

## **Use of Force**

### **300.1 PURPOSE AND SCOPE**

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### **300.11 PHILOSOPHY**

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

### **300.2 POLICY**

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

#### **300.21 USE OF FORCE TO EFFECT AN ARREST, PREVENT AN ESCAPE OR LAWFULLY CONTROL**

Pursuant to Oregon Revised Statutes 161.235, 131.615 and Oregon Vehicle Code 810.410, and, except as provided in Oregon Revised Statutes 161.239, a peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes it necessary:

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- To make an arrest or to prevent the escape from custody of an arrested person unless the peace officer knows that the arrest is unlawful; or
- For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.
- To ensure the safety of the peace officer, the person stopped and other persons present during a lawful stop per ORS 131.615 and Oregon Vehicle Code 810.410.

It is the policy of this department that use of force by its members be:

- (a) Justified under applicable state law and case law;
- (b) Consistent with the specific policies which follows;
- (c) Professionally accomplished according to approved training and with approved equipment whenever possible.
- (d) In all cases employed to accomplish a legitimate tactical objective;
- (e) Limited to that degree and duration which the officers reasonably believes necessary to accomplish that objective;
- (f) Applied by the officer and reviewed by the department based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision to use force.

### **300.22 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time)
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects)
- (c) Previous special knowledge of the individual
- (d) Environmental factors and dangers
- (e) Influence of drugs/alcohol (mental capacity)
- (f) Proximity of weapons
- (g) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances)
- (h) Seriousness of the suspected offense or reason for contact with the individual
- (i) Training and experience of the officer
- (j) Potential for injury to citizens, officers and suspects
- (k) Risk of escape
- (l) Other exigent circumstances

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

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While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

### **300.23 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended under the circumstances to create a substantial likelihood of death or very serious injury shall be considered non-deadly force. Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to leg restraints and control devices described in Policy Manual §§ 306 and 308 respectively.

### **300.24 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be very effective in controlling a static or actively resisting individual. Officers should only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The risk of escape
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., static demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved and the individual is safely contained.

### **300.25 CAROTID RESTRAINT**

The proper application of the carotid restraint hold by a trained officer may be effective in quickly restraining a violent individual however due to the potential for injury, the carotid restraint hold may only be applied under the following conditions:

- (a) The officer shall have received departmentally approved training in the use and application of the carotid restraint.
- (b) The carotid restraint may only be used when the officer reasonably believes that such a hold appears necessary to prevent serious injury or death to an officer or other person(s).
- (c) Any individual who has been rendered unconscious by the use of the carotid restraint shall be promptly examined by paramedics or other qualified medical personnel.
- (d) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid restraint and whether the subject lost consciousness as a result.
- (e) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.

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- (f) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in any related reports.

### **300.26 FOCUSED BLOWS**

Focused blows are defined as strikes delivered to a threat by the officer utilizing personal body weapons such as hands, elbows, feet and knees. Officers are authorized to utilize focused blows when their use is reasonably necessary based on the totality of circumstances known to the officer at the time. The use of focused blows shall be governed by all other applicable sections of this policy.

### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or serious injury under the circumstances.

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction, or threatened infliction of serious bodily injury or death, and, the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, and when feasible, a verbal warning should precede the use of deadly force.

### **300.4 REPORTING THE USE OF FORCE**

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

### **300.41 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the following circumstances:

- (a) The application of force appears to have caused physical injury
- (b) The individual has expressed a complaint of significant pain
- (c) Any application of a control device excluding routine use of handcuffs or temporary restraints
- (d) The individual has been rendered unconscious

### **300.42 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained obvious visible injury, expressed a complaint of significant pain, or who has been rendered unconscious. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by

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another officer and/or medical personnel. If an audio recording is made of contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

### **300.5 SUPERVISOR RESPONSIBILITY**

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officer(s)
- (b) Ensure that any injured parties are examined and treated if needed
- (c) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
- (d) Identify any witnesses not already included in related reports
- (e) Review and approve all related reports

In the event that the supervisor believes that the incident may give rise to potential civil litigation, the Lieutenant and Chief of Police should be notified as soon as possible.

Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated through appropriate channels.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### **300.6 USE OF FORCE REVIEW BOARD**

The Chief of Police may assemble and convene a Use of Force Review Board to investigate the circumstances surrounding any use of force incident and will designate a member of the Board to serve as chairperson. This board may be the same as used in § 302 and shall include a qualified use of force instructor.

### **300.7 ANNUAL REVIEW**

An annual review will be conducted by the Lieutenant on all Use of Force Reports which resulted in a "Supervisor's Review" or a review by the Use of Force Review Board and any incident report being forwarded through the chain of command. The analysis will focus on the effectiveness and trends in the use of force that might suggest training or equipment needs, or policy modification. Specific detail including items such as officer names, case numbers, location of occurrence are not needed for this purpose and therefore will not be part of this process.

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## **Deadly Force Review**

### **302.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish a process to review the use of deadly force by employees of this department. Any and all findings will only be disclosed in accordance with public record law.

### **302.2 REVIEW BOARD**

The Baker City Police Department is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department to convene a Use of Deadly Force Review Board when the use of deadly force by an employee results in injury or death to a person.

The Use of Deadly Force Review Board will also investigate and review the circumstances surrounding every accidental or intentional discharge of a firearm, whether the employee is on or off duty, excluding range training, recreational use or the destruction of a mortally injured or ill animal.

The Chief of Police may convene the Use of Deadly Force Review Board to investigate the circumstances surrounding any use of force incident.

### **302.21 COMPOSITION OF THE BOARD**

The Use of Deadly Force Review Board normally would be comprised of the following persons:

- Lieutenant
- Training Officer
- Police Association President

The Chief of Police will designate a member of the Board to serve as chairperson. One member of the board must be a qualified use of force instructor.

The chairperson will convene the Use of Deadly Force Review Board as necessary. It will be the responsibility of the involved employee(s) immediate supervisor to notify the Lieutenant of any incidents requiring board review. The employee(s) immediate supervisor will also ensure that all relevant reports, documents, and materials are available for consideration and review by the Board.

### **302.22 RESPONSIBILITIES OF THE BOARD**

The Use of Deadly Force Review Board is empowered to conduct an administrative investigation into the circumstances of an incident. The Board membership may request further investigation, call persons to present information, and may request that the involved employees appear before the Board. The involved employees will be notified of the meeting of the Board and may be represented by legal counsel and/or other representation through all phases of the review process.

If it appears that the actions of the employee(s) may result in criminal charges or disciplinary action by the Department, the Board will conduct the interviews in accordance with department disciplinary procedures. The Board does not have the authority to

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recommend discipline. The Board shall make a finding and such finding will be limited to one of the following:

- (a) The employee's actions were within department policy and procedures.
- (b) The employee's actions were in violation of department policy and procedure.

The review shall be based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy and procedures, and approved training, to those facts. Facts later discovered but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.

A finding will be the consensus of the Board. After the board has concluded, the board chairman will submit written findings to include specific policy references, of the board to the Chief of Police. After review by the Chief of Police, a copy of the findings will be forwarded to the Lieutenant for review and appropriate action.

At the conclusion of the review process, a copy of all relevant reports and information will be filed with the Chief of Police. These reports will be made available to the BCPD Association for review.

Once the Board has reached its specific finding, the Training Officer may convene the separate training committee to address training needs and recommendations for this department without specific reference to the facts of the incident considered by the Board.

### **302.3 ANNUAL REVIEW**

An annual review will be conducted on all use of deadly force incidents in accordance with the Department Use of Force policy.

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## Shooting Policy

### 304.1 PURPOSE AND SCOPE

The purpose of the shooting policy is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This policy is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this policy can only form the basis for departmental administrative actions.

### 304.11 POLICY

It is the policy of this department to resort to the use of a firearm, when it reasonably appears to be necessary, and generally:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.
- (c) To stop a dangerous animal.
  - 1. In circumstances where officers encounter an unexpected dangerous animal or are surprised by an animal which reasonably appears to pose an imminent threat to the safety of officers or others, officers are authorized to use deadly force to neutralize such a threat.
  - 2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g. dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g. fire extinguisher, Taser, OC Spray, bean bag shotgun, animal control officer). Nothing in this policy shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.
- (d) An officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and, where other dispositions are impractical. If practical a second officer should witness the euthanization. The primary officer shall notify his/her supervisor as soon as practical.
- (e) For target practice at an approved range.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a) and (b) above. A specific warning that deadly force will be used is not required by this policy; only that a warning be given if feasible.

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### **304.12 WARNING SHOTS**

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the officer reasonably believes that they appear necessary, effective and reasonably safe.

### **304.13 MOVING VEHICLES**

Shots fired at or from a moving vehicle are rarely effective and are generally discouraged.

- (a) Unless it reasonably appears that it would endanger officers or the public, officers are expected to move out of the path of any approaching vehicle.
- (b) This is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others.
- (c) Officers may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed or intends to commit a felony involving the infliction or threatened imminent infliction of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force when feasible.

### **304.14 REPORT OF WEAPON DISCHARGE**

Except during training or recreational use, any member who discharges a weapon accidentally or intentionally, on or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If on-duty at the time of the incident the member shall file a written report with his/her immediate supervisor prior to the end of shift unless otherwise directed. If off-duty, as directed by the supervisor but no later than the end of the next regularly scheduled shift.

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## **Leg Restraint Device**

### **306.1 PURPOSE AND SCOPE**

The proper use and application of a leg restraint device can reduce the potential of injury and damage to property when dealing with violent or potentially violent persons. This section provides guidelines, policy and procedures for the proper use of these devices.

### **306.2 POLICY**

When an officer deems it reasonable to restrain the legs of a violent or potentially violent person during the course of detention, arrest and/or transportation, only restraint devices approved by the Department should be used, and only in the departmentally approved manner for such temporary immobilization of the legs.

### **306.3 AUTHORIZED RESTRAINT**

The RIPP Hobble manufactured by RIPP Restraints, Inc., Orange City, Florida is the only restraint authorized by this department. Officers should only use the RIPP Hobble restraint supplied by the Department. In emergency circumstances, alternative restraints are acceptable provided they are utilized within the guidelines of this policy.

### **306.4 USE GUIDELINES**

In determining whether to use the restraint, officers should consider the following:

- (a) If the officer and/or others are subject to harm due to the assaultive behavior of a violent, resisting and/or attacking suspect
- (b) If it is reasonable to protect the suspect from his/her own actions which would place him/her in danger (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).

The restraint shall be used only after a person has been handcuffed.

### **306.41 MEDICAL CONSIDERATIONS**

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained obvious visible injury, expressed a complaint of significant pain, or who has been rendered unconscious. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel. If an audio recording is made of contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

### **306.5 PROCEDURE**

The restraint device is designed to reduce the likelihood of injury to the restrained person or others, and to reduce the likelihood of property damage caused by the restrained person

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by preventing them from using his/her legs in a manner likely to result in injury or damage. The restraint will only be used to bind and immobilize a person's legs. Only those officers trained in the use of the restraint are authorized to employ it on any person. The following guidelines shall be used when applying the restraint device:

- (a) If practical, officer(s) should notify a supervisor of the intent to apply the restraint. In all cases, a supervisor shall be notified as soon as practical after the application of the restraint
- (b) Once the person's legs have been bound, the safety clip of the restraint may be attached to the chain of the handcuffs provided there is an absolute minimum of 12" separating the wrists from the feet and the person can remain in a seated position or laying on their side.
- (c) Absent a medical emergency, the person being restrained shall remain restrained until the officer arrives at the jail or other facility or the person no longer poses a threat
- (d) Once secured, the suspect shall not be left unattended on his/her stomach for an extended period as this may potentially reduce the suspect's ability to breathe
- (e) The suspect should be constantly watched by an officer while in the restraint. The officer is to ensure the suspect does not roll onto his/her stomach
- (f) The officer shall look for signs of labored breathing

### **306.51 TRANSPORTING RESTRAINED SUSPECTS**

When transporting a suspect(s) who has been restrained, officers shall observe the following procedures:

- (a) Restrained suspects may be transported in a patrol unit. They shall be seated in an upright position and if practical secured by a seat belt. The long lead of the restraint should not be placed outside of the vehicle door or left attached to the handcuffs. When the suspect cannot be transported in a seated position he/she may be taken by ambulance/paramedic unit.
- (b) When taken by ambulance/paramedic unit, the suspect shall be accompanied by an officer.
- (c) Officers should inform the jail staff that the arrestee was subjected to being restrained by use of a restraint device prior to arrival at the jail.

### **306.6 DOCUMENTATION**

Anytime the restraint device is used, the circumstances requiring its use shall be documented in the related report(s). The officer should include the following in the report:

- (a) The amount of time the suspect was restrained
- (b) How the suspect was transported and the position of the suspect
- (c) Observations of the suspect's physical and physiological actions
- (d) Any known or suspected drug use or other medical problems

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## **Control Devices and Techniques**

### **308.1 PURPOSE AND SCOPE**

To reduce and minimize altercation-related injuries to officers and suspects, the Department authorizes the use of selected control devices. Certain control devices are provided in order to control violent or potentially violent suspects. It is anticipated that the use of these devices will generally result in fewer altercation-related injuries to officers and suspects. The below procedures are for the use and maintenance of control devices (e.g., baton, oleoresin capsicum (OC) spray and tear gas). Only those control devices that have been approved by the Chief of Police or his/her designee are authorized to be carried by members of this department.

#### **308.11 WHEN DEVICES MAY BE USED**

When a decision has been made to restrain or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

#### **308.12 REVIEW, INSPECTION AND APPROVAL**

Every control device will be periodically inspected by the department Armorer or Rangemaster, or the designated instructor for a particular control device.

#### **308.13 TRAINING FOR CONTROL DEVICES**

Only officers trained and having shown adequate proficiency in the use of any control device and this agency's Use of Force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.

- (a) Training for all control devices should occur every two years at a minimum.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers failing to demonstrate proficiency with the weapon or knowledge of this agency's Use of Force policy will be provided remedial training. If, after two additional attempts, an officer still cannot demonstrate proficiency with a weapon or knowledge of this agency's Use of Force policy, the officer may be subject to discipline.

### **308.2 BATON/ASP GUIDELINES**

The baton/ASP is authorized for use when the officer has completed departmentally approved training in its use, and based upon the circumstances perceived by the an officer, lesser force would not reasonably appear to result in the safe control of the suspect. Officers shall successfully complete annual update training for the baton/ASP.

### **308.3 CHEMICAL AGENTS GUIDELINES**

The use of Chemical Agents for crowd control/dispersal or against barricaded suspects shall be based on the circumstances. The Patrol Sergeant, Incident Commander or Crisis Response Unit Commander may authorize the delivery and use of Chemical Agents (CN or CS), evaluating all conditions known at the time and determining that lesser force would not reasonably appear to result in the safe control of the suspect(s). When practical, fire personnel should be alerted or summoned to the scene to control any fires and to assist in

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providing medical aid or gas evacuation when the scene is safe. Only officers or supervisors trained in the use of tear gas weapons shall discharge such devices at the scene.

### **308.4 OLEORESIN CAPSICUM SPRAY GUIDELINES**

Only authorized personnel may possess and employ department issued oleoresin capsicum (OC) spray. OC sprays are weapons used to minimize the potential for injury to officers, offenders, or other persons. They should be used only in situations where such force reasonably appears justified and necessary.

#### **308.41 REQUIRED INSTRUCTION FOR USE**

All personnel authorized to carry oleoresin capsicum spray, shall successfully complete the required departmentally approved course of instruction prior to possessing and using the oleoresin capsicum spray. Authorized shall complete periodic update training at least every two years.

#### **308.42 CARRYING OF OLEORESIN CAPSICUM SPRAY**

Uniformed field personnel carrying the oleoresin capsicum spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry the oleoresin capsicum spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

Canisters involved in any type of malfunction or damage shall be turned in to the officer's immediate supervisor for exchange with an explanation of the type of malfunction or cause of damage.

