

FINAL DRAFT PLAN

March 6, 2008

**DEADLY
PHYSICAL
FORCE
PLAN**

**Jackson County, Oregon
Deadly Physical Force Planning Authority**

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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.

The investigation of these incidents presents a unique combination of complexities that have potential social, civil, administrative and criminal consequences. Public interest and scrutiny is acute; employee morale rests in tenuous balance, and legal issues compound. Proper resolution requires the trust and confidence of all concerned that the investigation will be conducted impartially, thoroughly and openly; without undue or unlawful infringement on the rights and privacy of those involved. The affected agencies recognize their responsibilities to meet those demands, which can be accomplished only through effective management of the investigation. This requires an approach that is:

Well coordinated, to eliminate confusion;

Knowledgeable and skillful, to ensure thoroughness;

Defined, so that those involved and the public correctly interpret the investigative process;

Informative, without compromise of the investigation or individual's rights, in order to restrict speculation and rumor by those who have an interest in the investigation.

This Plan has been adopted by the Jackson County Deadly Force Planning Authority, duly constituted pursuant to SB 111, Chapter 842, Oregon Laws, 2007. As such, it sets out, among other things, the manner in which incidents which involve the use of deadly physical force by law enforcement personnel are to be investigated. It is anticipated that each incident will involve unique circumstances, and flexibility must be allowed for minor modifications. This protocol is not intended to increase the civil or criminal liability of member agencies or their employees, and it shall not be construed as creating any mandatory obligations to, or on behalf of, third parties.

SECTION 1: ADMINISTRATION

- A. 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, Chapter 842, Oregon Laws, 2007.
- B. There shall be six voting members of the Planning Authority. The approval of the Plan, or revisions thereof, shall be by majority vote.
- C. The presence of 2/3 of the voting members shall be required in order to hold any vote.
- D. The final Plan shall be incorporated into the Jackson County Cooperative Policing Manual.

SECTION 2: APPLICABILITY OF THE PLAN

A. Invocation of this Plan

1. Automatic and Immediate

- a) This Plan shall be applicable as set forth herein, to any use of deadly physical force by a law enforcement officer, acting in the course of his/her official duties, occurring within Jackson County.
- b) Investigation of these matters must be performed under two separate investigative formats: (1) the criminal investigation; and (2) the internal administrative investigation.

2. Optional

- a) This Plan may be invoked upon the occurrence of any sensitive or critical event involving a law enforcement officer which may have criminal liability attached. Examples include:
 - (i) A fatality which did not involve the use of deadly physical force by an officer.
 - (ii) An officer-involved motor vehicle incident.

(iii) Any death of a person while in law enforcement custody.

(iv) Anytime when requested by an employer agency.

SECTION 3: DEFINITIONS

A. Law Enforcement Officer or Officer

1. Full-time, part-time and reserve sworn police officers, whether on duty or off duty and when acting in the course of his/her official duties in a law enforcement capacity.
2. Full-time or part-time non-sworn employees who are on duty at the time of an incident.
3. Volunteers who are on duty or are working under the direct control and supervision of a law enforcement officer.
4. Sworn parole and probation officers employed by Jackson County Community Justice, whether on duty or off duty and when acting in the course of his/her official duties.

B. Involved Officer

1. The person who's 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.
2. This definition also applies to a situation in which no death occurs, but where the officer used deadly physical force.

C. Employer Agency

The agency by which the involved officer is employed or with which the person is affiliated.

D. Agency of Primary Responsibility

The agency within whose geographical jurisdiction the incident occurs. When an incident crosses jurisdiction boundaries, or occurs in the unincorporated areas of Jackson County, the agency of primary responsibility shall be jointly decided by the supervisors of the involved agencies.

E. Deadly Physical Force

4. Interviews will be conducted separately, and in a comfortable setting. Interviewers must remain aware of the perceptual distortions associated with traumatic incidents, and how these distortions may vary between officers. In-depth interviews may have to occur some time after the incident, depending upon the officer's condition.
5. Interviews should be audio and/or visually recorded.
6. If the interview is custodial in nature, the officer shall be given Miranda warnings.

D. Intoxicant testing:

1. Involved officers have the same rights and privileges that any civilian would have regarding intoxicant testing. Employees should be requested to voluntarily provide blood and/or urine samples for intoxicant testing.
2. If the involved officer refuses to voluntarily provide blood and/or urine, and it is necessary to obtain these, then the District Attorney's office should be contacted.

E. Autopsy

An autopsy shall be performed whenever a death results. A member of the investigative team shall attend the autopsy. A representative from the Oregon State Police Forensic Laboratory will attend the autopsy when appropriate, as determined by the investigative team.

SECTION 6: MEDIA RELEASES

- A. Initial media releases are the responsibility of the agency of primary responsibility, after consultation with the case agent and District Attorney. This responsibility will normally continue until the final police reports are submitted to the District Attorney for review.
- B. The District Attorney will assume responsibility for media releases once the final police reports are submitted to the District Attorney's Office for review. This will assist in minimizing the release of information that may jeopardize the investigation or subsequent prosecution.

