

Malheur Major Crime Team

Malheur County, Oregon

Experience has revealed that a well-trained criminal investigation team, coordinated and equipped properly, can be of great advantage in effectively recovering physical and testimonial evidence. Special investigative teams are especially valuable when large crime scenes are encountered or when there are multiple scenes in a given case. Such special investigative teams are equally valuable when investigating a series of interrelated crimes such as serial killings. The positive role of such teams can insure that the evidence gathered as a result of their work will meet the rigorous standards necessary for the admissibility of evidence in court.

This team concept to criminal investigation has been accepted by the major investigative agencies throughout Malheur County. The name of this effort will be the Malheur Major Crime Team, hereinafter referred to as M.M.C.T. The chiefs and commanders of the following agencies have agreed to participate in this interagency effort of a major crime investigation unit: the Malheur County District Attorney's Office, the Malheur County Medical Examiner's Office, the Malheur County Sheriff's Office, the Malheur County Victim Assistance Division, the Oregon State Police, the Ontario Police Department, and the Nyssa Police Department.

The mission of M.M.C.T. will be to assist when requested in non-traffic criminal deaths and major life threatening assaults. M.M.C.T. may also be

considered as a tool to investigate other major crimes or investigations with the joint agreement of the participating agencies and the local requesting jurisdiction. All M.M.C.T. investigations will be made through a mutual decision between the head of the agency of "primary responsibility" and the office of the District Attorney. The team members will act under the leadership of the primary case officer and the District Attorney.

The composition of M.M.C.T. will consist of members from the individual participating agencies. Each agency will provide a call out list of team member(s). In the event the decision is made to deploy M.M.C.T., a designated person from the primary agency will notify the supervisors of the responding agencies of the deployment. At that time, the supervisors of the responding agencies will make the determination if their assigned M.M.C.T. member(s) or other personnel are available and will notify their personnel to respond to the crime scene and/or the command post as outlined by the standing operating procedures of M.M.C.T. Ideally, assigned members of the responding agencies will be available for up to five days based upon needs of the investigation as determined by the primary agency. If the primary agency determines assistance is needed beyond the initial five-day period, the supervisor of the primary agency will call the supervisors of the responding agencies to ascertain if their assigned member(s) will still be available to assist with the M.M.C.T. investigation.

The selection of the individual members will remain the sole discretion of the participating agency commanders. All members should try to attend all training sessions and team meetings organized by M.M.C.T. The individual team member

will be accountable to his or her agency's administrator for their conduct, performance and activities as a law enforcement officer.

It is the intent of the participating agencies to have their assigned M.M.C.T. members serve on the team for a period of at least two (2) years. This period of time is to insure a minimum time for training of each member. Ideally, the primary member will rotate off of the team on years different than that of the alternate member. The individual agency commanders, however, will retain final authority to remove and replace team members as agency needs may require.

Each participating agency will be responsible for the expenses incurred by their own members, and only those members, during the course of the specific M.M.C.T. investigation. Each individual team member is responsible for keeping their supervisor briefed during their deployment to a M.M.C.T. investigation.

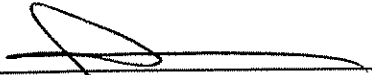
In all investigations regarding crimes committed within the city limits of the above-referenced participating agencies, the respective municipal police departments will be the agency of primary responsibility. In all investigations regarding crimes committed outside the city limits of the above-referenced participating agencies, the agency which receives the initial call will be the agency of primary responsibility. For investigations of incidents which occur at state institutions or on state property, the Oregon State Police will be the agency of primary responsibility.


When seeking M.M.C.T. assistance, the agency of primary responsibility will:


1. Assure proper protection of the crime scene until the arrival of M.M.C.T.

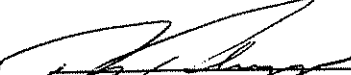
2. Notify the on-call District Attorney.
3. Make M.M.C.T. call out with the mutual agreement of the District Attorney.
A: Use of the included call out list by selected member
4. Provide all assistance as requested by M.M.C.T.
A: May include clerical support
5. Provide the District Attorney and the primary agency with copies of all reports involving the participation of the team in the investigation.
6. Provide for storage and control of all evidence seized during the M.M.C.T. investigation.
7. The primary agency will continue with the investigation to its ultimate completion and subsequent prosecution.
8. All media communications and press releases will be the responsibility of the primary agency and the District Attorney.

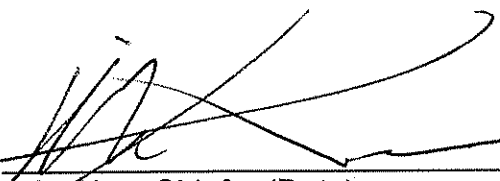
Education, Outreach & Training: Each member agency shall insure that their police officers have sufficient educational opportunities and training to comply with this agreement, and their own agencies use of force guidelines. Each agency shall have a copy of this agreement and their own use of deadly force policy available for public inspection and outreach. Agencies are encouraged to disseminate and discuss the plan in the media and public forums.

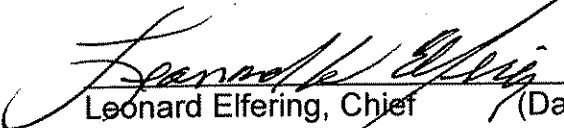

Andrew Bentz, Sheriff (Date) 5/23/08
Malheur County Sheriff's Office


Daniel Norris, District Attorney (Date) 6-28-08
Malheur County District Attorney


David Brauer, Chief M.E. (Date) 7/22/08
Malheur County Medical Examiner


Richard Pileggi, Lieutenant (Date) 7-17-08
Oregon State Police


Mike Kee, Chief (Date)
Ontario Police Department


Leonard Elfering, Chief (Date) 7-16-08
Nyssa Police Department



Department of State Police

CHAPTER: 500.8

SUBJECT: USE OF FORCE

REVISED: July 11, 2006

SUPERSEDES: August 7, 2000

PAGES: 10

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.