#### **308.43 PEPPERBALL SYSTEMS**

PepperBall projectiles are plastic spheres that are filled with oleoresin capsicum (OC) powder. A compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact, releasing the OC powder. Although classified as a less-lethal device, the potential exists for the projectiles to inflict serious injury when they strike the face, eyes, neck, and groin. Therefore, personnel deploying the PepperBall system shall avoid intentionally striking those body areas unless a life-threatening situation exists. The use of the PepperBall system is subject to the following requirements:

- (a) Officers encountering a situation that requires the use of the PepperBall system shall notify a supervisor as soon as practical. The supervisor shall respond to all PepperBall System deployments where the suspect has been hit. The field sergeant shall make all notifications and reports as required by § 300 Use of Force Policy.
- (b) Only qualified, department-trained personnel shall be allowed to deploy and use the PepperBall system.
- (c) Each deployment of a PepperBall system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Only non-incident deployments are exempt from the evaluation form requirement (e.g., training, accidental discharges, or product demonstrations).

#### **308.44 TREATMENT FOR OC SPRAY EXPOSURE**

Persons who have been affected by the use of Oleoresin Capsicum spray shall be provided with the proper solution or water to cleanse the affected areas as soon as practical and safe to do so. Those persons who complain of further severe effects shall be afforded a medical assessment by competent medical personnel.

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### **308.45 REPORT OF USE**

All uses of chemical agents or Oleoresin Capsicum shall be documented in the related arrest/crime report.

### **308.5 KINETIC ENERGY PROJECTILES**

This department is committed to reducing the potential for violent confrontations when suspects are encountered. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury.

Kinetic energy projectiles are approved by the Department and are fired from specially marked 12 gauge shotguns or 37/40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

### **308.51 DEPLOYMENT**

Approved munitions are justified and may be used to compel an individual to cease his or her actions when such munitions present a reasonable option for resolving the situation at hand.

Approved munitions may only be deployed when a second officer is on scene to provide an immediate lethal force option if necessary.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal announcement of the intended use of the Kinetic Energy Projectiles shall precede the application of a Kinetic Energy Projectile in order to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply
- (b) Provide others and individuals with warning that a kinetic energy device may be deployed

### **308.52 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT**

Examples include, but are not limited to, the following types of situations:

- (a) Where the subject is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions
- (b) Where the subject has made credible threats to harm himself or others
- (c) Where the subject is engaged in riotous behavior or is throwing rocks, bottles, or other dangerous projectiles at people and/or officers
- (d) For tactical applications such as: Rendering a street light inoperable, deterring a vicious animal, or breaking a window to facilitate a tactical operation

### **308.53 DEPLOYMENT CONSIDERATIONS**

Before discharging projectiles, the officer should consider the following factors:

- (a) Severity of the crime or incident
- (b) Subject's capability to pose an imminent threat to the safety of officers or others

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- (c) If the subject is actively resisting arrest or lawful control or attempting to evade arrest by flight
- (d) The credibility of the subject's threat as evaluated by the officers present, and physical capacity/capability
- (e) The proximity of weapons available to the subject
- (f) The officer's versus the subject's physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s))
- (g) The availability of other force options and their possible effectiveness
- (h) Distance and angle to target
- (i) Environmental factors or dangers in particular if the suspect is on an elevated structure
- (j) Type of munitions employed
- (k) Type and thickness of subject's clothing
- (l) The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate

### **308.54 DEPLOYMENT DISTANCES**

Officers will keep in mind the manufacturer's recommendations regarding deployment when using control devices, but are not solely restricted to use according to these manufacturer recommendations. Each tactical situation must be evaluated on the totality of circumstances at the time of deployment.

Five yards is the manufacturer's minimum recommended distance for application to prevent death or serious physical injury. At distances greater than 20 yards, accuracy of the Super-sock munitions decreases significantly, thereby increasing the chances of striking the head or throat area.

### **308.55 SHOT PLACEMENT**

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted when deadly force is not reasonably justified.

The primary strike zone is the upper and lower legs, as well as the buttocks. The secondary strike zone is the lower abdomen, shoulders and arms, and the knees. The last resort strike zone areas include the upper torso, back, and the head and neck in deadly force situations.

In cases where the use of deadly force is justified or immediate incapacitation must be accomplished to prevent death or serious injury, officers are authorized to consider close range or extended range shots involving distances closer than five yards or greater than 20 yards.

### **308.56 APPROVED MUNITIONS**

The approved 12-gauge munitions for patrol use is the Super-Sock CTS Model 2581. It is a 2-3/4 inch standard clear plastic 12-gauge shotshell, with a 40 gram (approximately) lead shot payload sewn into a sock-shaped drag-stabilized fabric bag.

Other munitions may be used with documented approval by both the Range Master and the Chief of Police.

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### **308.57 USE OF KINETIC ENERGY PROJECTILES**

A specially marked shotgun, designated for the use of 12-gauge projectiles, will normally be carried in the secure weapons mount in the front of each primary patrol unit, as well as in the sergeants' patrol unit.

These shotguns will generally be kept unloaded, with munitions being loaded at a potential deployment scene. When practical, another officer or supervisor should witness the loading of the munitions. The loading officer shall personally inspect every round to absolutely ensure it is the appropriate less lethal munition prior to loading it into the shotgun. It is ultimately the responsibility of the officer or supervisor deploying the munitions to verify the correct munitions are loaded into the shotgun.

Officers are to ensure that vehicles carrying these weapons and munitions do not contain any lethal rounds.

### **308.58 USE OF KINETIC ENERGY PROJECTILES BY SWAT**

Officers assigned to the Crisis Response Unit, who have completed a departmental training course may carry and employ 12 gauge or 37/40 mm projectiles while on duty or while performing Special Weapons and Tactics (SWAT) missions.

### **308.59 SAFE HANDLING OF WEAPONS**

The intent of this policy is to promote proper safety while handling kinetic energy devices and projectiles on and off duty. Employees shall maintain the highest level of safety when handling these devices and shall consider the following:

- (a) Officers shall not unnecessarily display or handle any kinetic energy device.
- (b) Officers shall be governed by all rules and regulations pertaining to the use of the police range or training facility, and shall obey all orders issued by the Rangemaster or weapons instructor.
- (c) Any member who discharges a kinetic energy devices accidentally or intentionally, on or off-duty, except during training or recreational use, shall make a verbal report to the on-duty supervisor as soon as circumstances permit and shall file a written report with their immediate supervisor prior to the end of shift if on-duty. If off-duty, as directed by the supervisor.
- (d) Officers shall not place or store any kinetic energy device or projectiles in department premises except when the place of storage is locked.

### **308.6 TRAINING REQUIRED FOR USE**

Personnel who have successfully completed an approved departmental training course shall be authorized to use kinetic energy projectiles. Officers deploying kinetic energy projectiles will complete an annual recertification course demonstrating proficiency with the weapon and knowledge of this agency's Use of Force policy.

### **308.7 RESPONSIBILITIES**

#### **308.71 PATROL SERGEANT'S RESPONSIBILITIES**

The Patrol Sergeant shall monitor the use of control devices in the same manner as all other use of force incidents.

- (a) The Patrol Sergeant may authorize the use of a control device by selected personnel or members of specialized units provided the person(s) authorized has/have the

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## *Control Devices and Techniques*

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required training. The request for a control device should be made through the Patrol Sergeant.

- (b) The Patrol Sergeant shall review each use of control devices by any personnel within his or her command.
- (c) The Patrol Sergeant shall ensure briefing training on the use of control devices is provided as needed.

### **308.72 RANGEMASTER RESPONSIBILITIES**

The Rangemaster shall control the inventory and shall issue all control devices. All damaged, inoperative and/or expended control devices shall be returned to the Rangemaster for disposition, repair or replacement.

### **308.73 MAINTENANCE RESPONSIBILITY**

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

### **308.8 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device and/or technique listed within this section shall be documented pursuant to Policy Manual § 300.4 and 300.5.

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3410 K Street, Baker City, OR. 97814 Troy A. Hale, Sheriff (541)523-6415	Approved: _____ Date: _____	
<b>TRAINING, DEFENSIVE TOOLS AND FIREARMS</b>	<b>SUBJECT: USE OF FORCE</b>	

## **POLICY**

Deputies will use only that force that is reasonable to bring an incident under control, make an arrest, prevent an escape, or protect the lives of the deputy and others; and to protect property. In vesting deputies with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. The Sheriff's Office recognizes and respects the value and special integrity of each human life.

## **PURPOSE**

This policy provides deputies with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of force to use in a situation, the Sheriff expects each deputy to use federal and state laws and these guidelines to make decisions in a legal, professional, impartial, and safe manner. This policy is only for Sheriff's Office use and not for criminal or civil proceedings. It does not create a higher legal standard of safety or care, in an evidentiary sense, with respect to third-party claims. Staff violations of this policy will only form the basis of Sheriff's Office disciplinary actions. (*Note: Specific defensive tool issues related to the use of force are in the policy G-11-3, Defensive Tools.*)

## **REFERENCES**

- United States Constitution, Amendment 4 (Search and seizure)
- United States Constitution, Amendment 8 (Cruel and unusual punishment)
- United States Constitution, Amendment 14 (Operating under color of law)
- ORS 133.325, Arrest by Peace Office; Procedure
- ORS 161.205, Use of Physical Force Generally
- ORS 161.219, Limitations on Use of Deadly Physical Force in Defense of Person
- ORS 161.229, Use of Physical Force in Defense of Property
- ORS 161.235, Use of Physical Force in Making an Arrest or in Preventing an Escape
- ORS 161.239, Use of Deadly Physical Force in Making an Arrest or in Preventing an Escape
- ORS 161.265, Use of Physical Force to Prevent an Escape (from a correctional

facility)

- BCSO Policy G-8-9, *Vehicle Pursuits*
- BCSO Policy G-10-1, *Complaint Investigation*
- BCSO Policy G-11-3, *Defensive Tools*
- BCSO Policy E-6-2, K-9 [*Canine*] *Unit*
- BCSO Policy J-14-14, *Use of Force in a Corrections Setting*
- *BCSO Officer-Involved Fatal or Critical Incident Protocol*

## DEFINITIONS

**Deadly physical force.** *Physical force* that under the circumstances of its use is readily capable of causing death or serious physical injury

**Defensive tools.** Sheriff's Office approved material and equipment for use in applying approved use-of-force tactics. It may include such items as restraints, firearms, batons, OC spray, and chemical munitions.

**Deputy.** Any member of the Baker County Sheriff's Office the Sheriff authorizes to use *physical force*, defensive tools and tactics, or firearms in the performance of their assigned duties.

**Hog-tie.** Binding a person's wrists and ankles together behind the back while in a prone position in such a way as to produces extreme tension on the body.

**Electrical stun device.** A non-lethal weapon that stuns a *threat* with a high voltage, very low current, short duration shock that may incapacitate the *threat*.

**Extended-range impact munitions.** Less lethal munitions that are designed to hit a *threat* from a greater distance than an impact weapon. They may neutralize the threat through pain compliance or incapacitation.

**Firearm.** A weapon designed to expel a projectile using powder action.

**Focused blows.** A deputy striking specific parts of a *threat's* body with his or her feet, knees, legs, body, hands, elbows, arms, or head.

**Impact weapon.** 1) A device, such as a baton, or other object designed to hit a *threat*. 2) An alternative object, like a flashlight, used to hit a *threat*.

**Medical personnel.** Licensed physicians, licensed physician assistants, registered nurses, and certified emergency medical technicians.

**Neck restraint.** A physical hold that usually incapacitates the *threat* by restricting blood flow to the brain. It compresses the *threat's* jugular veins or carotid arteries. As a secondary effect it may compress the *threat's* airway, which will limit the *threat's* ability to breathe. The neck restraint is also known as a sleeper hold and carotid restraint.

**OC spray.** A solution of oleoresin capsicum, which when used may cause a burning sensation on contact. OC spray may cause tearing and swelling of eyes. If inhaled, it

can cause inflammation and swelling of the mucous membrane linings of breathing passageways. This may temporarily restrict breathing to short shallow breaths. OC spray is also known as pepper spray.

**Physical force.** The use of hands, other parts of the body, objects, instruments, electronic stun devices, firearms, or other physical methods to restrain, subdue, control, or compel a person to act or stop acting in a particular way.

**DEFINITIONS (Cont.)**

**Physical control.** The use of hands, holds, OC spray, electronic stun devices, and other physical methods to restrain, subdue, control, or compel a person to act or stop acting in a particular way.

**Positional asphyxia.** Term for a cause of death due to respiratory failure in which body position and restraint method may have been contributing factors. Also known as Sudden In-Custody Death Syndrome.

**Restraint.** A device used to secure and control the hands, arms, feet, legs, head, or torso of a person. Examples are handcuffs, flex cuffs, and leg restraints.

**Serious physical control.** The level of force between *deadly physical force* and *physical control* on the use-of-force continuum. It includes the use of focused blows, impact weapons, chemical agents (other than OC spray), extended-range impact munitions, and neck restraints.

**Taser M26.** Advanced Taser M26; A less than lethal, conducted energy weapon that uses propelled wires to conduct energy to a remote target, thereby controlling and overriding the central nervous system of the body. The Advanced Taser M26 is manufactured by TASER International, Scottsdale AZ, 85260-9913. (480) 991-0797.

Probes: Probes are small projectiles launched from the Advanced Taser M26 using compressed and inert nitrogen capsules (1800 psi).

**Threat.** 1) Any person, animal, or object controlled by a person that is presenting a danger to themselves or others. 2) Any person resisting arrest or being lawfully controlled. 3) Any animal that presents a danger to others and is not under the control of a person.

**Use-of-force continuum.** A table showing an overview of the force options available for deputies to use in response to a threat's level of resistance. The table is not meant to cover all possible responses or methods because the dynamics needed to control each situation are unique.

**PROCEDURES****SECTION A: CONSIDERATIONS FOR THE USE OF FORCE****A-1. Reasonableness and Use of Force**

Deputies will use only the amount of force that reasonably appears necessary to bring

an incident under control, given the facts and circumstances the deputy perceives at that time. A person must judge "reasonableness" of the force from the viewpoint of a reasonable deputy on the scene at the time of the incident. A person judging reasonableness will also allow for the "totality of the circumstances." Any interpretation of "reasonableness" must allow for the fact that deputies are forced to make split-second decisions about the amount of force that is needed in situations that are tense, uncertain, and rapidly evolving.

## **A-2. Factors for Consideration in Using Force**

A deputy may consider the factors listed below when deciding to use force in a situation along with the type and level of force to use. The deputy is not limited to these factors.

## **SECTION A: CONSIDERATIONS FOR THE USE OF FORCE**

### **A-2. Factors for Consideration in Using Force (Cont.)**

- a. Conduct of the *threat*
- b. Age, size, strength, physical conditioning, and skills of the *threat* and deputy
- c. Influence of drugs or alcohol on the *threat*
- d. Mental capacity of the *threat*
- e. *Threat's* proximity to a weapon
- f. Deputy injury, disability, or level of exhaustion
- g. Prior or special knowledge of the *threat* or situation
- h. Risk of escape
- i. Potential injury to citizens and deputies
- j. Seriousness of the *threat's* offense or reason for contact with the *threat*
- k. Training and experience of the deputy
- l. Ratio of deputies to *threats*
- m. Environmental factors, such as availability of cover, ground level, terrain, weather, and visibility

### **A-3. Principles for the Use of Force**

The following principles apply when using force:

- a. The *threat*, by his or her level of resistance, always dictates the level of force a deputy will use against him or her; therefore, the *threat* is responsible for any injury he or she may receive while resisting.
- b. If the level of force is justified, the method of force that a deputy uses does not matter.
- c. If the level of force is justified, the degree of injury to the *threat* does not matter.

- d. A deputy must overcome a *threat's* resistance as quickly as possible to minimize the possibility or degree of injury to the *threat* and the deputy.

#### **A-4. Threatening the Use of Force**

A deputy will not threaten to use force that is not justified.

#### **A-5. Deputy Discretion**

A deputy may refrain from the use of force, including *deadly physical force*, even when justified if the deputy believes the use of such force is not fitting under the circumstances.

