, Levins said. SBI agents are dedicated and professional, he said, but the agency has no rapid response team. That means agents cannot secure scenes, collect evidence or identify witnesses as quickly as CMPD, Levins said.

But Schurmeier, of the SBI, said his 250-agent bureau has enough resources to investigate all Charlotte police shootings. "We would make adjustments to handle that," he said.

Critics contend that CMPD's practice of investigating its own has failed to hold errant officers to account.

In 2015, the Observer obtained city documents listing current and former CMPD officers involved in 67 fatal and non-fatal shootings since 2005. One police officer was fired. Another was suspended for two days.

Kerrick, the officer who shot Jonathan Ferrell, was the first CMPD officer criminally charged in an on-duty shooting in more than 30 years. Kerrick was tried on a voluntary manslaughter charge, but a jury was unable to reach a verdict. Under a financial settlement with the city, Kerrick subsequently resigned from the department.

Some law enforcement scholars suspect that if investigations were thorough, more officers would be charged and disciplined.

“It definitely raises some red flags,” said Tim Lynch, a researcher with the Cato Institute, a libertarian think tank. “It raises questions about whether they are investigating thoroughly, aggressively and impartially.”

‘Subjective bias’

National experts say CMPD’s practices aren’t unique. While policies vary across the country, they say, most large police departments in other states investigate their own officers after shootings. Most smaller agencies call in outside agencies to conduct the probes because they often lack the expertise, training and manpower.

Tony Underwood, who formerly headed the nine-county SBI office that covers Mecklenburg, says CMPD has top-notch criminal investigators. Still, he says, when police shoot someone, the “standard practice” should be to call in independent investigators.

“You don’t investigate your own fatal shootings,” he said. “It does a disservice to the agency as well as to the public.”

Civil rights advocates agree.

Susanna Birdsong, policy counsel for the American Civil Liberties Union of North Carolina, noted that CMPD has promised more accountability and transparency.

“The trust has been broken,” Birdsong said. “This is one way for that to be rebuilt.”

Building trust

Whether there is sufficient political pressure to change CMPD’s practices is unclear.

Any change would likely start with Chief Putney, who reports to the city manager, or at the direction of city council, which supervises the manager.

Charlotte City Council member Julie Eiselt, who chairs the board’s Community Safety Committee, said that she believes CMPD should investigate its own officers after fatal police shootings. Without the power to investigate, the department’s leadership has less ability to mandate changes from officers, Eiselt said.

“Bringing in an outside agency doesn’t guarantee justice,” Eiselt said.

She said people who are unhappy with a CMPD investigation can take complaints to the Citizens Review Board.

The City Council established the review board in 1997 to look into allegations of police misconduct – and to restore public confidence in the police department after three unarmed African Americans were killed by white officers. Critics, however, say the review board has become a rubber stamp. A 2013 Observer investigation found that over 15 years, the board had examined 78 cases and always sided with police.

Roberts said independent police shooting investigations would help build the trust needed for community safety.

“That trust is vital,” she said.