SECTION 7: ACCESS TO REPORTS AND EVIDENCE

- A. Materials created or collected as a result of the criminal investigation will be made available to the employer agency for purposes of the internal administrative investigation at the conclusion of the criminal investigation, unless otherwise directed by the District Attorney. Materials may also be released to the employer agency while the criminal investigation is pending with prior approval of the District Attorney.

Materials may be made available to other agencies or individuals, including the involved officer and the officer's attorney, once the District Attorney had determined that no criminal charges will be brought against any individual as a result of the incident. If any criminal charges are filed, no materials will be released while charges are pending, except to the employer agency, without the approval of the District Attorney.

B. The materials may include:

1. Reports
2. Access to physical evidence
3. Photographs and diagrams
4. Audio and visual recordings

C. At the conclusion of the criminal investigation, all reports will be submitted to the District Attorney by the case agent for review.

D. When the District Attorney's Office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the employer agency shall be notified of that decision so it can assume responsibility for preservation of such evidence.

SECTION 8: DISTRICT ATTORNEY

A. When an incident involving the use of deadly physical force by an officer occurs, the District Attorney's Office should be notified by the employer agency, agency of primary responsibility or MA/DIU case agent.

B. The District Attorney's Office has the following roles in the incident investigation:

1. Participate co-equally with the investigative team performing the criminal investigation. It should be noted that the District Attorney has ultimate authority for the prosecution of criminal cases, and specific shared responsibility with the medical examiner in death investigations.
2. Assist and advise the investigative team on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses, etc.
3. Upon completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws were violated.

- a) The District Attorney will normally present these matters to the Grand Jury for determination of criminal liability on the part of the involved officer. However, not all cases covered by this protocol may rise to a level that merits a Grand Jury determination. The District Attorney has the sole statutory and constitutional duty to make the decision whether to present the matter to a Grand Jury.
- b) The District Attorney will decide on the issue of criminal liability or present the matter to a Grand Jury as soon as practicable, but not before the District Attorney has determined that sufficient information is available to competently make the decision.
- c) When the District Attorney has made a final decision concerning criminal liability, or has presented the case to the Grand Jury, the District Attorney shall promptly communicate the result to the agency of primary responsibility, the employer agency, the involved officer's representative and the public.

SECTION 9: INTERNAL ADMINISTRATIVE INVESTIGATION

1. Investigation Priority

While both the criminal investigation and the internal administrative investigation are important and should be pursued, it is recommended that the criminal investigation have investigative priority and be completed before commencing the internal administrative investigation. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence and the involved parties. Additionally, it will prevent the criminal investigation from being compromised by an untimely exercise of the employer agency's administrative rights.

2. Information Excluded From the Criminal Investigation

Interview statements, physical evidence, toxicology test results, and investigative leads that are obtained by internal administrative investigators by ordering police agency employees to cooperate, shall not be revealed to criminal investigators.

SECTION 10: DEBRIEFING / MENTAL HEALTH COUNSELING

- A. The use of deadly physical force by an officer has the potential to create strong emotional reactions, which may interfere with an officer's ability to function effectively. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers within the agency.
- B. The requirements of this section provide a minimum framework, and are not intended to take the place of agency policy. Agencies are encouraged to develop formal

procedures to deal with an officer's stress response following a use of deadly force incident. Such policies should include a procedure that is implemented from the time of the incident and continues as long as necessary.

1. If the incident is of such a magnitude that agency-wide morale is implicated, the agency shall take such steps as it deems necessary to ensure professional police services are provided, and to develop strategies to restore morale.
 2. Each agency shall provide for a process for any officer to participate in a facilitated critical stress incident debriefing.
 3. If available, agencies should encourage officers to take advantage of employee assistance programs and, if needed, agencies should request assistance from other agencies that may have in place formal programs for dealing with critical incidents.
- C. In the six months following a use of deadly physical force incident that results in a death, the agency shall offer each involved 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.
1. At agency expense, the involved officer(s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session, with a follow-up session scheduled at a date determined by the mental health professional.
 2. The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.

SECTION 11: AGENCY USE OF FORCE PLANS, REPORTING, TRAINING AND OUTREACH

- A. Every law enforcement agency must adopt a policy dealing with the use of deadly physical force by its officers. At a minimum, such policies must include guidelines for the use of deadly physical force.
- B. Upon the conclusion of the criminal investigation, the announcement by the District Attorney pursuant to Section 8.B.3.c. of this Plan, and the debriefing, the agency shall complete the Attorney General's report regarding the use of force, and submit the report to the Attorney General.
- C. The Jackson County Deadly Force Planning Authority shall take steps to engage the Jackson County community in a discussion regarding the purpose of the Plan, and the elements contained therein. Such steps may include, but are not limited to, general public release of the draft, discussion with the media, providing the draft to agency

employees, union representatives, elected officials, and members of relevant community groups.