#### **A-6. Excessive Force**

Staff must report to a supervisor any deputy that uses excessive force on a *threat* or who fails to follow use-of-force procedures. Supervisors will handle use-of-force complaints according to policy G-10-1, *Complaint Investigation*. Deputies are subject to disciplinary action, up to and including immediate termination, for use-of-force abuse or failure to report abuse.

#### **A-7. Division Use-of-Force Procedures**

Division commanders may develop use-of-force procedures for specific application within their divisions. They must augment and not conflict with these general procedures.

**SECTION B: USE OF FORCE CONTINUUM****B-1. Use-of-Force Continuum**

Deputies will use the use-of-force continuum as the guide to escalate or de-escalate the force based on the threat. (The continuum is in table 1 on page . Terms used in the continuum are table 2 on page .) Deputies must know and apply the proper level and type of force needed to control a *threat's* behavior. The use of force must be reasonable for the circumstances and deputies may use any level of force, including *deadly physical force*, if reasonable, without first using lesser levels of force. They will not use force to punish, harass, or abuse a *threat*.

**Advanced Taser M26:** The Advanced Taser M26 is a conducted energy weapon that is effective because it overrides the central nervous system of the human body. The Advanced Taser M26 sends out short duration, high voltage electrical waves known as Taser-waves, or T-waves that overpower the normal electrical signals within the nerve fibers. As a result of using Taser technology, the officer gains control of the situation with minimum risk to the suspect and officer while maintaining a safe distance up to twenty-one (21) feet. The Advanced Taser M26 uses Electro-Muscular-Disruption (EMD) systems. An EMD system affects the sensory and motor nervous system and causes the muscles to contract.

**Medical Findings:** Medical findings regarding the Advanced Taser M26: The Advanced Taser M26 operates at 50,000 volts, 26 watts, and 0.162 amps. It is not voltage that is dangerous, it is amperage. The electrical output of the Advanced Taser M26 may seem high but the amps are within safe limits. Testing has concluded that the Advanced Taser has no effect on heart rhythms. Testing has also been conducted on over 700 human volunteers with no injury. There may be minor skin irritation similar to sunburn present and the probe contact sites.

**Deployment of the Advanced Taser M26:** The Advanced Taser M26 will be deployed at the same level of O/C Spray on the use of force continuum.

Any time a deputy arrives on scene and is carrying the Advanced Taser M26 and there is potential for its use, the Deputy will announce "Taser on scene" or a similar phrase to inform other Deputies/Officers of its presence. When the Advanced Taser M26 is deployed **for use, the Deputy will give the verbal warning of "Taser Taser Taser" so that all Deputies/Officers on scene will be aware that the shot is from the Taser and not a firearm, reducing the risk of sympathetic fire.**

**Education of other agencies:** The Advanced Taser M26 instructors will contact all surrounding police agencies provide them a short presentation of the Advanced Taser M26 and demonstrate its use when feasible.

**Use of the Advanced Taser M26:** All Deputies who are issued the Advanced Taser M26 shall be certified as a user by a certified taser instructor, prior to deployment in the field. The certification class consists of a minimum of four (4) hours of instruction and will require annual in-service training to remain certified.

**SECTION B: USE OF FORCE CONTINUUM****B-1. Use-of-Force Continuum****Use of the Advanced Taser M26:** (Cont.)

The Advanced Taser M26 should only be used to stop a threat. This would include, but is not limited to, threats to officer safety, threats to others, and includes the threat of a suspect injuring himself. **The Advanced Taser M26 shall never be used as a tool for coercion.**

**Limitations for use of the Advanced Taser M26:** Do not use the Advanced Taser M26 in the following situations.

- a. Any known pregnant female.
- b. Any subject who is saturated with or in the presence of a highly flammable or combustible substance.
- c. Any subject who may receive a secondary injury from a severe fall from its use, ie. standing on the roof ledge of a building.
- d. The facial area of the head.

Once a subject who has had the Advanced Taser M26 deployed on them is in custody, the Deputy will notify dispatch that the Advanced Taser M26 has been deployed and request that a supervisor be notified and request Fire/EMS/QRT to respond to the scene and evaluate the suspect. In most cases, transport to a medical facility will not be required. Show the probe contact points on the subject to medical technicians. In the event that a Taser probe hits a sensitive tissue area ie. face, neck, groin and female breast, the probe will only be removed by trained medical staff at a medical facility. Probes may be removed on the scene by the deploying Deputy in any other case. The probes and probe contact sites on the subjects should be photographed. The probes will be placed into the fired cartridge, taped over, marked as a biohazard, and entered into evidence. Deputies will wear protective gloves when removing the probes.

After deployment of the Advanced Taser M26, the deploying Deputy will fill out an Advanced Taser use report and turn it into the Patrol Sergeant. The patrol Sergeant will maintain a file for Advanced Taser use reports. A copy of the report will also be filed with the case file and use of force report. The Patrol Sergeant will submit a copy of the Advanced Taser use report to Taser International.

**B-2. Use-of-Force Escalation and De-escalation**

Deputies will escalate the force as the threat escalates and de-escalate when it is safe

or appropriate. The following concepts determine the justified escalation and de-escalation of force.

- a. Is the action worth the risk of injury to the deputy, bystanders, or the *threat*?
- b. Is the force applied the least amount necessary to neutralize the *threat*?
- c. Does the *threat* have an opportunity to comply with the force or commands?
- d. Is the application of force neutralizing the *threat*?

## **SECTION C: GUIDELINES ON SPECIFIC APPLICATIONS OF FORCE**

### **C-1. Impact Weapons**

Deputies may use impact weapons if the *threat* warrants a *serious physical control* level of response. They may use them as an "expedient" tool, such as a lever or breakout tool, if the situation reasonably warrants and they cannot easily access another tool designed for the purpose. They may also use impact weapons as a way to apply a *physical control* tactic, like to a pressure point. A deputy will consider how he or she intends to use the impact weapon when deciding how much force to use in response to the *threat*. Deputies should avoid directing strikes to a *threat's* head, neck, spine, groin, or kidneys unless the level needs to escalate to *deadly physical force*.

### **C-2. Extended-Range Impact Munitions**

Deputies will stay alert to the fact that extended-range impact munitions may take the form of *deadly physical force* depending on the method of deployment and the target area the munitions are directed at. Deputies should avoid directing munitions to a *threat's* head, neck, spine, groin, or kidneys unless the level needs to escalate to *deadly physical force*. Deputies may use these munitions as expedient tools for tactical building or vehicle entry.

### **C-3. Neck Restraint**

The neck restraint is the highest level of force to use when a *threat* warrants *serious physical control*.

### **C-4. Canines as a Use of Force**

A canine handler will follow this use-of-force policy and policy E-6-2, [Canine] K-9 Unit, when using a canine as a defensive tool.

### **C-5. Use of Force and Vehicles**

A vehicle, with its driver or occupants, in certain situations may be a *threat*. A vehicle may also be a defensive tool for a deputy. Deputies will follow procedures in policy G-8-9, *Vehicle Pursuits*, for use-of-force actions against a vehicle.

### **C-6. Training on and Carrying Defensive Tools and Tactics**

Deputies must receive training on the use of defensive tools and tactics according to policy G-11-3, *Defensive Tools*. They will carry defensive tools according to the

same policy and any division procedures.

## **SECTION D: DEADLY PHYSICAL FORCE PARAMETERS**

### **D-1. Use of Deadly Physical Force**

Deputies are authorized to use *deadly physical force*—

- a. In self defense or defense of others from what the deputy reasonably believes to be a threat of death or serious bodily harm.

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## **SECTION D: DEADLY PHYSICAL FORCE PARAMETERS**

### **D-1. Use of Deadly Physical Force (Cont.)**

- b. To prevent the escape of a *threat* that the deputy has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

### **D-2. Warning Before Use of a Firearm**

Before using a firearm, if feasible, deputies will give warning of their intent to shoot.

### **D-3. Warning Shots**

The use of warning shots is highly discouraged. However, deputies may use warning shots when the only other resolution to the situation would be the use of *deadly physical force*. A deputy will fire into an adequate backstop if the situation warrants the use of warning shots.

### **D-4. Other Discharges of a Firearms**

A deputy may also discharge a weapon under the following circumstances:

- a. During range practice or competitive sporting events.
- b. To destroy an animal that presents a threat to public safety.

### **D-5. Other Discharges of a Firearms**

- a. To destroy a seriously injured animal.
- b. During lawful off-duty, gun-related activities, such as hunting.

### **D-6. Shooting from a Moving Vehicle**

Deputies will not discharge a firearm from a moving vehicle. BCSO-approved Tactical Negotiations Team (TNT) tactics and special procedures may include

exceptions to this firearm-discharge procedure.

#### **D-7. Shooting at a Vehicle**

A deputy may fire at someone in a vehicle under circumstances that warrant the use of *deadly physical force*. He or she will not fire to disable a vehicle.

#### **D-8. Display and Use of Firearm**

Except for maintenance or training, deputies will not draw or display their firearm unless circumstances create reasonable cause to believe that they may need to use the firearm.

### **SECTION E: USE-OF-FORCE INJURIES**

#### **E-1. Medical Care to Human Threats**

Deputies will make sure human *threats* that sustain injuries while under their control receive the opportunity for proper medical care. They will balance the potential threat an injured *threat* may

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### **SECTION E: USE-OF-FORCE INJURIES**

#### **E-1. Medical Care to Human Threats (Cont.)**

still present against the need for immediate care. Medical personnel will exam the *threat* whenever a deputy used *serious physical control* or *deadly physical force* on the *threat*. Deputies should have the medical personnel exam the *threat* before taking the *threat* to jail.

#### **E-2. Contributing Factors to Positional Asphyxia**

Deputies should consider factors that may contribute to a *threat* suffering positional asphyxia. Factors that may affect the *threat's* susceptibility include but are not limited to the following:

- a. Drug and alcohol use
- b. History of mental illness
- c. Violent physical exertion
- d. Obesity
- e. Preexisting health conditions

#### **E-3. Positional Asphyxia Prevention**

To help prevent positional asphyxia, deputies will position a restrained *threat* in a seated or upright position or on his or her side as soon as possible after applying any restraints. They will restrain a *threat* in way that does not impede his or her

ability to breathe. Deputies will not hog-tie a *threat*; nor will they sit or lie on the chest or back of the *threat* or otherwise cause compression to the upper torso any longer than is necessary to apply restraints or otherwise neutralize the *threat*. They will monitor the condition of *threats* in restraints, and those who have just undergone some type of *physical control* or higher level on the use-of-force continuum. Before releasing the *threat* to authorized personnel, a deputy will brief them on the *threat's* condition and any *physical force* applied.

## **SECTION F: REPORT AND REVIEW PROCESS**

### **F-1. Use-of-Force Reports**

Deputies involved must write and get approved a use-of-force report before the end of their shift in the following situations:

- a. For any use-of-force incident that results in an injury to the *threat*, an involved deputy, or other person. However, if the injury results in death or is so severe that death is likely to result, then supervisors will direct the need for reports according to the *BCSO Officer-Involved Fatal or Critical Incident Protocol*.
- b. When a deputy discharges a firearm or extended range impact weapon outside a firing range, unless it was for lawful off-duty gun-related activities, such as hunting.
- c. For any incident involving a level of force of *physical control* or higher on the use-of-force continuum. (*Note: This excludes the standard use of restraints for security in an arrest, escort, or transport of a cooperative threat.*)

## **SECTION F: REPORT AND REVIEW PROCESS**

### **F-1. Use-of-Force Reports (Cont.)**

- d. When a deputy displays any defensive tool to gain compliance. For example: pointing a firearm at a person, drawing a baton while giving a verbal order, or pointing OC spray at a person.

### **F-2. Report Form**

Each division commander will provide a use-of force report for use by deputies within his or her division.

### **F-3. Report Content**

The use-of-force report is to address events, actions, and other information surrounding the use-of-force action. It should be in chronological order and should address the following key elements, when possible and if appropriate:

- a. Reason for contact with the *threat*
- b. Behavior and actions of the *threat* in specific terms
- c. Rationale for the level of force and method, including fears and perceptions
- d. Description of the incident in detail
- e. Description of the *threat's* physical size, appearance, gestures, and expressions
- f. Description of the scene and environmental factors
- g. Description of how a force option or method was applied and the weapons used
- h. Word-for-word quotes
- i. Duration of physical combat
- j. Description of how force escalated and de-escalated
- k. If transported, destination, length of trip, mode, and body position of the *threat*
- l. Decontamination procedures taken
- m. Injuries and the first aid and medical care given
- n. Names of medical personnel, and their agency, giving medical care
- o. Names of those involved in the incident and witnesses

#### **F-4. Documenting Injuries**

To document injuries, deputies will take photographs of the injuries to *threats*, deputies, and third parties. They may also videotape the injuries.

#### **F-5. Administrative Review of Reports**

Division commanders will designate the approval, review, and distribution of use-of-force reports within their divisions. As a minimum, a shift supervisor will approve the original use-of-force report and then forward it on to the division commander or a designated representative.

#### **F-6. Training Assessment Reviews**

Designated instructors for each division will periodically review the report file to assess training and equipment needs. The reviews should occur at least every 6 months. Training section staff may also review the files to assess training needs. The rangemaster will review any use of *deadly physical force* with a firearm or the discharge of a firearm by a deputy.

### **SECTION F: REPORT AND REVIEW PROCESS**

#### **F-6. Training Assessment Reviews (Cont.)**

- a. Any training review will determine whether—
  - (1) Training is current and adequate.
  - (2) Relevant policies are clearly understandable and effective in covering the situation.
  - (3) The deputy complied with current laws, policies, procedures, work instructions, and training guidelines.
  
- b. The reviewers will send a summary of findings to the appropriate division commander for action.

**FORMS USED:** As specified by division commanders

APPENDIX 1: USE-OF-FORCE CONTINUUM

TABLE 1: USE-OF-FORCE CONTM.

