



**Testimony of  
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**Before the Senate Judiciary Committee  
Public Hearing on Senate Bill 400 and  
the Investigation of Police-Involved Shootings**

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Good morning Chairmen Greenleaf and Leach, and members of the Senate Judiciary Committee. My name is Ed Marsico, and I am the Legislative Chair for the Pennsylvania District Attorneys Association and District Attorney of Dauphin County. Thank you for inviting us here today to discuss SB 400 and procedures surrounding officer-involved shootings.

Officer-involved shootings can be devastating to the person who has been shot, officers, their families, and the larger community. Use of force cases can, unfortunately, create or deepen distrust between officers and the communities they serve. The Association of Prosecuting Attorneys reports that in 2016 alone, 64 police officers were killed in on-duty shootings, up from 41 shooting deaths in 2015. One in three police officer shooting deaths was an “ambush-style” attack, which understandably has put law enforcement officers on high alert.

But at the same time, the public faith in the criminal justice system has weakened in part because of the issues surrounding investigations and prosecutions of use of force cases.

The time period following an officer-involved shooting can be confusing and complex to the person injured, his or her family, as well as to the officer involved. Often, these situations can create division between those injured or killed and law enforcement. Indeed, the person who has been injured was or is a member of our community and his or her rights are important to us. Pennsylvania’s prosecutors believe these principles must underlie any investigation.

Recently, the PDAA Best Practices Committee released a report addressing officer involved shootings. It was the first report of its kind issued by a state district attorneys association.

The Committee report, which was released in November, contains 16 separate recommendations designed to ensure that these investigations are transparent and conducted with independence and objectivity. The most significant recommendation was that district attorneys bring in an independent police agency to conduct an investigation of the shooting. This was a significant recommendation that recognizes the perceived or actual lack of independence in an investigation of an officer-involved shooting and thus avoids any appearance of bias in the investigation and evidence-collection

phase of the case. The guidelines also recognized that in certain circumstances some jurisdictions may need to adjust this recommendation based on different factors.

Other recommendations included creating a written protocol, ensuring that the responding police agency immediately notify the District Attorney's office of a shooting, securing the scene, and publicly releasing charging decisions.

A written protocol, for example, improves transparency and trust in the system. A protocol explains the roles and responsibilities of the investigating agency and the District Attorney so that expectations are clear. Moreover, it provides the public with assurance of how an officer-involved shooting should and will be handled by law enforcement. Having clear procedures based on best practices not only improves investigations, but enhances community relationships.

SB 400 seeks to "restore the public's faith that everyone in our society is on equal footing in the criminal justice system." We share this mission and have a duty to ensure that our actions reflect this important goal. The problem is that a special prosecutor would not accomplish this goal.

Under the proposed legislation, locally elected district attorneys would be removed from the investigation and prosecution of any case where an individual died as a result of a police officer's conduct. Instead, the Attorney General's office would appoint a special prosecutor to investigate and prosecute these cases.

Appointing a special prosecutor, however, does not guarantee independence, objectivity, transparency, or any of the other things that may improve the public perception of our criminal justice system. In fact, it could even make the situation worse. The same pressures, both public and political, will exist regardless of who is handling the case. But elected district attorneys face this kind of pressure on a daily basis. By passing the buck to an unelected, unaccountable prosecutor, we may be putting these cases into the hands of a person even more susceptible to public pressure but who can act without consequences. What if they are more likely to succumb to the pressure?

Handing a high-profile, high-publicity case to an unelected special prosecutor is not appropriate. District Attorneys are elected by their communities and

entrusted with the great responsibility of determining when to charge individuals with crimes that may deprive them of their liberty. We take that responsibility extremely seriously. We are charged with exercising our discretion in all cases, not just the easy or low-profile cases, and we are accountable to the people who elected us. A special prosecutor, unelected and unattached, is not responsible for the community most directly affected by this type of tragedy.

Further, District Attorneys have the background and experience to make these tough decisions. We handle shootings and murder cases every day. We know how to direct an investigation, work with reluctant witnesses, utilize expert testimony, and know Pennsylvania law regarding justification. We determine whether any citizen was justified in using force—and the same laws apply to our police.

You may be asking yourself, why do the PDAA recommendations include investigation by an independent police agency but not an independent prosecutor? The biggest reason is accountability. Moreover, the role of an investigator isn't reviewable in the same way as the charging decision of the District Attorney. The role of the independent investigator is to compile evidence and witness statements to be analyzed by the District Attorney. The elected District Attorney then analyzes that evidence, applying the facts of the case to the law to determine whether the law has been violated. That analysis and District Attorney's charging decision can and should be publicly evaluated. Whether an investigator properly gathered evidence at a crime scene, however, cannot be scrutinized in the same way.

We respectively disagree with the premise underlying this bill. This legislation reflects a perception that county district attorneys are too closely tied to their local police agencies to independently review these cases. But the fact of the matter is that district attorneys around the state regularly prosecute police officers for excessive use of force—including use of deadly force—and do so fairly and impartially. We also investigate and prosecute officers who commit thefts, DUI's, etc.

I have reviewed many use of force by police cases in my seventeen years as District Attorney. The overwhelming majority of those cases were justifiable uses of force. But I have also determined that some of those incidences were not justified under the law and have charged officers with the appropriate

offense. We are morally and ethically obligated to act fairly and in the interest of justice in every case, including use of force cases, and we do so every single day.

To be clear, we're not saying that an elected District Attorney should handle a case where he or she has a conflict of interest. But the Commonwealth Attorneys Act already provides a procedure for that situation. If a district attorney has an actual or perceived conflict of interest, he or she can refer the case to the Attorney General's office, in accordance with the Commonwealth Attorneys Act. In some ways, this legislation would make our jobs easier, but we are elected and trained to make these decisions and are accountable for them.

The difference between that provision and this legislation is that SB 400 assumes a conflict of interest or perceived conflict of interest in *every* single officer-involved shooting case. By carving out an entire category of cases to be sent to a special prosecutor, it sends a message to the public that local prosecutors should not be trusted to make tough decisions. This type of precedent has the potential to undermine the pursuit of justice and threaten the safety of police officers and residents throughout this Commonwealth.

Thank you for your continued efforts to make Pennsylvania safer and the opportunity to testify on this important topic.