- D. Law enforcement agencies within Jackson County are responsible for training their officers on the specifics of their policies regarding the use of deadly physical force. That training should also include information about this Plan. Training may include, but is not limited to, firearms training and shooting scenarios, seminars, briefings, written materials, promulgation of this Plan along with the Patrol Supervisor's and Companion Officer's checklist, wallet cards and other written materials. Training should include suggestions for dealing with challenges that officers may encounter when responding to situations involving persons who appear to be suicidal, or who may have other mental health issues. Periodically, such training should be fashioned to include attorneys employed by state and local governments within the county.
- E. Public outreach regarding law enforcement use of deadly physical force is also an important component of effective and well-received law enforcement policies and of this Plan. Public outreach may be provided in numerous ways, including seminars, citizen's police academies, career day sessions at local schools, media releases, and the promulgation of written materials such as flyers. Entities which should take the lead in such outreach include: Jackson County law enforcement agencies, the Law Enforcement Agencies Heads group, MA/DIU, the Jackson County Public Safety Coordinating Counsel and the Deadly Physical Force Planning Authority.

SECTION 12: FISCAL IMPACT

Jackson County law enforcement agencies have incurred no reimbursable out of pocket costs associated with the development of this Plan. It is estimated that there will not be ongoing reimbursable costs associated with the implementation of the Plan. However, if any law enforcement agency covered by the Plan does sustain such costs in the future, that agency shall submit to the Department of Justice, in the fiscal year in which said costs are accrued, a report outlining the fiscal impact of each element of the Plan as described in Section 4 and Sections (a) to (e) of Section 2(4) of Senate Bill 111, Chapter 842, Oregon Laws, 2007.

SECTION 13: PLAN REVISION

If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. Proposed revisions should be discussed with the Law Enforcement Agency Heads group, as well as the MA/DIU. If the Planning Authority adopts a revision, such revision shall be submitted to the Attorney General and included in the Jackson County Cooperative Policing Manual.

**POLICE EMPLOYEE-INVOLVED FATAL OR SERIOUS INJURY
Patrol Supervisor's Checklist**

1. Emergency life saving measures and protection of the public have first priority.
2. Request additional patrol officers as necessary.
3. If an injured person is transported to a hospital, an officer should accompany that person in the same vehicle in order to:
 - a) Locate, preserve, safeguard and maintain the chain of custody of physical evidence.
 - b) Obtain a dying declaration, excited utterance, or any other statement made by the injured person.
 - c) Maintain custody of the person if that individual has been arrested.
 - d) Provide information to medical personnel about the incident as it relates to treatment.
 - e) Identify relevant people, including ambulance and medical personnel, and obtain from them information that is relevant to the investigation.
 - f) Be available for contact with the injured person's family, if appropriate.
4. When the agency of primary responsibility is the Jackson County Sheriff's Office, the Oregon State Police, the Medford Police Department, Ashland Police Department, Central Point Police Department or Eagle Point Police Department, the supervisor shall determine the number of detectives needed from the Major Assault/Death Investigation Unit and will cause the supervisor of those detectives to be contacted.
5. When the agency of primary responsibility is not one of those listed above, the on-scene supervisor of the agency of primary responsibility shall contact the Jackson County Sheriff's Office or the Oregon State Police and speak directly to a supervisor regarding the call-out of the Major Assault/Death Investigation Unit. That supervisor will cause MA/DIU detectives to be contacted. If a supervisor from the Oregon State Police or the Jackson County Sheriff's Office is unavailable, the on-scene supervisor shall leave a telephone number and wait for a call, or take other appropriate action.
6. Determine what responding/scene officers have learned and what they've done.
7. LIMIT QUESTIONS of involved officers and other witnesses to those necessary for public safety and scene management.
8. Arrange for radio broadcasts on outstanding suspect, vehicle, witnesses, etc.

9. Protect sensitive investigative information, including names of involved officers. Use caution on radio broadcasts. Use secure phone when possible.
10. Locate, identify, and sequester civilian witnesses for detectives' interviews.
11. The scene must be secured as soon as possible and a sufficient perimeter established to safeguard evidence. Access to the scene should be limited to those officials who must enter for an investigative purpose. A written log should be established to identify all persons entering and leaving the crime scene.
12. Responding officers in shooting incidents should ensure that involved officers maintain their weapons in place, in the same condition as they were at the conclusion of the incident, until surrendered to the evidence officer.
13. Collect your information and thoughts to brief investigators.

ROLE OF THE COMPANION OFFICER

1. A companion officer shall be assigned by the employer agency to each involved officer if practicable. The companion officer shall remain with the involved officer until the officer can be interviewed.
2. The companion officer is present to provide for the involved officer's privacy, to be certain that his/her needs are accommodated, and to insure the integrity of the involved officer's later statements to investigators.
3. The companion officer should encourage the involved officer not to discuss the incident until the investigative interview. However, this is not intended to in any way prohibit the involved officer from speaking to family members.
4. The involved officer may also wish to speak to attorneys, union representatives, psychotherapists or other similar professionals.
5. After the involved officer is released from the scene by the officer in charge, the companion officer should remove the involved officer from the scene as soon as possible.