<b>TABLE 1: USE-OF-FORCE CONTINUUM</b>				
	<b>LEVEL OF FORCE</b>	<b>METHOD OF FORCE</b>	<b>LEVEL OF RESISTANCE</b>	<b>THREAT'S BEHAVIOR</b>
<b>VI</b>	Deadly Physical Force	Any force readily capable of causing death or serious physical injury	Lethal	Resistive
<b>V</b> ↑	Serious Physical Control	<ul style="list-style-type: none"> <li>• Neck restraint</li> </ul>	Ominous	
		<ul style="list-style-type: none"> <li>• Canine apprehension</li> <li>• Extended range impact munitions</li> <li>• Impact weapon</li> <li>• Focused blows</li> <li>• Chemical agents</li> </ul>	Active	
<b>IV</b> ↑	Physical Control		Static	
		<ul style="list-style-type: none"> <li>• Electrical stun devices</li> <li>• OC spray</li> <li>• Hair takedown</li> <li>• Joint takedown</li> <li>• Digital control</li> <li>• Joint manipulation</li> <li>• Pressure points</li> <li>• Restraints</li> </ul>		



V	<b>Serious physical control.</b> The level of force between <i>deadly physical force</i> and <i>physical control</i> on the use-of-force continuum. It includes the use of focused blows, impact weapons, chemical agents (other than OC spray), extended-range impact munitions, and neck restraints.
IV	<b>Physical control.</b> The use of hands, holds, OC spray, electronic stun devices, and other physical methods to restrain, subdue, control, or compel a person to act or stop acting in a particular way.
III	<b>Physical contact.</b> Using a close position, personal touch, or escort hold to guide or control a <i>threat</i> . The intent of any touch is not to cause pain.
II	<b>Verbal commands.</b> Verbal efforts to coax cooperation from a <i>threat</i> . They can take the form of questions, direct orders, persuasions, or warnings.
I	<b>Presence.</b> The expected influence a person or object carries as a position of authority and level of force. Examples are a deputy's uniform, a patrol vehicle, or the display of a badge.
<b>METHOD OF FORCE</b>	
<i>This refers to the methods a deputy might use to neutralize the threat.</i>	
<p><b>Canine apprehension.</b> The action of a canine grabbing and holding a <i>threat</i> using a full-mouth hold until the handler orders release. The handler may initiate the action to apprehend a <i>threat</i> or in self-defense. The canine may initiate the action in the defense of the handler or itself.</p> <p><b>Canine harass and delay.</b> The directed use of canine by its handler to detain or control a <i>threat</i> by having the canine bark and move back and forth in herding motion. It can include the canine having light contact with the <i>threat</i>, primarily with its muzzle, paws, or shoulder, to keep the <i>threat</i> from moving.</p> <p><b>Chemical agent.</b> An irritant substance (other than OC spray) to the eyes and upper respiratory tract.</p> <p><b>Digital control.</b> Control gained over the <i>threat</i> by applying force to the fingers to obtain a pain compliance response.</p> <p><b>Electrical stun device.</b> A nonlethal weapon that stuns a <i>threat</i> with a high voltage, very low current, short duration shock that incapacitates the <i>threat</i>.</p> <p><b>Extended range impact munitions.</b> Less-than-lethal munitions that are designed to hit a <i>threat</i> from a greater distance than an impact weapon.</p> <p><b>Focused blows.</b> A deputy striking specific parts of a <i>threat's</i> body with his or her feet, knees, legs, body, hands, elbows, arms, or head.</p> <p><b>Impact weapon.</b> 1) A device, such a baton, or other object designed to hit a <i>threat</i>. 2) An alternative object, like a flashlight, used to hit a <i>threat</i>.</p> <p><b>Neck restraint.</b> A physical hold that usually incapacitates the <i>threat</i> by restricting blood flow to the brain. It compresses the <i>threat's</i> jugular veins or carotid arteries. As a secondary effect it may compress the <i>threat's</i> airway, which will limit the <i>threat's</i> ability to breath. The neck restraint is also known as a sleeper hold and carotid restraint.</p> <p><b>OC spray.</b> A solution of oleoresin capsicum, which when used causes burning pain on contact. It can incapacitate or prompt a <i>threat</i> to comply with orders. OC spray causes tearing and swelling of eyes. If inhaled, it causes inflammation and swelling of the mucous membranes lining of breathing passageways. This may temporarily restrict breathing to short shallow breaths. OC spray is also know as pepper spray.</p> <p><b>Pressure point control.</b> Control gained over a <i>threat</i> by applying pressure at specific points of the body to obtain a pain compliance response.</p> <p><b>Restraint.</b> A device used to secure and control the hands, arms, feet, legs, head, or torso of a person. Examples are handcuffs, flex cuffs, and leg restraints.</p> <p><b>Show of force.</b> A demonstration of the ability to use force, such as the massing of deputies or tactical squads. It can also be a single deputy with defensive tools and tactics.</p> <p><b>Takedown.</b> Forcing a <i>threat</i> to the ground into a position of disadvantage to allow a deputy to gain control.</p>	

<b>TABLE 2: USE-OF-FORCE CONTINUUM TERMS (Cont.)</b>	
<b>LEVEL OF RESISTANCE</b>	<i>This refers to the level of resistance from the <u>threat</u>.</i>
<b>Lethal.</b> The <i>threat</i> shows the intent, and has the opportunity and means to inflict serious physical injury or death. The means can be a weapon or superior body size, strength, or combative skill.	
<b>Ominous.</b> The <i>threat</i> demonstrates the willingness to engage in combat by verbal challenges, threats, aggressive behavior, or assault.	
<b>Active.</b> The <i>threat</i> pulls away from deputy's grasp, attempts to escape, resists, or counters <i>physical control</i> .	
<b>Static.</b> The <i>threat</i> refuses to comply with commands or directed movement, becomes dead weight, or grasps an object to prevent movement. The <i>threat</i> has a weapon but does not threaten to use it.	
<b>Verbal.</b> The <i>threat</i> verbally resists but complies physically with a deputy's commands.	
<b>THREAT'S BEHAVIOR</b>	<i>This refers to how the threat is responding to the use of force.</i>
<b>Resistive.</b> The <i>threat</i> does not act in accordance to a deputy's commands and behaves in a way that opposes or negates the deputy's lawful use of force.	
<b>Undecided.</b> The <i>threat</i> physically acts according to the deputy's commands and shows no committed intent to overcome or negate the deputy's lawful use of force.	
<b>Complaint.</b> The <i>threat</i> acts in accordance with all commands from the deputy or responds to a physical use of force by remaining under control and offering no resistance.	

3410 K Street, Baker City, OR. 97814  
Troy A. Hale, Sheriff  
(541)523-6415

Approved: \_\_\_\_\_  
Date: \_\_\_\_\_

**TRAINING, DEFENSIVE TOOLS AND  
FIREARMS**

**SUBJECT: DEFENSIVE TOOLS  
(CRITICAL POLICY)**

Information contained in this policy is releasable only to  
ALL Sheriff's Office personnel

**POLICY:** An inherent part of a deputy's duty is the potential use of lawful physical force to include deadly physical force. A Baker County deputy is issued specific equipment and given specific training so that this force may be applied in a legally recognized manner.

**PURPOSE:** This policy is designed as a single source to provides Sheriff's Office members with guidelines and procedures as to the issuance, carrying, maintenance, and training of authorized defensive tools to include firearms. Use of Force issues are defined in the policy G-11-2

**REFERENCES:** ORS 161.219, 161.235, 161.239, 133.235, 161.265  
BCSO Policy # G-11-2 (Use of Force)  
BCSO Policy # G-10-1 (Internal Affairs)  
BCSO Policy # E-6-2 (K9)  
BCSO Policy # (TBW) (Emergency Vehicle Operation; EVO)  
Federal Aviation regulation 108  
Baker County Interagency Pursuit policy (dated 6/13/96)  
Baker County Critical Incident Protocol

**DEFINITIONS:**

**Clearing Barrel:** Approved ballistic safety chamber designed to allow safe loading and unloading of a firearm..

**Authorized Armorer:** Sheriff's Office approved firearms instructor who successfully completes a manufacturer's armorer course.

**Deputy:** The term deputy in this document refers to any member of the Baker County Sheriff's Office who utilizes physical force, defensive tools, and/or firearms in the performance of their assigned duties.

**Extended Range Impact Munitions:** Munitions designed to neutralize the threat using pain compliance and/or physical incapacitation via impact at a greater range than a standard police impact weapon such as a baton.

**Firearm:** Weapon, by whatever name known, which is designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

**Impact weapon:** 1) Weapon specifically designed to neutralize the threat using pain compliance and/or physical incapacitation via impact. 2) Any alternate object used to neutralize the threat using pain compliance and/or physical incapacitation via impact.

**O/C Spray:** Oleoresin Capsicum spray; An organic suspension of Oleoresin Capsicum which when applied to a threat gains compliance via physical incapacitation and secondary pain compliance

**Positional asphyxia:** Term given to cause of death that results from respiratory compromise in which body position and restraint may be a contributing factor.

**Restraints:** 1) Specific equipment designed for restraint, i.e., chain or hinge metal handcuffs, flexcuffs/flex ties, leg hobbles, Velcro leg restraints. 2) Specific action designed to restrain, i.e., low risk handcuffing, high risk handcuffing, multiple deputy restraint. 3) Alternate means to accomplish restraint.

**Shield:** Term given to tactical ballistic protective shield.

**Undercover:** Any deputy assigned a specific duty requiring concealment of their identity.

**Vest:** Term given to approved soft body armor for sheriff's office personnel.

## **PROCEDURE:**

### **Section A -- Considerations.**

1. Modifications (Not related to firearms): No defensive tool will be modified (i.e. weighting of batons, changing nozzle patterns of O/C spray, etc.). Exceptions may be approved on an individual basis with the recommendation of the lead instructor of defensive tactics and the approval of the Sheriff. Exceptions will be granted only for modifications that are related to the performance of job duties in special situations ( i.e., undercover, concealment, etc.). Approved modification will be documented and

maintained on file in the training division.

**Section B - Defensive tools (Non-Firearms)**

1. Restraints: All persons taken into custody shall at a minimum be handcuffed behind the back, unless such handcuffing is impossible (i.e., an amputee), impractical (i.e., large frame individuals who are unable to be cuffed in the rear, investigative transport of in custody informants, etc.), not sanctioned

**Section B - Defensive tools (Non-Firearms) (Cont.)**

(i.e., court appearance by a prisoner) or if doing so would be medically inappropriate (i.e., threats with breathing difficulties, pregnant women, etc.) If a subject can not be handcuffed behind the back they will be restrained by alternate means such as handcuffing in front, belly chains, use of flex cuffs, etc.

This policy is not designed to limit the uses of restraints by deputies for the deputy's safety. Deputies may use restraints at their discretion as a means of control of potential violent contacts. If conventional restraints are not available a deputy may elect to use alternate means of restraint they have access to at that time. The totality of the situation must be taken in account and the deputy must realize that they are responsible for the level of force that is applied. Restraints applied to gain control over a situation will be removed as soon as possible if the situation de-escalates and when it has been determined no crime in which the subject will be placed in physical custody has occurred.

2. Restraint while transporting: Prior to all transports of custodial suspects the suspect will be restrained in the above manner and searched. The suspect will remain in restraints until the transport is completed and they are released to authorized personnel or correctional facility. All suspects transported to the Baker County Jail will only enter the jail complex if properly restrained. Once in the jail the arresting deputy will secure the arrestee until released by jail staff. Only jail deputies will authorize the release of the arrestee from restraints.
3. Restraints issued by Sheriff's Office:
  - a. Metal Handcuffs: Each deputy will be issued one pair of approved metal handcuffs (refer appendix a). Handcuffs will be issued once they have successfully completed Sheriff's Office approved training in the use of these restraints. Carrying of handcuffs is mandatory by all trained on duty certified personnel. Additionally, a deputy is required to carry at least one handcuff key, on their person, while on duty. A deputy may elect to purchase and carry additional handcuffs listed in appendix a. The deputy is responsible for normal cleaning and maintenance. The deputy will inspect the handcuffs for operation prior to each shift. If the deputy determines the handcuffs are not functioning properly they will be replaced prior to start of shift. Undercover deputies, with approval from their supervisor, will have discretion in the carry of handcuffs and additional restraints.
  - b. Flexcuffs: Deputies will have access to Sheriff's Office approved flexcuffs and flex

ties (refer to appendix a ) as an additional form of restraint. A deputy may carry and use this equipment once they have successfully completed Sheriff's Office required training in the use of these restraints.

- c. Leg restraints: Deputies will have access to leg restraints as an additional form of restraint. Leg restraints will only be used in conjunction with hand restraint i.e., handcuffs; they will not be used as the sole form of restraint. A deputy may carry and use this equipment once they have successfully completed Sheriff's Office approved training in the use of these restraints. Access to these restraints is mandatory. (refer appendix a)

#### **Section B - Defensive tools (Non-Firearms)**

4. Restraints/Use specific to correction deputies: Refer to policy C-3-13. Listing of the equipment is found in appendix a.
5. O/C Spray: Each deputy will be issued one canister of Sheriff's Office approved O/C spray with holster (refer appendix b). O/C spray will be issued once they have successfully completed Sheriff's Office required training in O/C spray application, use, carry and first aid treatment. Carry of O/C spray is mandatory by all trained, enforcement personnel. Deputies will have access to replacement O/C spray. If a deputy determines their O/C spray's ability has degraded (i.e., low volume, bad nozzle, low propellant, normal use, etc. ) they will replace it immediately. The complete inventory of O/C spray will have no canister older then 2 years after it's charging date. The deputy is responsible for normal maintenance. The deputy will inspect O/C spray canister for operation prior to each shift and after each use. If the deputy determines the canister has potential malfunctions it will be replaced prior to start of shift. Undercover deputies will have discretion in the carry of O/C spray.
6. Impact weapons: Each deputy will be issued one Sheriff's Office approved baton with holster (refer appendix c) except for corrections deputies in a direct prisoner supervision assignment. An expandable baton will be issued once they have successfully completed Sheriff's Office required training in it's application, use, and carry. Successful completion of impact weapon Sheriff's Office training is required. Carry of an approved impact weapon is mandatory by all trained and qualified uniform personnel except for those stated above. The deputy is responsible for normal cleaning and maintenance. The deputy will inspect the baton for operation

prior to each shift and after each use. If a deputy determines their baton is inoperable (i.e., split, warped, fails to extend, normal use, etc. ) it will be replaced as soon as possible and prior to utilization. A qualified defensive tactics instructor will examine the defective baton at a later time and make a determination if it needs to be replaced or if it can be repaired. Undercover deputies will have discretion in the carry of impact weapons.

Deputies are authorized to use alternate objects (e.g. flashlights) as impact weapons under the following circumstances. 1) The deputy has determined the level of force response requires impact weapons. 2) The deputy does not have ready access to their issued impact weapon or their weapon is inoperable. 3) The object must be used in a manner consistent with training in impact weapons.

7. Utility knives: Members may carry a knife designed for utility work. The knife blade will not exceed 5" and may be folding or fixed blade. All fixed blade knives with an overall length greater than 4" will be carried concealed and not on the duty belt. Folding blade knives with an overall length of 6" or less may be carried in a sheath on the duty belt; if greater than 6" it will be carried sheathed and concealed. Knives will be secured prior to entry into a correctional facility except for corrections deputies who carry approved/issued knives as part of their specific duties. The knife will only be used as a defensive tool for self defense and at a level of force response that requires the use of deadly force by the deputy.
8. K9: (refer to K9 policy E1-1 and Use of Force policy G11-2).

## **SECTION C - FIREARMS**

Members shall furnish and carry only approved firearms and shall utilize such firearms within the scope of applicable law, this policy and the use of force policy. Members while on duty shall carry their firearm and spare magazines or speed loaders on their person, except where carry of a firearm is prohibited. Members required to carry a firearm shall be armed with a firearm that is clean and in good working condition and that meet Sheriff's Office specifications as outlined in appendix e and f.

### **1. Carry of Firearms**

- a. Uniform duty carry: Deputies on duty and in uniform shall carry their firearm loaded with duty ammunition and secured in a uniform duty holster as approved in appendix

h . Members will not carry more than one handgun that is exposed to public view.

Uniform deputies will carry at least two spare magazines if a semi-automatic handgun is utilized, or two spare speed loaders if a revolver is utilized, loaded with duty ammunition. Magazines and speed loaders will be carried in a pouch that covers the magazine or speed loader. The pouch shall be attached to the uniform belt. Exceptions to carry a single magazine or speed loader may be granted by the deputy's division commander.

- b. Non-uniform duty carry: Members on duty and working in a non-uniform capacity shall carry their firearm loaded with duty ammunition and secured in a concealed carry holster as approved in appendix h . While outside of the Sheriff's Office or another police station, members shall carry their firearm concealed from public view.

Non-uniform members shall carry at least one spare magazine if a semi-automatic handgun is utilized, or one spare speed loader if a revolver is utilized, loaded with duty ammunition. Magazines and speed loaders shall be carried secured on their person in a manner that allows for rapid access.

2. Security of firearms:

- a. Security of Duty, Off-Duty and backup firearms: Deputies shall retain control of their firearms at all times. When entering a jail or processing prisoners, firearms and their ammunition will be secured in an authorized secure area or gun locker. This section is not intended to limit the use of firearms in a correctional facility during a crisis situation or in the employment of extended range impact weapons.

- b. Support firearms: Support firearms will be stored in an authorized storage area or locked in the vehicle's appropriate electronic support firearm rack when not carried by the deputy. Vehicles not equipped with an electronic locking rack will secure the support firearm, in it's designated case, in a locked area of the vehicle separate from the main compartment unless tactical considerations may require the immediate use of the weapon upon arrival to the specific situation.

- c. Deputies will file a written report with the rangemaster immediately following the theft, loss, or replacement of any duty, off-duty or backup firearm. This report will include a complete description of the firearm including the serial number.
  - d. Deputies will not lend, give or sell any firearm to any person, group or organization that does not have a legal right to possess such firearm.
3. Backup/Secondary firearms: A second handgun loaded with approved ammunition may be carried while on duty. Backup handguns shall be carried concealed from public view and secured in a holster that covers the trigger guard. The backup handgun shall be of an equal caliber as authorized for duty use or not less than .380 ACP caliber. (refer appendix f.)
4. Off duty carry: As part of their ORS vested authority to carry a concealed weapon as a police deputy, members may carry a firearm off duty. Off duty handguns shall be loaded with approved ammunition and carried secured in a holster concealed from public view. Off duty handguns shall be of a equal caliber as authorized for duty use or not less than .380 ACP caliber. (refer appendix f.)

