

DEADLY PHYSICAL FORCE

**Policies and procedures relating to the use of deadly
physical force by law enforcement personnel**

Benton County
Use of Deadly Physical Force
Planning Authority

Table of Contents

MEMBERS OF THE PLANNING AUTHORITY 3

PREAMBLE 3

SECTION 1: ADMINISTRATION 4

SECTION 2: APPLICABILITY OF THE PLAN 4

SECTION 3: DEFINITIONS 4

SECTION 4: IMMEDIATE AFTERMATH 5

SECTION 5: SERIOUS PHYSICAL INJURY/DEATH 5

SECTION 6: PRIMARY INVESTIGATIVE AGENCY 7

SECTION 7: INVESTIGATION PROTOCOLS 7

SECTION 8: DISTRICT ATTORNEY 8

SECTION 9: DEBRIEFING AND REPORTING 9

SECTION 10: TRAINING, OUTREACH 9

SECTION 11: FISCAL IMPACT 9

SECTION 12: PLAN REVISION 10

Members of the Planning Authority

Benton County District Attorney, John Haroldson, co-chair
Benton County Sheriff, Diana Simpson, co-chair
Oregon State Police, Lt. Mark Cotter
Police Department, Chief Gary Boldizar, Corvallis Police Department
Labor Union Representative, Brett Roach, Corvallis Police Department
Public Member, Nick Bonano

On February 7, 2008, this Plan was approved by a majority of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Benton County -----Approved March 4, 2008

City of Albany -----Approved March 26, 2008

City of Corvallis -----Approved April 7, 2008

City of Philomath----- Approved April 14, 2008

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on ***.

Preamble

The use of deadly physical force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. The purpose of this Plan is not to set the standards for the use of such force, or to be a substitute for agency policy regarding use of force, but rather to provide a framework for a consistent response to an officer's use of deadly physical force that treats the law enforcement officer fairly, and promotes public confidence in the criminal justice system.

Section 1: Administration

- (1) In the event that a member of the planning authority is unable to continue to serve, a replacement shall be appointed as provided in Section 2(1) of Senate Bill 111, Oregon Laws 2007.
- (2) There shall be six voting members of the Planning Authority. The approval of the Plan, elements or revisions thereof, shall be by majority vote.
- (3) The presence of 2/3 of the voting members shall be required in order to hold any vote.
- (4) Any meeting of a quorum of the voting members of the Planning Authority is subject to Oregon's open meeting law.

Section 2: Applicability of the Plan

- (1) This plan shall be applicable, as set forth herein, to any use of deadly physical force by a peace officer acting in the course of and in furtherance of his/her official duties, occurring within Benton County.

Section 3: Definitions

Agency: The law enforcement organization employing the officer who used deadly physical force

Plan: Means the final document approved by the Planning Authority, adopted by two-thirds of the governing bodies employing law enforcement agencies, and approved by the Attorney General. Any approved revisions shall become a part of the Plan. Issues related to the revision of this plan are addressed in Section 12 of this plan.

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.

Serious Physical Injury: Has the same meaning as "serious physical injury" as defined in ORS 161.015(8).

Physical Injury: Means impairment of physical condition or substantial pain that does not amount to "serious physical injury."

Involved Officer: Means the person whose official conduct, or official order, was the cause in fact of the death of a person. "Involved Officer" also means an officer whose conduct was not the cause in fact of the death, but who was involved in the incident

before or during the use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

Preliminary Statements: Those statements provided by involved Officers to supervisors or investigators immediately after a deadly force incident related to officer safety, public safety and necessary information to secure the scene, apprehend others that may be of concern to the investigation, and provide a framework for the investigation.

Section 4: Immediate Aftermath

- (1) When an officer uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety of the officer and any member of the public.
 - (a) After taking such steps, the officer shall immediately notify his or her agency of the use of deadly physical force.
 - (b) Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.
 - (c) Upon request, the officer may provide preliminary statements.

Section 5: Serious Physical Injury/Death

When the use of deadly physical force results in death or serious physical injury to any person, in addition to the requirements of **Section 4 (1) of this Plan**, and notwithstanding agency policy, the following provisions apply:

- (1) Upon the arrival of additional officers, sufficient to manage the scene, each Involved Peace Officer shall be relieved of the above duties set forth in Section 4 (1) of the Plan, and the duties shall be re-assigned to uninvolved police personnel.
- (2) As soon as practicable, each Involved Peace Officer shall leave the scene, as directed by his or her supervisor, and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to the Agency's office. If requested by the Involved Peace Officer, the officer's union representative shall be notified.

(3) As soon as practicable, the duty weapon of any peace officer who fired their weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate.

(4) Interview of an "Involved Peace Officer":

As used in this section "interview" refers to formal interview of the officer by assigned investigative personnel that occurs within a reasonable time period after the incident, and after the officer has had an opportunity to consult with counsel, if so desired.