Members working in a non-uniform capacity , with the exception of undercover, shall carry a badge and Sheriff's Office identification card on their person in a manner that is readily accessible.

5. Undercover carry: Members assigned to an undercover detail or assignment may carry a firearm in an unconventional manner as necessitated by the individual circumstances. Those members shall carry their handguns in a manner that is tactically safe.

Members working undercover will have discretion in the carry of official badge or Sheriff's ID card with the approval of their supervisor.

6. Support firearms: Support firearms such as shotguns, carbines, rifles, or gas delivery guns will be carried, deployed and utilized in a manner consistent with the training program for that firearm. Only members who have successfully completed a training program recognized by the Rangemaster and are currently qualified will carry support firearms. Support firearms shall be kept secure when not in use.
7. Personally owned support firearms: Members may carry on duty , at their own expense, their own support firearm. Requests to carry any personally owned support firearms must be submitted to, and approved by the Rangemaster with final approval by the specific division commander and the Sheriff.
8. Purchasing of firearms for duty/off duty use: Members who wish to purchase a firearm that will be used in their capacity as a Deputy Sheriff and from a manufacturer requiring Sheriff's Office letterhead shall follow the following format;

**SECTION C – FIREARMS (Cont.)**

The member will submit a memo to the Rangemaster requesting authorization to purchase the firearm. This memo will include the make, model, caliber, the vendor, and any modifications or support equipment (i.e. night sights and magazines). Approved memos will be signed by the Rangemaster and sent to the Operations secretary who will type the request on letterhead for the Sheriff's signature. Members will be responsible for any applicable state and federal taxes.

9. Extended range impact munitions: Deputies who have successfully completed a Sheriff's Office approved training course and are currently qualified with the use of extended range impact ammunition **will carry it.**

**The extended range impact shotgun munitions will be carried on the shotgun until it is to be deployed when the shotgun is loaded with standard ammunition. When the shotgun is deployed ONLY with extended range munitions, the ammunition may be carried loaded in the magazine of the shotgun.**

**10. Safety:**

- a. **Administrative loading and unloading of firearms:** While in the Sheriff's Office complex, members will load or unload firearms in a safe manner and only in the indoor range or with the muzzle of the firearm pointed into a clearing barrel that has been provided for that purpose.

- b. Firearm safety rules: General rules of firearms safety:
- (1) Treat all firearms as though they are loaded.
  - (2) Never point a firearm at anyone or anything unless you are justified in shooting.
  - (3) Be sure of your target and beyond before you pull the trigger.
  - (4) Place your trigger finger on the trigger only when the gun is on target and you have made the decision to shoot.

- c. Range safety rules: (refer appendix j for range safety)

11. Deputies flying while armed: Deputies may carry a firearm aboard a commercial aircraft after successful completion of the "Law Enforcement Deputies (LEO) Flying Armed" course and pursuant to Federal Aviation Regulations Part 108.

12. Maintenance, modifications, and inspections of firearms

- a. Maintenance: Members will carry firearms that are clean and in good working order. Members shall clean their firearms after each use. If the firearm can not be cleaned immediately, the member shall clean it before their next on-duty day. Members may disassemble their handguns only in accordance with the manufactures recommendations for common cleaning.

**SECTION C – FIREARMS (Cont.)**

Only trained armorers or gunsmiths authorized by the Rangemaster may perform complete disassembly, repairs, or modifications of any duty firearms. See appendix g for authorized modifications to duty firearms.

Members shall report any damage or repairs of their duty firearms to the Rangemaster.

Rangemaster will be responsible for the maintenance on Sheriff's Office owned weapons, with the exception of firearms assigned to TNT at the TNT team leaders discretion.

- b. Inspections: Firearms inspections may be conducted without notice by a supervisor, Rangemaster, or Firearms Instructor. Firearms found to be defective, in safety, operation, or cleanliness may be required to be placed out of service until the condition is corrected. Each deputy will inspect their weapon prior to use and/or start of duty. Any firearms not functioning normally will be taken out of service for repair and brought to the Rangemaster's attention for repair.
- c. Modifications: Deputies will not alter or adjust any Sheriff's Office owned firearm (other than sight alignment) unless the deputy is an authorized armorer. Sheriff's Office armorers or Sheriff's Office authorized gunsmiths are allowed to perform alterations and adjustments to Sheriff's Office owned/issued weapons. Members may replace existing sights on their duty handguns when the modification is performed by an authorized armorer or gunsmith. The replacement sights must be a quality manufactured sight that conforms to the original sight configuration.

Members will ensure their weapon is functioning correctly after any modification by doing a complete operations check.

13. Approval process for firearms ammunition and support equipment: The Rangemaster shall have the responsibility for researching and evaluating changes in Sheriff's Office approved firearms, ammunition and support equipment. The Rangemaster will forward to the Sheriff his/her recommendations for final approval.

## **SECTION D - TRAINING**

### **1. Instructors**

- a. Qualifications and selection: Instructors in the fields of firearms and defensive tactics shall be selected from deputies of the Sheriff's Office. The selection process will be developed by the appointed lead instructor for each training area.

Lead instructors for the above training disciplines will be appointed by the sheriff using written memorandum for record. Lead instructor's will receive a quality assurance review or demonstrated their proficiency at least once every three years by a sheriff's designee.

### **SECTION D – TRAINING (Cont.)**

- b. Lead instructor responsibilities: The lead instructor in each area of defensive tactics and firearms shall be responsible for:
  - (1) The overall program management, curriculum development, implementation of the training.
  - (2) Development of instructor selection process, instructor standards, and updated training for instructor proficiency.
  - (3) Purchase of training supplies, equipment and it's maintenance.
  - (4) Notifying the training division or administration when any member fails to meet qualification standards or performance objectives.
  - (5) Research and development of new techniques, tactics, schools, equipment, and the recommendation to the appropriate authority via the chain of command for the implementation of such.
  - (6) Participation in the review process of incidents within each training area to ensure

that members actions conform to training, that the training given met the need required, and that future training needs are met.

## 2. Training for certification

a. Defensive tools (Non-Firearms): The following criteria and standards will apply to all members authorized to carry defensive tools and techniques which are not considered a firearm.

- (1) Required Training: Members shall demonstrate proficiency with restraints, O/C Spray, impact weapons and the neck restraint a minimum of once annually. Those members who may use these defensive tools/techniques shall attend a minimum of eight hours of integrated training annually.
- (2) Remedial: Those members who fail to qualify will be provided remedial training. The training will be documented and remedial training time may equal but not exceed the same amount of time that is required for annual qualification. Written exception for additional time may be granted by the Sheriff on a case by case basis.
- (3) Failure to qualify: Any member who fails to qualify in the above required training will not return to a duty assignment that requires the carry or use of the above defensive tools/tactics until remedial training has been given and they have qualified. If the member fails to qualify after remedial training in the above defensive tools/tactics they will not be allowed to carry a baton and/or O/C Spray and/or use the neck restraint while placed in a temporary assignment by their division commander. Each failure to qualify will be brought to the attention of the lead defensive tactics instructor, the training coordinator, the deputy's division commander and the Sheriff. Case review will determine further action as warranted. Failure to qualify may result in suspension and termination of employment.

b. Firearms: The following criteria and standards will apply to all members authorized to carry firearms.

## **SECTION D – TRAINING** (Cont.)

- (1) Required Training: Members shall demonstrate proficiency with each firearm they carry for use on-duty, off-duty, or as a backup, and/or support a minimum of twice annually. Those members who carry a firearm shall attend a minimum of

- eight hours of firearms training annually.
- (2) Remedial: Those members who fail to qualify will be given remedial training. The training will be documented and remedial training time may equal but not exceed the same amount of time that is required for annual qualification. Written exception for additional time may be granted by the Sheriff on a case by case basis.
  - (3) Failure to qualify: Members will have two opportunities to qualify on a required marksmanship course, or two opportunities to meet the performance objectives of a required department firearms course.

Any member who fails to qualify with a handgun will not return to a duty assignment that requires the carry of a handgun until remedial training has been given and they have qualified. If the member fails to qualify after remedial training they will not be authorized to carry a firearm as a member of the sheriff's office and will be placed in a temporary assignment by their division commander. **Each failure to qualify will be brought to the attention of the rangemaster, the deputy's division commander, the training coordinator and the Sheriff. Case review will determine further action as warranted. The failure to qualify may result in suspension and termination of employment.**

**Members who fail to qualify or meet the performance objectives of a required course with a support firearm will not be allowed to carry that support firearm until remedial training has been administered and they qualify or successfully complete the required performance objectives.**

c. Specific issues:

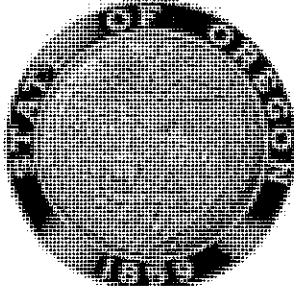
- (1) Recruits: Recruit deputies will successfully complete the minimum recruit training orientation prior to the use and carry of defensive tools to include firearms.
- (2) Reserves: Reserve deputies will successfully complete the Baker County approved reserve academy prior to the use and carry of defensive tools to include firearms.
- (3) Deputies: Deputies will successfully complete the annual refresher training to continue the use and carry of defensive tools to include firearms.
- (4) Special volunteers: Special volunteers required to use defensive tools will successfully complete the minimum designed specific course prior to the use and carry of defensive tools to include firearms.

**Section F - TNT (Section will be written by TNT and refer to their SOP, will only be issued to members of the team, supervisors, etc.)**

**Section G - Reports Required. (none specific)**



OCT 05 2007

	<b>Department of State Police</b>	CHAPTER: 500.8 SUBJECT: USE OF FORCE REVISED: July 11, 2006 SUPERSEDES: August 7, 2000 PAGES: 10
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## **POLICY**

This Department recognizes and respects the value of each human life. Sworn employees are vested with the lawful authority to use force in preserving the peace. A balancing of all human interests is required. It is the policy of this Department to use the force that is necessary and reasonable to bring an incident under control, while protecting the safety of the officer or other persons.

The use of force by police officers, whether deadly or non-deadly, is frequently closely scrutinized by the media, the criminal justice system, and the citizens we serve. Therefore, sworn employees must be prepared to articulate and justify the reasoning applied when the use of force is necessary. Toward that end, the totality of the circumstances leading to and justifying the use of force must be carefully documented.

Non-sworn employees are not expected to use physical force in the performance of their duties. Should they find themselves in a position requiring the use of physical force, they are to comply with statutes applicable to non-peace officers.

## **RELATED LAWS/REFERENCES**

ORS 161.015, 161.235, ORS 161.239, ORS 161.245 and related statutes; Department Manual Chapter 300.1, 402.2, 402.3, 502.7 - 502.10.

## **DEFINITIONS**

1. **Deadly Physical Force (ORS 161.015)** - "Deadly physical force" means physical force that under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
2. **Non-Deadly Physical Force** - Any use of physical force other than that which is considered deadly physical force.
3. **Physical Force** - Actual physical contact with a person, and/or the use of chemical agents on a person, for the purpose of overcoming resistance to lawful authority.

4. Physical Injury (ORS 161.015 sub.6) - Impairment of physical condition or substantial pain.
5. Serious Physical Injury (ORS 161.015 sub.7) - Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss of impairment of the function of any bodily organ.
6. Use of Force Incident - Any incident when deadly physical force, non-deadly physical force, or physical force is utilized in the furtherance of the Department's mission. Includes any discharge of a firearm (except to destroy an animal for public safety or humanitarian reasons, or during approved firearms training).
7. Totality of the Circumstances - All factors considered. With respect to use of force, circumstances may include comparative size; physical, emotional and mental condition; skill level of combatants; nature of the offense; weapons; and availability of assistance.
8. Use of physical force in making an arrest or in preventing an escape [ORS 161.235, (in part)].
  - A. A peace officer is justified in using physical force upon another person only when and to the extent the peace officer reasonably believes it necessary:
    1. To make an arrest or to prevent the escape from custody of an arrested person, unless the peace officer knows that the arrest is unlawful; or
    2. For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest, or while preventing or to prevent an escape.

## **RULES**

1. A sworn employee shall only use that force reasonably necessary in the performance of his/her duties in the following circumstances:
  - A. To make the lawful arrest of a person;
  - B. To prevent the escape from custody of a person lawfully arrested;
  - C. In self defense; or
  - D. In the defense of another person.

2. No sworn employee shall use unreasonable or excessive force upon or toward any person.
3. All use of force by sworn employees shall comply with current statute; and Department rules, policies, procedures, and training.
4. The degree of force used shall be the amount necessary to overcome resistance being employed by the person, or the immediate threat the person poses to the sworn employee or other persons.
5. Any force employed shall, whenever feasible, be progressive in nature. Situations may require the officer to proceed directly to a higher level of force as identified in the force continuum guidelines of this policy.
6. Unless other circumstances exist, sworn employees will use only the weapons, tools, techniques and training authorized by the Department.

## **PROCEDURES**

### **1. Five Step Communications Procedures**

- A. Whenever feasible, verbal communication utilizing the tactical five step approach per prescribed Department training guidelines should be adhered to:
  1. Ask (Ethical appeal)
  2. Set context (Reasonable appeal)
  3. Present options (Personal appeal)
  4. Confirm (Practical appeal)
  5. ACT!

### **2. Progressive Use of Force**

Force continuum guidelines - This section sets forth the definitions and progressive levels of the force continuum utilized by the Department.

- A. Officer presence - Compliance is gained through the professional bearing and demeanor exhibited by the officer.
- B. Verbal - Compliance is achieved through tactical communication, i.e., the Five Step Communication Procedure.
- C. Empty hand/Control techniques - Compliance is gained through physical contact utilizing Department trained techniques to overcome resistance.
- D. Chemical agent - Compliance is gained through oleoresin capsicum (o/c) and/or any other Department approved chemical agent.

- E. Strikes and kicks - Compliance is achieved through the use of empty hand strikes and kicks in accordance with prescribed training.
  - F. Impact weapons - Use of an impact weapon to gain compliance.
  - G. Deadly Physical Force - The use of deadly or dangerous weapons in a manner, degree or to the extent that death or serious physical injury is a reasonable consequence.
3. Use of Deadly Physical Force
- A. Notwithstanding ORS 161.239, a sworn employee may use deadly physical force only when the officer reasonably believes the use of such force is necessary to:
    - 1. Defend the officer or another person from what the officer reasonably believes to be the infliction or threatened infliction of serious physical injury;
    - 2. Apprehend a person who the officer has probable cause to believe has committed, or is committing, a crime involving the infliction of serious physical injury;
      - a. However, where the suspect poses no threat to the officer or others of serious physical harm, the officer is not justified in using deadly physical force; or,
    - 3. Prevent the escape of a person from custody who the officer has probable cause to believe is inflicting, or threatening to inflict, serious physical injury as a means of escape.
  - A. Deadly physical force may be used when and if, where feasible, some warning has been given.
  - B. "Warning shots" are prohibited.
  - C. Discharging a firearm at a motor vehicle constitutes the use of deadly physical force.
  - D. When a sworn employee draws his/her firearm, baton, or other weapon as dictated by the totality of the circumstances, that act alone will not be considered "use of force" and does not necessitate notification to a supervisor.
  - E. When a firearm is pointed at a person, the immediate supervisor shall be notified as soon as practicable.

- F. In addition to the circumstances previously outlined in this section, sworn employees may also discharge a Department authorized firearm:
  - 1. At Department sanctioned firearms practice or competitive shooting events; and
  - 2. In the destruction of an animal if it poses a threat to public safety or as a humanitarian measure if an animal is seriously ill or injured. (If unusual circumstances exist, i.e., prior intelligence for a search warrant, or an animal of obvious value, prior supervisor approval should be sought if feasible.) In all cases, a supervisor will be notified as soon as practicable.

#### 4. Non-Deadly Use of Force

- A. Sworn employees are provided and authorized to carry and use tools and techniques to gain compliance under circumstances when the use of dangerous or deadly weapons is not justified. Examples of these tools include handcuffs, chemical agents, mini-flashlight and hand control techniques.
  - 1. Use of these and similar tools and techniques are not considered use of dangerous or deadly weapons when the manner, degree or extent in which they are used, would not be expected to result in serious physical injury or death.

#### 5. Training

- A. Deadly Weapons (Firearms)
  - 1. Current guidelines in Department policy for firearms training will be strictly adhered to while on duty.
- A. Non-Deadly Weapons
  - 1. Current guidelines in Department policy for defensive tactics training will be strictly adhered to while on duty.
- A. Sworn employees shall be instructed in various aspects of verbal and non-verbal communication, officer safety techniques, defensive tactics, and firearms which encompass the prescribed force continuum guidelines.

#### 6. Use of Force Notification

- A. Any sworn employee involved in a "use of force incident" is required to notify his/her immediate supervisor as soon as practicable after the incident.
  - 1. If an officer is represented by the Oregon State Police Officers Association (OSPOA), the employee shall fill out the "Use of Force OSPOA Rights/Supervisory Notification Form" as formal notice that they understand their rights with respect to the use of

force delivered.

- a. The Use of Force OSPOA Rights/Supervisory Notification Form is attached to this chapter and may be reproduced.
2. The represented officer's immediate supervisor shall ensure this form is utilized.
3. The original Use of Force OSPOA Rights/Supervisory Notification Form is forwarded through the chain of command to the Office of Professional Standards.

## 7. Reporting Use of Force

- A. In circumstances other than those instances provided for in the Public Safety Employee Involved Major Incident Investigative Manual, all use of force incidents may be the subject of a supervisory investigation and/or a written report when:
  1. Use of force results in an apparent or reported injury;
  2. A non-deadly weapon is used on a person (baton, chemical agent) or a strike or blow is delivered to the body;
  3. A firearm is discharged in the furtherance of the Department's mission, except for firearms training or practice; or when necessary to kill an injured animal as discussed in this policy; or
  4. A supervisor deems a report of the use of force is necessary.
- B. A supervisor will review the specific circumstances of the incident and determine if a report to General Headquarters through the chain of command is needed.
  1. In all use of force incidents required to be reported, the Use of Force After-Action Report will be utilized.
  2. When the incident is minor in nature and the use of force was justified and the level of force used was the most appropriate, the supervisor should document the facts, and a supervisor's report to Headquarters may not be necessary.
  3. The original Use of Force After-Action Report is forwarded through the chain of command to the Office of Professional Standards.

## 8. Department Review

- A. All reported use of force incidents will be reviewed at the appropriate Department level of authority to determine:
  1. If Department rules, policy, or procedures, were followed;
  2. If the current and relevant rules, policy and procedures were appropriate and effective for the incident; and
  3. If Department training was, and is adequate.

B. Findings of rule or policy violations or training inadequacies shall be forwarded to the proper level of authority for appropriate corrective action and/or resolution.

C. Critical Incident Review Team

1. The Critical Incident Review Team will review all deadly force incidents.
  - a. The purpose of the Critical Incident Review Team is to conduct a meaningful incident review process with the goal of identifying successes and shortcomings and make efforts to replicate or improve performance as appropriate in responding to critical incidents.
2. The review by the Critical Incident Review Team will be separate and independent of any criminal or personnel review of the deadly force incident.
  - a. The Critical Incident Review Team will review whether the rule, policies, or procedures were adequate;
  - b. Whether the tactics, equipment, communications, investigation processes or other relevant issues were/are adequate or appropriate.
3. The Critical Incident Review Team will not have disciplinary responsibility or authority for the incident.
4. The Critical Incident Review Team will be appointed by the Superintendent or designee and be comprised of at least four (4) members to include a sworn trooper/senior trooper, sworn supervisor, sworn representative from the Training Section, and the representative Region Commander or Division Director.
5. The Critical Incident Review Team will prepare a written report of each review. The report will consider but is not limited to:
  - a. The effectiveness of the performance of the Department and its personnel;
  - b. Use of resources;
  - c. Potential problems; and
  - d. Recommendations for needed changes of Department policies, procedures, equipment, training, tactics, supervision or;
  - e. Other relevant matters/issues.
6. The Critical Incident Review Team will complete the review and report within 90 days after closure of the Use of Force After-Action Report and any personnel or criminal review.

D. Administrative Analysis Summary Report and Public Disclosure

1. An annual review and summary analysis of use of force incidents shall be conducted by the Office of Professional Standards.
2. Upon request, the summary shall be made available for public inspection by the Office of Professional Standards.
3. The Training Section will review the annual summary of use of

force incidents to determine if training policies and procedures are adequate. The Training Section shall submit a report describing their findings.

4. Use of force reports shall be retained as required by law.



**INTERAGENCY  
BAKER COUNTY MAJOR CRIME TEAM AGREEMENT**

**The parties to this agreement are the Baker County District Attorney's Office, Baker County Sheriff's Office, Baker City Police Department, and the Department of State Police.**

**The parties hereby agree to the following Baker County Major Crime Team Agreement.**

**The Baker County Major Crime Team will consist of personnel appointed by their respective agencies.**

**Any member of law enforcement in conjunction with his or her supervisor will have the authority to activate the Baker County Major Crime Team. The Baker County Major Crime Team may be activated for those crimes or those series of crimes which require an immediate, combined, full-scale investigative response.**

**OPERATIONS**

Supervisors of the agencies represented at the scene will select the person who will be the Incident Commander, Team Supervisor and Lead Investigator. This decision should be based on who is available and their level of experience. Should a disagreement occur as to the decision regarding these assignments or assignments involved in the investigation, the District Attorney will decide these matters. The Incident Commander will coordinate with other agency supervisors regarding assignments and direction. The Incident Commander and other agency supervisors should remain free of any direct investigative duties. The individual officers assigned to the Baker County Major Crime Team are accountable to their respective agencies for their conduct, performance, and activities as law enforcement officers.

**ASSIGNMENTS**

**INCIDENT COMMANDER:**

This position is responsible for incident activities including development and implementation of strategic decisions relating to approving, ordering and releasing resources. The incident commander, in most cases, will be the senior administrator on scene. Typically the incident commander will be from the jurisdiction of the incident but this is not a requirement. The incident commander can be shared by a representative from one or more agencies depending on the size of the incident and the demands placed on the incident commander, experience level of the senior administrator and any other needs identified.

**MAJOR CRIME TEAM SUPERVISOR:**

This position will be determined individually at each major criminal investigation. The selection will be made by board members in conjunction with the district attorney at the scene. Typically the most experienced investigator at the scene will be selected with consideration for jurisdictional concerns and resources available.

The team supervisor position supervises the investigative efforts of the major crime team and reports case progress and status to the incident commander and district attorney.

The major crime team supervisor directs the investigative efforts of the major crime team, assigns duties, and coordinates with the District Attorney on matters of case preparation and prosecution needs.

The major crime team supervisor ensures the quality of the case investigation and is responsible for the direction and utilization of resources provided by, or requested of the incident commander.

### LEAD DETECTIVE:

The lead detective is the most qualified and experience investigator on the major crime team from the jurisdiction in which the crime occurred. Generally, that determination will be made by the incident commander and the team supervisor with input from other agency supervisors on scene. District Attorney recommendation will be considered as well.

The lead detective is responsible for the generation and collection of reports by major crime team members. The lead detective will be responsible for the investigation of all leads developed up to and through prosecution. The lead detective will be available to devote the necessary time and effort to see the case through its ultimate conclusion.

If the major crime team representative from a particular agency cannot fulfill this obligation, an alternate lead will be selected. There is no prohibition from co-lead detectives from two agencies sharing responsibility of case development as long as one of the leads are responsible for report generation, completion, submission and prosecution.

The lead detective will work with the team supervisor to schedule briefings with team members.

The lead detective is responsible for all evidence collected, and the submission of evidence for any analysis to be conducted.

The lead detective works closely with the team supervisor and follows the directions of the team supervisor to ensure successful case resolution.

### PROCEDURES

- A. Upon activation, death investigations shall be under joint direction of the Baker County District Attorney's Office and the Baker County Medical Examiner (O.R.S. 146.100). The incident commander, team commander and lead detective should be chosen by the supervisors of the agencies represented at the scene. The District Attorney may choose incident commander, team supervisor or lead investigator but shall do so with the input of the other supervisors on scene.

- B. Decisions regarding whether an autopsy will be performed will be determined by the District Attorney in conjunction with the Medical Examiner. In most deaths where the cause of death is not readily obvious, a blood sample will be drawn at the direction of the law enforcement officer meeting standard evidentiary protocol. Blood will be stored in a refrigerated environment and discarded only at the direction of the District Attorney.
- C. The Baker County Major Crime Team will conduct its investigations in a professional manner and will use approved techniques in the handling of evidence. For cases in the Baker City limits the Baker City Police Department will be responsible for seizing and storing of all evidence, unless otherwise designated. For cases in the county either the Baker County Sheriff's Office or the Oregon State Police will be responsible for seizing and storing of all evidence. This decision should be made at the scene between the Team Supervisor and the District Attorney.
- D. The Baker County Major Crime Team may use the Oregon State Police Forensics Laboratory and latent print personnel when appropriate.
- E. The Baker County Major Crime Team may request the assistance of the Oregon State Police Arson Section and/or the State Fire Marshal in fire investigations or deaths involving possible arson.
- F. Copies of all reports will be submitted to the team supervisor, who will cause the reports to be reviewed, approved, and submitted, as soon as practical, to the Baker County District Attorney's Office.

### **TEAM RESPONSIBILITIES**

- A. The Baker County Major Crime Team, when activated will respond to assist any agency by participating in a collective, cooperative criminal investigation.
- B. The Baker County Major Crime Team will not be restricted to investigating deaths but may be activated by participating agencies, as they deem necessary. Procedure for choosing assignments including incident commander, team supervisor and lead investigator will be the same for death and non-death investigations. (see above).

### **AGENCY RESPONSIBILITIES**

- A. Each agency shall provide a list of authorized personnel to be called when the major crime team is activated. Each agency will be responsible for notifying its respective member.
- B. It will be the responsibility of each agency to provide sufficient personnel, within that agency's ability, to staff the Baker County Major Crime Team. If a primary team member is unavailable an alternate will be called.
- C. Personnel needs will be decided on a case by case basis. These needs will be mutually agreeable to each agency head, or his designee. Crime scene security will be the responsibility of the Baker City Police Department for investigations in the City and by the

Sheriff's Office or the State Police for investigations in the county. Scene security will be supplied where possible, by non-crime team members of applicable agencies involved.

- D. It will be the responsibility of the team supervisor and the lead detective to schedule briefing sessions and team meetings.

### **TRAINING**

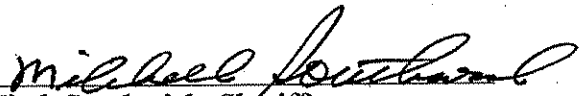
- A. The Baker County Major Crime Team will attend training seminars and, if requested, will provide assistance as instructors in local training programs whenever possible.

### **MEDIA RELATIONS**

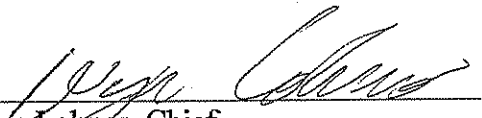
- A. Press releases will be the responsibility of the Baker County District Attorney's Office or an individual designated by the District Attorney.

The Baker County District Attorney's Office, Baker County Sheriff's Office, Baker City Police Department, and the Department of State Police agree to review this document on a yearly basis, or more frequently as needed.


It is the intention of the Baker County District Attorney's Office, Baker County Sheriff's Office, Baker City Police Department, and the Department of State Police to provide, when necessary, a viable, efficient, cooperative, and professional law enforcement criminal investigative team, providing procedure for major crimes committed in Baker County. By this agreement, the Parties intend to work together to preserve the safety, peace, and dignity of our community and our citizens in the most efficient manner possible.

  
Mitch Southwick, Sheriff  
Baker County Sheriff's Office

5/6/08  
Date

  
Wyn Lohner, Chief  
Baker City Police Department

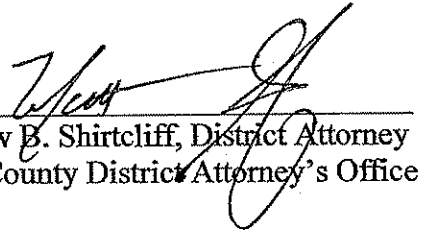
5-06-08  
Date

  
David MacManiman, Lieutenant  
Oregon State Police

5-12-2008.  
Date

  
Ray Duman, Lieutenant  
Oregon State Police

5/6/08  
Date

  
Matthew B. Shirtcliff, District Attorney  
Baker County District Attorney's Office

5/6/08  
Date

**A-Engrossed**  
**Senate Bill 111**

Ordered by the Senate May 2  
Including Senate Amendments dated May 2

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Department of Justice)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates planning authority in each county to develop plan concerning use of deadly physical force by police officers. Directs planning authority to submit plan to governing body of each law enforcement agency within county except Department of State Police and Department of Justice. Specifies required elements of plan. Directs governing body to approve or disapprove plan. **Directs planning authority to submit plan to local public safety coordinating council for review and comment.**

Authorizes Department of Justice, to extent funds are appropriated for such purposes, to make grants to law enforcement agencies for expenses incurred in implementing and revising approved plans.

Establishes procedures for law enforcement agencies to follow in dealing with use of deadly physical force and for grand jury proceedings in which use of deadly physical force is element.

Appropriates moneys from General Fund to Department of Justice for grants and for grand jury recording and transcription costs.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to use of physical force; creating new provisions; amending ORS 132.090, 132.330, 132.430,  
3 146.135, 181.640 and 181.662; appropriating money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 7 of this 2007 Act:**

6 (1) "Employ," when used in the context of the relationship between a law enforcement  
7 agency and a police officer, includes the assignment of law enforcement duties on a volunteer  
8 basis to a reserve officer.

9 (2) "Law enforcement agency" means the Department of State Police, the Department  
10 of Justice, a district attorney, a political subdivision of the State of Oregon and a municipal  
11 corporation of the State of Oregon, that maintains a law enforcement unit as defined in ORS  
12 181.610 (12)(a)(A).

13 (3) "Police officer" means a person who is:

14 (a) A police officer or reserve officer as defined in ORS 181.610; and

15 (b) Employed by a law enforcement agency to enforce the criminal laws of this state.

16 **SECTION 2. (1) There is created in each county a deadly physical force planning author-**  
17 **ity consisting of the following members:**

18 (a) The district attorney and sheriff of the county.

19 (b) A nonmanagement police officer selected by the district attorney and sheriff. If there  
20 are unions representing police officers within the county, the district attorney and sheriff

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in boldfaced type.

1 shall select the police officer from among candidates nominated by any union representing  
2 police officers within the county.

3 (c) If at least one city within the county employs a police chief, a police chief selected  
4 by the police chiefs within the county.

5 (d) A representative of the public selected by the district attorney and sheriff. The person  
6 selected under this paragraph may not be employed by a law enforcement agency.

7 (e) A representative of the Oregon State Police selected by the Superintendent of State  
8 Police.

9 (2) The district attorney and sheriff are cochairpersons of the planning authority.

10 (3) The law enforcement agency that employs the police officer selected under subsection  
11 (1)(b) of this section shall release the officer from other duties for at least 16 hours per year  
12 to enable the officer to serve on the planning authority. The agency shall compensate the  
13 officer at the officer's regular hourly wage while the officer is engaged in planning authority  
14 activities.

15 (4) The planning authority shall develop a plan consisting of the following:

16 (a) An element dealing with education, outreach and training regarding the use of deadly  
17 physical force for police officers, attorneys employed by state or local government within the  
18 county and members of the community.

19 (b) An element dealing with the immediate aftermath of an incident in which a police  
20 officer used deadly physical force.

21 (c) An element dealing with the investigation of an incident in which a police officer used  
22 deadly physical force.