(a) The interview of the involved officer(s) who discharged a firearm during a use of deadly physical force incident resulting in death or serious physical injury, shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the officer(s). The interview shall occur no sooner than 48 hours after the incident, unless this waiting period is waived by the officer.

(b) The waiting period does not preclude an initial on-scene preliminary statement with the officer to assess and make an initial evaluation of the incident.

(5) For at least 72 hours immediately following an incident in which the use of deadly physical force by a peace officer resulted in the death of a person, a law enforcement agency may not return an Involved Peace Officer to duties that might place the officer in a situation in which the officer has to use deadly force.

(a) Officer(s) involved in discharging his or her firearm that results in death or serious physical injury shall immediately be placed on paid administrative leave until such time as sufficient information exists to determine the justification in the use of deadly physical force and that the officer(s) have had an opportunity for mental health counseling.

(6) In the 6 months following a use of deadly physical force incident that results in a death, the Agency shall offer each Involved Peace Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.

(7) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 8 (1) of this Plan.

(a) This provision does not prevent the Agency from requiring additional notification requirements within their respective agency policies.

- (8) The Agency shall designate a representative to make an initial public statement about the incident. Such statement shall include:
 - (a) The time and place of the incident.
 - (b) The condition of any suspect.
 - (c) The nature of the use of deadly physical force.

- (9) Prior to a final determination being made by the District Attorney, the District Attorney and the primary investigative agency shall consult with each other and make a public release of information as is deemed appropriate.

Section 6: PRIMARY INVESTIGATIVE AGENCY

After consulting with the District Attorney, the Agency shall decide what law enforcement agency will be the primary investigating agency. In the event that the involved officer's own agency will be the primary investigating agency, and the incident resulted in a death, the Agency will promptly make arrangements for at least one investigator from outside the Agency to participate in the investigation.

- (a) In the event that a use of deadly physical force resulting in death or serious physical injury involves officers from multiple jurisdictions, the District Attorney and each involved agency shall consult and agree upon a primary investigative agency.

Section 7: Investigation Protocols

- (1) The investigation, at a minimum, shall consist of:
 - (a) Eyewitness interviews.
 - (b) Evidence collection
 - (c) Scene documentation.
 - (d) Involved Officer interview(s)

- (2) The investigation shall be documented in written reports.

- (a) All written reports shall be filed with the investigator's agency, and copies provided to the lead investigative agency, and the Involved Officer's agency.
- (b) All police reports shall be promptly provided to the District Attorney.

Section 8: District Attorney

- (1) When an incident of the use of deadly physical force by a peace officer occurs, and death or serious physical injury results, the agency shall, as soon as practicable, notify the District Attorney's Office.
 - (a) Notification shall be made to the District Attorney, Chief Deputy, or other senior member of the District Attorney's staff.
- (2) When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney, and/or a senior member of his staff will consult with the agency regarding the investigation and implementation of the elements of this plan.
- (3) The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a Grand Jury.
 - (a) Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly force.
 - (b) The District Attorney will consult with the investigating agency and make the decision on whether to present the case to a Grand Jury.
 - (1) The timing of the decision will be made by the District Attorney at such time as he has determined that sufficient information is available to competently make the decision.
 - (c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer's representative.
 - (d) If the District Attorney decides that the investigation reveals that the officer's use of deadly force was justified under Oregon law, and that Grand Jury review is unnecessary, the District Attorney shall so notify the Agency, the involved officer, the involved officer's representative, and the public.
- (4) If the use of deadly physical force results in physical injury to someone other than a police officer, upon completion of the investigation, all investigative

information shall be forwarded to the District Attorney for review.

Section 9: Debriefing and Reporting

- (1) Upon a final determination by the District Attorney, the Agency shall conduct an internal review of the matter according to Agency policy. Such review, at a minimum, shall include a review of the incident by the involved officer.
- (2) Upon the conclusion of the investigation, the announcement by the District Attorney pursuant to Section 8 (3), and the debriefing, the Agency shall complete and submit a report to the Attorney General's Office regarding the use of force.

Section 10: Training, Outreach

- (1) Each law enforcement agency within Benton County should conduct an annual presentation intended to engage members of the community in a discussion regarding the agency's policies on the use of deadly force, as well as discussions regarding the use of deadly force by the Agency's personnel.
- (2) Each law enforcement agency within Benton County shall provide a copy of this Plan to every officer, and provide training to officers on the implementation of the plan.

Section 11: Fiscal Impact

- (1) At the conclusion of each fiscal year following the adoption of the Plan, each agency shall submit to the administrator of the Plan, a report outlining the fiscal impact of each element of the Plan as described in section (a) to (e) of Section 2 (4) of Senate Bill 111, Oregon Laws 2007.

Section 12: Plan Revision

- (1) Beginning January 1, 2009, and each year thereafter, the Planning Authority shall meet at least once to review and discuss the operation of the Plan.
- (2) If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. If the Planning Authority adopts a revision, such revision shall be submitted for approval as provided by statute.