23 (d) An element dealing with the exercise of district attorney discretion to resolve issues  
24 of potential criminal responsibility resulting from a police officer's use of deadly physical  
25 force.

26 (e) An element dealing with collecting information regarding a police officer's use of  
27 deadly physical force, debriefing after an incident in which a police officer used deadly  
28 physical force and revising a plan developed under this subsection based on experience.

29 (f) An estimate of the fiscal impact on the law enforcement agencies to which the plan  
30 applies of each element described in paragraphs (a) to (e) of this subsection.

31 ~~(5)~~ (5) The planning authority shall conduct at least one public hearing in the county before  
32 submitting a plan, or a revision of a plan, to the governing bodies in the county under sub-  
33 section (7) of this section.

34 (6) The planning authority may consult with anyone the planning authority determines  
35 may be helpful in carrying out its responsibilities.

36 (7) The planning authority shall submit the plan developed under subsection (4) of this  
37 section, and revisions of the plan, to the governing body of each law enforcement agency  
38 within the county except for the Department of State Police and the Department of Justice.

39 (8) A governing body shall approve or disapprove the plan submitted to it under sub-  
40 section (7) of this section within 60 days after receiving the plan. The governing body may  
41 not amend the plan.

42 (9) If the plan is not approved by at least two-thirds of the governing bodies to which the  
43 plan is submitted, the planning authority shall develop and submit a revised plan. The plan-  
44 ning authority shall submit the plan to the local public safety coordinating council of the  
45 county for the council's review and comment.

1 (10) If the plan is approved by at least two-thirds of the governing bodies to which the  
2 plan is submitted, the planning authority shall submit the approved plan to the Attorney  
3 General. No later than 30 days after receiving the plan, the Attorney General shall review  
4 the plan for compliance with the minimum requirements described in section 3 of this 2007  
5 Act. If the Attorney General determines that the plan complies with the minimum require-  
6 ments, the Attorney General shall approve the plan. Upon approval of the plan:

7 (a) Each law enforcement agency within the county to which the plan applies is subject  
8 to the provisions of the plan; and

9 (b) Each law enforcement agency subject to the plan is entitled to grants as provided in  
10 section 4 of this 2007 Act.

11 (11) If the plan is not approved by the Attorney General, the planning authority shall  
12 develop and submit a revised plan.

13 (12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not  
14 subject to a provision of a plan approved under subsection (10) of this section that:

15 (a) Conflicts with a provision of a city or county charter or a general ordinance that  
16 applies to the law enforcement agency; or

17 (b) Imposes an obligation not required by section 5 of this 2007 Act if complying with the  
18 provision would require the law enforcement agency to budget moneys, or submit a revenue  
19 measure for a vote of the people, in order to comply with the provision.

20 (13) The Attorney General shall periodically publish all approved plans.

21 (14) A law enforcement agency within a county has a duty to participate in good faith in  
22 the planning process of the planning authority for the county.

23 (15) A person bringing an action challenging the validity or enforceability of a plan ap-  
24 proved under subsection (10) of this section shall serve the Attorney General with a copy of  
25 the complaint. If the Attorney General is not a party to the action, the Attorney General  
26 may intervene in the action.

27 **SECTION 3.** In the plan required by section 2 (4) of this 2007 Act, a deadly physical force  
28 planning authority shall, at a minimum:

29 (1)(a) Address, under section 2 (4)(a) of this 2007 Act, the manner in which each law  
30 enforcement agency within the county will comply with section 5 (2) of this 2007 Act; and

31 (b) Attach a copy of each policy adopted under section 5 (2) of this 2007 Act to the plan.

32 (2) Address, under section 2 (4)(b) of this 2007 Act, the manner in which each law  
33 enforcement agency within the county will comply with section 5 (3)(a) and (4) of this 2007  
34 Act.

35 (3) Address, under section 2 (4)(c) of this 2007 Act, the manner in which each law  
36 enforcement agency within the county will comply with section 5 (5)(a) of this 2007 Act.

37 (4) Address, under section 2 (4)(d) of this 2007 Act, the manner in which the district at-  
38 torney of the county will comply with ORS 146.135 (2).

39 (5) Address, under section 2 (4)(e) of this 2007 Act, the manner in which each law  
40 enforcement agency within the county will comply with section 5 (6) of this 2007 Act.

41 **SECTION 4.** (1) As used in this section, "expenses" does not include personnel costs.

42 (2) To the extent that funds are appropriated to it for such purposes, the Department  
43 of Justice shall make grants to law enforcement agencies to reimburse the law enforcement  
44 agencies for expenses incurred in implementing and revising the plans required by section 2  
45 of this 2007 Act. A grant under this section may not exceed 75 percent of the expenses in-

1 curred by the law enforcement agency.

2 (3) The department may not make a grant under this section to a law enforcement  
3 agency unless the law enforcement agency is subject to a plan that has been approved by the  
4 Attorney General under section 2 (10) of this 2007 Act.

5 (4) The department shall adopt rules necessary for the administration of this section.

6 **SECTION 5.** (1) As used in this section, "involved officer" means:

7 (a) A police officer whose official conduct, or official order to use deadly physical force,  
8 was a cause in fact of the death of a person. As used in this paragraph, "order to use deadly  
9 physical force" means an order issued to another officer to use deadly physical force in a  
10 specific incident or an order or directive establishing rules of engagement for the use of  
11 deadly physical force for a specific incident.

12 (b) A police officer whose official conduct was not a cause in fact of the death of a person  
13 but whose official involvement in an incident in which the use of deadly physical force by a  
14 police officer resulted in the death of a person:

15 (A) Began before or during the use of the deadly physical force; and

16 (B) Was reasonably likely to have exposed the police officer to greater stresses or trauma  
17 than other police officers experienced as a result of their involvement in the incident before  
18 or during the use of the deadly physical force.

19 (2) A law enforcement agency shall adopt a policy dealing with the use of deadly physical  
20 force by its police officers. At a minimum, the policy must include guidelines for the use of  
21 deadly physical force.

22 (3)(a) For each involved officer employed by a law enforcement agency, the law enforce-  
23 ment agency shall pay the costs of at least two sessions with a mental health professional  
24 that are attended by the officer. The sessions must be held within six months after the in-  
25 cident in which the officer was involved.

26 (b) An involved officer shall attend at least one of the sessions described in paragraph  
27 (a) of this subsection.

28 (c) Sessions with a mental health professional under this subsection may not be substi-  
29 tuted for a fitness for duty examination required or requested as a condition of employment  
30 by the law enforcement agency that employs the involved officer.

31 (4) For at least 72 hours immediately following an incident in which the use of deadly  
32 physical force by a police officer resulted in the death of a person, a law enforcement agency  
33 may not return an involved officer to duties that might place the officer in a situation in  
34 which the officer has to use deadly physical force. A law enforcement agency may not reduce  
35 an involved officer's pay or benefits as a result of the law enforcement agency's compliance  
36 with this subsection. Notwithstanding section 4 (1) of this 2007 Act, a personnel cost in-  
37 curred in complying with this subsection by a law enforcement agency employing 40 or fewer  
38 police officers is an expense for purposes of section 4 of this 2007 Act.

39 (5)(a) A law enforcement agency employing an involved officer shall include at least one  
40 police officer from a different law enforcement agency in the investigation of the incident in  
41 which the involved officer was involved.

42 (b) The failure of a law enforcement agency to comply with paragraph (a) of this sub-  
43 section is not grounds for suppressing evidence obtained in the investigation.

44 (6)(a) A law enforcement agency shall collect at least the following information relating  
45 to incidents in which a police officer's use of deadly physical force resulted in the death of

1 a person:

2 (A) The name, gender, race, ethnicity and age of the decedent.

3 (B) The date, time and location of the incident.

4 (C) A brief description of the circumstances surrounding the incident.

5 (b) A law enforcement agency shall promptly submit the information collected under  
6 paragraph (a) of this subsection to the Department of Justice.

7 (7) The department shall compile and periodically publish information submitted under  
8 subsection (6) of this section. The department, by rule, may specify a form to be used by law  
9 enforcement agencies in submitting information under subsection (6) of this section.

10 **SECTION 6.** Conclusions and recommendations for future action made by or for a law  
11 enforcement agency that result from activities conducted pursuant to the element of a plan  
12 described in section 2 (4)(e) of this 2007 Act are not admissible as evidence in any subsequent  
13 civil action or administrative proceeding.

14 **SECTION 7.** (1) Notwithstanding sections 2, 3, 5 (3) and (6) and 12 of this 2007 Act, if  
15 sufficient moneys are not appropriated to the Department of Justice for purposes of making  
16 grants under section 4 of this 2007 Act, a deadly physical force planning authority created  
17 by section 2 of this 2007 Act or a law enforcement agency is not required to comply with any  
18 requirement of section 2, 3 or 5 (3) or (6) of this 2007 Act for which the law enforcement  
19 agency is entitled to reimbursement under section 4 of this 2007 Act.

20 (2) If sufficient moneys are not appropriated to the Department of Justice to pay the  
21 costs of recording and transcribing testimony before a grand jury as required by section 12  
22 of this 2007 Act:

23 (a) The Department of Justice is not required to comply with section 12 (5) of this 2007  
24 Act; and

25 (b) A district attorney is not required to comply with section 12 of this 2007 Act.

26 **SECTION 8.** ORS 132.330 is amended to read:

27 132.330. (1) The district attorney may submit an indictment to the grand jury in any case when  
28 the district attorney has good reason to believe that a crime has been committed which is triable  
29 within the county.

30 (2) The district attorney may present facts to the grand jury about an incident in which  
31 a police officer used deadly physical force.

32 **SECTION 9.** ORS 132.090 is amended to read:

33 132.090. (1) Except as provided in subsections (2) and (3) of this section and section 12 of this  
34 2007 Act, no person other than the district attorney or a witness actually under examination shall  
35 be present during the sittings of the grand jury.

36 (2) If not otherwise required under section 12 of this 2007 Act, upon a motion filed by the  
37 district attorney in the circuit court, the circuit judge may appoint a reporter who shall attend the  
38 sittings of the grand jury to take and report the testimony in any matters pending before the grand  
39 jury, and may appoint a parent, guardian or other appropriate person 18 years of age or older to  
40 accompany any child 12 years of age or younger, or any person with mental retardation, during an  
41 appearance before the grand jury. The circuit judge, upon the district attorney's showing to the  
42 court that it is necessary for the proper examination of a witness appearing before the grand jury,  
43 may appoint a guard, medical or other special attendant or nurse, who shall be present in the grand  
44 jury room and shall attend such sittings.

45 (3) The district attorney may designate an interpreter who is certified under ORS 45.291 to in-

1 terpret the testimony of witnesses appearing before the grand jury. The district attorney may des-  
2 ignate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a  
3 certified interpreter is not available and that the person designated by the district attorney is a  
4 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may  
5 be present in the grand jury room and attend the sittings of the grand jury.

6 (4) No person other than members of the grand jury shall be present when the grand jury is  
7 deliberating or voting upon a matter before it.

8 (5) As used in this section, "mental retardation" has the meaning given that term in ORS  
9 427.005. Mental retardation may be shown by attaching to the motion of the district attorney:

10 (a) Documentary evidence of intellectual functioning; or

11 (b) The affidavit of a qualified person familiar with the person with mental retardation. "Quali-  
12 fied person" includes, but is not limited to, a teacher, therapist or physician.

13 **SECTION 10.** The Legislative Assembly finds that:

14 (1) Grand juries originally were created and have existed for centuries as a check against  
15 potential abuse of the government's power to charge individuals with crimes.

16 (2) Grand jury proceedings are kept secret to help protect witnesses, victims and grand  
17 jurors against retaliation and innocent persons against wrongful accusations of crime.

18 (3) As authorized by law and as guided by the policies of law enforcement agencies, police  
19 officers may cause the death of a person by the use of deadly physical force.

20 (4) The use of deadly physical force by a police officer that results in the death of a  
21 person requires a level of public scrutiny that uniquely justifies limited intrusions into the  
22 secrecy historically accorded grand jury proceedings.

23 **SECTION 11.** Section 12 of this 2007 Act is added to and made a part of ORS 132.310 to  
24 132.390.

25 **SECTION 12.** (1) As used in this section:

26 (a) "Certified shorthand reporter" has the meaning given that term in ORS 8.415.

27 (b) "Involved officer" has the meaning given that term in section 5 of this 2007 Act.

28 (c) "Police officer" has the meaning given that term in section 1 of this 2007 Act.

29 (2) A proceeding before a grand jury must be on the record and recorded by a certified  
30 shorthand reporter as provided in this subsection if the proceeding has been convened to  
31 examine the use of deadly physical force by a police officer that resulted in the death of a  
32 person. When a proceeding is required to be on the record under this subsection, the district  
33 attorney shall ensure that a certified shorthand reporter attends the sittings of the grand  
34 jury to take and report the questioning and testimony of all witnesses. The certified short-  
35 hand reporter may not record any information that reveals the identity of a grand juror. The  
36 certified shorthand reporter may not be present during, or record, the deliberations of the  
37 grand jury.

38 (3) Unless the certified shorthand reporter can show good cause why the time should be  
39 extended, no later than seven days after a grand jury in a proceeding required to be on the  
40 record under subsection (2) of this section determines that no criminal charges should be  
41 returned or returns an indictment indorsed "not a true bill," the certified shorthand reporter  
42 shall provide a certified transcript of the report to the district attorney of the county in  
43 which the incident occurred.

44 (4)(a) No later than five days after receiving the transcript from the certified shorthand  
45 reporter, the district attorney shall send notice of the following to all witnesses who ap-

1 peared before the grand jury:

2 (A) The witness's right to file a petition under subsection (6) of this section;

3 (B) The time period within which the petition must be filed; and

4 (C) The witness's right to review the transcript and submit objections to the accuracy  
5 of the transcript as provided in paragraph (b) of this subsection.

6 (b) No later than seven days after the district attorney sends the notice required by  
7 paragraph (a) of this subsection, a witness may:

8 (A) Review, under the supervision of the district attorney, the portion of the grand jury  
9 transcript in which the witness's testimony is transcribed; and

10 (B) Submit an objection to the accuracy of the transcription of the witness's testimony.

11 A witness submitting an objection under this subparagraph shall attach the objection to the  
12 transcript.

13 (c) No earlier than eight days after sending the notice required by paragraph (a) of this  
14 subsection, the district attorney shall provide a copy of the complete transcript to each in-  
15 volved officer in the incident and to the law enforcement agency that employs each involved  
16 officer.

17 (5) The Department of Justice shall pay the costs of the recording and the transcripts  
18 required by subsections (2) and (3) of this section.

19 (6)(a) No later than 14 days after the district attorney sends the notice required by sub-  
20 section (4)(a) of this section, the district attorney, an involved officer, the law enforcement  
21 agency employing the involved officer or any witness who appeared before the grand jury  
22 may petition the circuit court for a judgment sealing all or part of the transcript or delaying  
23 the public release of all or part of the transcript. The petition must be served on the district  
24 attorney, the involved officer and the law enforcement agency employing the involved officer.  
25 The petition must be supported by an affidavit showing why the public interest in disclosure  
26 is outweighed by one of the factors listed in subsection (7)(b) of this section.

27 (b) If no petition is timely filed, the district attorney shall make the transcript available  
28 to any person upon request and payment of copying fees set under ORS 192.440.

29 (7)(a) No later than seven days after service under subsection (6)(a) of this section, the  
30 district attorney, an involved officer or the law enforcement agency that employs the in-  
31 volved officer may file an objection to the petition. If no objection is timely filed, the court  
32 may rule without a hearing on the petition. If an objection is timely filed, the court shall hold  
33 a hearing on the petition no later than seven days after the time for filing objections has  
34 expired.

35 (b) The court shall deny the petition unless the court finds that the public interest in  
36 disclosure is outweighed by:

37 (A) The impairment of the proceeding or prosecution of any criminal matter related to  
38 the proceeding;

39 (B) The probable prejudice to the right of a witness who appeared before the grand jury  
40 or of an involved officer to a fair trial; or

41 (C) The privacy right of a witness who appeared before the grand jury.

42 (8) When the court determines that all or part of the transcript should be sealed or that  
43 disclosure of all or part of the transcript should be delayed, the court shall enter a judgment  
44 sealing the transcript or portions of the transcript or delaying the public release of the  
45 transcript or portions of the transcript.

1 (9) A judgment sealing or delaying release of all or any portion of a transcript based on  
2 subsection (7)(b)(B) or (C) of this section has no further effect with respect to public release  
3 of the transcript after a witness whose testimony is subject to the judgment:

4 (a) Files a civil action against an involved officer or the law enforcement agency em-  
5 ploying the involved officer; or

6 (b) Gives testimony, including depositions, in a civil or criminal action arising out of the  
7 incident in which deadly physical force was used.

8 (10) The testimony of a police officer who is the subject of an investigation of the use of  
9 deadly physical force and who is called as a witness before a grand jury in a proceeding re-  
10 quired to be on the record under subsection (2) of this section is not admissible evidence in  
11 a civil proceeding except:

12 (a) When the testimony before the grand jury is compelled under ORS 136.617; or

13 (b) When the testimony before the grand jury is offered as a prior inconsistent statement  
14 to impeach the witness.

15 (11) This section does not create a cause of action.

16 (12) The failure of a certified shorthand reporter to record all of the grand jury pro-  
17 ceeding required to be recorded under subsection (2) of this section does not affect the va-  
18 lidity of any indictment or prosecution that arises from the proceeding.

19 SECTION 13. ORS 146.135 is amended to read:

20 146.135. (1) The district attorney for the county where the death occurs may order an inquest  
21 to obtain a jury finding of the cause and manner of death in any case requiring investigation.

22 (2) The district attorney may not order an inquest under this section concerning a death  
23 that resulted from a police officer's use of, or order to use, deadly physical force until after  
24 the district attorney has determined that the police officer did not commit a crime or a  
25 grand jury has received testimony concerning the incident and has declined to indict the  
26 police officer. As used in this subsection, "police officer" has the meaning given that term  
27 in section 1 of this 2007 Act.

28 [(2)] (3) For the purpose of conducting an inquest, the district attorney shall have the powers  
29 of a judicial officer as described by ORS 1.240 and 1.250.

30 [(3)] (4) The district attorney shall advise the jury of inquest as to its duties and instruct the  
31 jury on questions of law.

32 [(4)] (5) The district attorney shall cause a record of the inquest proceedings to be made which  
33 shall include the written order of inquest, a record of the testimony of witnesses and the written  
34 verdict of the jury.

35 [(5)] (6) Within a reasonable time after the verdict is returned, the record of inquest shall be  
36 filed in the district medical examiner's office for the county where the inquest was held.

37 [(6)] (7) A copy of the order of inquest and verdict of the jury shall be filed in the State Medical  
38 Examiner's office.

39 [(7)] (8) The record of inquest shall be available for inspection as provided by ORS 146.035 (5).

40 SECTION 14. ORS 146.135, as amended by section 13 of this 2007 Act, is amended to read:

41 146.135. (1) The district attorney for the county where the death occurs may order an inquest  
42 to obtain a jury finding of the cause and manner of death in any case requiring investigation.

43 (2) The district attorney may not order an inquest under this section concerning a death that  
44 resulted from a police officer's use of, or order to use, deadly physical force *[until after the district*  
45 *attorney has determined that the police officer did not commit a crime or a grand jury has received*

1 *testimony concerning the incident and has declined to indict the police officer*]. As used in this sub-  
2 section, "police officer" has the meaning given that term in section 1 of this 2007 Act.

3 (3) For the purpose of conducting an inquest, the district attorney shall have the powers of a  
4 judicial officer as described by ORS 1.240 and 1.250.

5 (4) The district attorney shall advise the jury of inquest as to its duties and instruct the jury  
6 on questions of law.

7 (5) The district attorney shall cause a record of the inquest proceedings to be made which shall  
8 include the written order of inquest, a record of the testimony of witnesses and the written verdict  
9 of the jury.

10 (6) Within a reasonable time after the verdict is returned, the record of inquest shall be filed in  
11 the district medical examiner's office for the county where the inquest was held.

12 (7) A copy of the order of inquest and verdict of the jury shall be filed in the State Medical  
13 Examiner's office.

14 (8) The record of inquest shall be available for inspection as provided by ORS 146.035 (5).

15 **SECTION 15.** ORS 181.662 is amended to read:

16 181.662. (1) The Department of Public Safety Standards and Training may deny the application  
17 for training, or deny, suspend or revoke the certification, of any instructor or public safety officer,  
18 except a youth correction officer or fire service professional, after written notice and hearing con-  
19 sistent with the provisions of ORS 181.661, based upon a finding that:

20 (a) The public safety officer or instructor falsified any information submitted on the application  
21 for certification or on any documents submitted to the Board on Public Safety Standards and  
22 Training or the department.

23 (b) The public safety officer or instructor has been convicted of a crime or violation in this state  
24 or any other jurisdiction.

25 (c) The public safety officer or instructor does not meet the applicable minimum standards,  
26 minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).

27 **(d) The public safety officer failed to comply with section 5 (3)(b) of this 2007 Act.**

28 (2) The department shall deny, suspend or revoke the certification of a fire service professional,  
29 after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding  
30 that the fire service professional has been convicted in this state of a crime listed in ORS 137.700  
31 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime  
32 listed in ORS 137.700.

33 (3) The department may deny, suspend or revoke the certification of any fire service professional  
34 after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding:

35 (a) That the fire service professional falsified any information submitted on the application for  
36 certification or on any documents submitted to the board or the department; or

37 (b) Consistent with ORS 670.280, that the fire service professional is not fit to receive or hold  
38 the certification as a result of conviction of a crime in this state, or in any other jurisdiction, other  
39 than a crime described in subsection (2) of this section.

40 (4) The department shall deny, suspend or revoke the certification of any public safety officer  
41 or instructor, except a youth correction officer, after written notice and hearing consistent with the  
42 provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been  
43 discharged for cause from employment as a public safety officer.

44 (5) The department, in consultation with the board, shall adopt rules specifying those crimes and  
45 violations for which a conviction requires the denial, suspension or revocation of the certification

1 of a public safety officer or instructor.

2 (6) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a public  
3 safety officer or instructor, the department may:

4 (a) Proceed with any investigation of, or any action or disciplinary proceedings against, the  
5 public safety officer or instructor; or

6 (b) Revise or render void an order suspending or revoking the certification.

7 (7) The department shall deny, suspend or revoke the accreditation of a training or educational  
8 program or any course, subject, facility or instruction thereof if the program, course, subject, facility  
9 or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181.640  
10 (1)(g) or 181.650 (3).

11 **SECTION 16.** (1) A deadly physical force planning authority created by section 2 of this  
12 2007 Act shall submit the plan required by section 2 (4) of this 2007 Act to the governing  
13 bodies described in section 2 (7) of this 2007 Act no later than July 1, 2008.

14 (2) Notwithstanding section 2 (3) of this 2007 Act, for the period of time from the effective  
15 date of this 2007 Act to June 30, 2008, the law enforcement agency that employs the police  
16 officer selected under section 2 (1)(b) of this 2007 Act shall release the officer from other  
17 duties for at least 80 hours to enable the officer to serve on the planning authority. The  
18 agency shall compensate the officer at the officer's regular hourly wage while the officer is  
19 engaged in planning authority activities during that period of time.

20 **SECTION 17.** A law enforcement agency shall adopt the policy required by section 5 (2)  
21 of this 2007 Act no later than July 1, 2008.

22 **SECTION 18.** (1) A law enforcement agency that participates in the development of the  
23 plan required by section 2 (4) of this 2007 Act shall keep track of the expenses it incurs by  
24 reason of its participation. For purposes of this subsection and subsection (2) of this section,  
25 "expenses" includes, but is not limited to, personnel costs.

26 (2) The Department of Justice shall award a law enforcement agency one credit for each  
27 dollar of expenses incurred before July 1, 2008, by reason of the law enforcement agency's  
28 participation in the development of the plan required by section 2 (4) of this 2007 Act.

29 (3) Notwithstanding section 4 (2) of this 2007 Act, when a law enforcement agency applies  
30 for a grant under section 4 of this 2007 Act, the department, to the extent that funds are  
31 appropriated to the department for the purpose, shall make a grant that exceeds 75 percent  
32 of the expenses incurred by the law enforcement agency if the law enforcement agency has  
33 unused credits awarded under subsection (2) of this section. When the department makes a  
34 grant that exceeds 75 percent of the expenses incurred by a law enforcement agency, the  
35 department shall deduct the amount of the grant that exceeds 75 percent from the credits  
36 awarded the law enforcement agency under subsection (2) of this section.

37 (4) The department may adopt rules necessary for the administration of this section.

38 **SECTION 19.** ORS 132.430 is amended to read:

39 132.430. (1) When a person has been held to answer a criminal charge and the indictment in  
40 relation thereto is not found "a true bill," it must be indorsed "not a true bill," which indorsement  
41 must be signed by the foreman and filed with the clerk of the court, in whose office it shall remain  
42 a public record. Except for the recording and transcript required by section 12 of this 2007  
43 Act, in the case of an indictment not found "a true bill" against a person not so held, the same,  
44 together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

45 (2) When an indictment indorsed "not a true bill" has been filed with the clerk of the court, the

1 effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by  
2 the grand jury unless the court so orders.

3 **SECTION 20.** A law enforcement agency, as defined in section 1 of this 2007 Act, may not  
4 use moneys it receives under section 4 of this 2007 Act to supplant moneys from another  
5 source that the law enforcement agency has been previously authorized to expend.

6 **SECTION 21.** There is appropriated to the Department of Justice, for the biennium be-  
7 ginning July 1, 2007, out of the General Fund, the amount of \$300,000 for the purpose of  
8 carrying out the provisions of sections 4 and 12 (5) of this 2007 Act.

9 **SECTION 22.** ORS 181.640 is amended to read:

10 181.640. (1) In accordance with any applicable provision of ORS chapter 183, to promote  
11 enforcement of law and fire services by improving the competence of public safety personnel and  
12 their support staffs, and in consultation with the agencies for which the Board on Public Safety  
13 Standards and Training and Department of Public Safety Standards and Training provide standards,  
14 certification, accreditation and training:

15 (a) The department shall recommend and the board shall establish by rule reasonable minimum  
16 standards of physical, emotional, intellectual and moral fitness for public safety personnel and in-  
17 structors.

18 (b) The department shall recommend and the board shall establish by rule reasonable minimum  
19 training for all levels of professional development, basic through executive, including but not limited  
20 to courses or subjects for instruction and qualifications for public safety personnel and instructors.  
21 Training requirements shall be consistent with the funding available in the department's  
22 legislatively approved budget.

23 (c) The department, in consultation with the board, shall establish by rule a procedure or pro-  
24 cedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth  
25 Authority to determine whether public safety personnel meet minimum standards or have minimum  
26 training.

27 (d) Subject to such terms and conditions as the department may impose, the department shall  
28 certify instructors and public safety personnel, except youth correction officers, as being qualified  
29 under the rules established by the board.

30 (e) The department shall deny applications for training and deny, suspend and revoke certifi-  
31 cation in the manner provided in ORS 181.661, 181.662 and 181.664 (1).

32 (f) The department shall cause inspection of standards and training for instructors and public  
33 safety personnel, except youth correction officers, to be made.

34 (g) The department may recommend and the board may establish by rule accreditation stan-  
35 dards, levels and categories for mandated and nonmandated public safety personnel training or ed-  
36 ucational programs. The department and board, in consultation, may establish to what extent  
37 training or educational programs provided by an accredited university, college, community college  
38 or public safety agency may serve as equivalent to mandated training or as a prerequisite to man-  
39 dated training. Programs offered by accredited universities, colleges or community colleges may be  
40 considered equivalent to mandated training only in academic areas.

41 (2) The department may:

42 (a) Contract or otherwise cooperate with any person or agency of government for the procure-  
43 ment of services or property;

44 (b) Accept gifts or grants of services or property;

45 (c) Establish fees for determining whether a training or educational program meets the accred-

- 1 itation standards established under subsection (1)(g) of this section;
- 2 (d) Maintain and furnish to law enforcement units and public and private safety agencies infor-
- 3 mation on applicants for appointment as instructors or public safety personnel, except youth cor-
- 4 rection officers, in any part of the state; and
- 5 (e) Establish fees to allow recovery of the full costs incurred in providing services to private
- 6 entities or in providing services as experts or expert witnesses.
- 7 (3) The department, in consultation with the board, may:
- 8 (a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid
- 9 cities and counties to conduct surveys through qualified public or private agencies and assist in the
- 10 implementation of any recommendations resulting from such surveys.
- 11 (b) Upon the request of law enforcement units or public safety agencies, conduct studies and
- 12 make recommendations concerning means by which requesting units can coordinate or combine their
- 13 resources.
- 14 (c) Stimulate research by public and private agencies to improve police, fire service, corrections
- 15 and adult parole and probation administration and law enforcement.
- 16 (d) Provide grants from funds appropriated or available therefor, to law enforcement units,
- 17 public safety agencies, special districts, cities, counties and private entities to carry out the pro-
- 18 visions of this subsection.
- 19 (e) Provide optional training programs for persons who operate lockups. The term "lockup" has
- 20 the meaning given it in ORS 169.005.
- 21 (f) Provide optional training programs for public safety personnel and their support staffs.
- 22 (g) Enter into agreements with federal, state or other governmental agencies to provide training
- 23 or other services in exchange for receiving training, fees or services of generally equivalent value.
- 24 (h) Upon the request of a law enforcement unit or public safety agency employing public safety
- 25 personnel, except youth correction officers, grant an officer, fire service professional, telecommu-
- 26 nicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum
- 27 requirements adopted or approved by the board. Multidiscipline certification authorizes an officer,
- 28 fire service professional, telecommunicator or emergency medical dispatcher to work in any of the
- 29 disciplines for which the officer, fire service professional, telecommunicator or emergency medical
- 30 dispatcher is certified. The provisions of ORS 181.652, 181.653 and 181.667 relating to lapse of cer-
- 31 tification do not apply to an officer or fire service professional certified under this paragraph as
- 32 long as the officer or fire service professional maintains full-time employment in one of the certified
- 33 disciplines and meets the training standards established by the board.
- 34 (i) Establish fees and guidelines for the use of the facilities of the training academy operated
- 35 by the department and for nonmandated training provided to federal, state or other governmental
- 36 agencies, private entities or individuals.
- 37 (4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt
- 38 rules necessary to carry out the board's duties and powers.
- 39 (5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt
- 40 rules necessary to carry out the department's duties and powers.
- 41 (6) For efficiency, board and department rules may be adopted jointly as a single set of combined
- 42 rules with the approval of the board and the department.
- 43 (7) The department shall obtain approval of the board before submitting its legislative concepts,
- 44 Emergency Board request or budget requests to the Oregon Department of Administrative Services.
- 45 (8) The Department of Public Safety Standards and Training shall develop a training

1 program for conducting investigations required under section 5 of this 2007 Act.

2 **SECTION 23.** The Department of Public Safety Standards and Training shall complete  
3 development of the training program required by ORS 181.640 (8) no later than August 31,  
4 2008. The department shall submit a report summarizing the training program to the legis-  
5 lative interim committees dealing with the judiciary no later than September 30, 2008.

6 **SECTION 24.** (1) Sections 4, 10 to 12 and 20 of this 2007 Act and the amendments to ORS  
7 132.090, 132.430, 181.640 and 181.662 by sections 9, 15, 19 and 22 of this 2007 Act become op-  
8 erative on July 1, 2008.

9 (2) The amendments to ORS 146.135 by section 14 of this 2007 Act become operative on  
10 July 1, 2009.

11 **SECTION 25.** (1) Notwithstanding the effective date of section 5 of this 2007 Act, section  
12 5 (3) to (7) of this 2007 Act applies to incidents occurring on or after July 1, 2008.

13 (2) Section 12 of this 2007 Act applies to incidents occurring on or after July 1, 2008.

14 **SECTION 26.** This 2007 Act being necessary for the immediate preservation of the public  
15 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect  
16 on its passage.

17