Officer-Involved Shooting

310.1 PURPOSE AND SCOPE

To establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

Nothing in this policy is intended to increase, modify, or in any way affect the current legal standards nor shall any deviation from these guidelines be considered a breach of any legal standard.

310.2 INVESTIGATION RESPONSIBILITY

This department conforms to the Malheur County Major Crime Team for investigating officer-involved shootings.

310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency or interagency team with the approval of the Chief of Police or a Captain
- (b) A criminal investigation of the involved officers conducted by an outside agency or interagency team
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

310.4 JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved officers. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings:

310.41 ONTARIO POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Ontario Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation. The criminal investigation of the officer-involved shooting will be conducted by this agency or an inter-agency team as designated in the Malheur County Major Crime Team in conjunction with the District Attorney's Office.

310.42 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Ontario Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by this agency or an inter-agency team as designated in the Malheur County Major Crime Team

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in conjunction with the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

310.43 ONTARIO POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Ontario Police Department will conduct timely civil and/or administrative investigations.

310.44 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of officer-involved shootings:

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Civil Investigation	Administrative Investigation
Ontario Police Department Officer in this Jurisdiction	Ontario Police Department	Malheur County Major Crime Team and District Attorney's Office	Ontario Police Department Civil Liability Team	Ontario Police Department Patrol Sergeant
Allied Agency's Officer in this Jurisdiction	Ontario Police Department	Malheur County Major Crime Team and District Attorney's Office	Involved Officer's Department	Involved Officer's Department
An officer From this department in Another Jurisdiction	Agency where incident occurred	Malheur County Major Crime Team dictated by county where incident occurred	Ontario Police Department Civil Liability Team	Ontario Police Department Patrol Sergeant

310.5 THE INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting.

310.51 DUTIES OF INITIAL ON SCENE SUPERVISOR

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s)
 1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects

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1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information
- (e) Provide all available information to the Patrol Sergeant and the Communications Center. If feasible, sensitive information should be communicated over secure networks
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction
 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
 2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

310.52 PATROL SERGEANT DUTIES

Upon learning of an officer-involved shooting, the Patrol Sergeant shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police or a Captain.

310.53 NOTIFICATIONS

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Investigation Captain
- District Attorney
- Interagency OIS team
- Civil Liability Response Team
- Psychological/Peer support personnel
- Medical Examiner (if necessary)
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Patrol Sergeant.

310.54 MEDIA RELATIONS

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Patrol Sergeant, Investigation Captain and Public Information Officer in the event of inquiries from the media.

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Captain.

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Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.55 INVOLVED OFFICERS

Once involved officer(s) have arrived at the station, the Patrol Sergeant should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated.
- (b) Discussions with licensed attorneys will be considered privileged as attorney client communications.
- (c) Discussions with departmental (e.g., association) representatives will be privileged only as to the discussion of non-criminal information.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any officer upon request.
 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
- (e) Communications with peer counselors are confidential and may not be disclosed by any person participating in the peer support counseling session (Oregon Revised Statutes 181.860). To be considered confidential communications under the statute, the peer counselor must:
 1. Have been designated by a law enforcement agency or employee assistance program to act as a peer counselor, and
 2. Have received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

Care should be taken to preserve the integrity of any physical evidence present on the officer, equipment or clothing (e.g., blood, fingerprints, etc.) until investigators or lab personnel can properly retrieve it.

Detectives shall make reasonable accommodations to the officer's physical and emotional needs.

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. Officers who use deadly physical force that results in the death of a person shall not be returned to regular duty until at least 72 hours immediately following the incident. It shall be the responsibility of the Patrol Sergeant to make schedule adjustments to accommodate such leave.

310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION

310.61 DETECTIVE PERSONNEL

Once notified of an officer-involved shooting, it shall be the responsibility of the Investigation Division supervisor to assign appropriate detective personnel to handle the investigation of related crimes in compliance with the Malheur County Major Crime Team Protocol. Detectives will be assigned to work with the District Attorney's Office and may be assigned

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to separately handle the investigation of any related crimes not being investigated under the direction of the District Attorney's Office.

All related departmental reports except administrative and/or privileged reports will be forwarded to the designated detective supervisor for approval. Privileged reports shall be maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Captain.

310.62 CRIMINAL INVESTIGATION

It shall be the policy of this department to utilize the District Attorney's Office to provide guidance in a criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, detective personnel from this department may be assigned to "partner" with investigators from the interagency investigative team so as to not duplicate efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and personnel assigned to conduct the administrative investigation should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry
- (b) If requested, any involved officer will be afforded the opportunity to consult with a representative of his or her choosing or an attorney, prior to speaking with criminal investigators
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators

310.63 REPORTS BY INVOLVED OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures, but should also be included for reference in the investigation of the officer-involved shooting.

Officer-Involved Shooting

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted under the supervision of the Patrol Sergeant and will be considered a confidential peace officer personnel file.

- (a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 - 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s).
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, or if there are additional issues that were not covered in the criminal investigation, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview.
 - 3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview).
 - 4. The officer shall be informed of all constitutional "Miranda" rights and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions. The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (The Garrity admonishment).
 - 5. The administrative interview shall be considered part of the officer's confidential personnel file.
 - 6. The Patrol Sergeant shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 - 7. The completed administrative investigation shall be submitted to the Use of Deadly Force Review Board, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy .
 - 8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

2. Exonerated;
3. Not sustained;
4. Sustained;
5. Not involved; or
6. Chargeable/Nonchargeable.

8.04.12 REVIEW OF USE OF FORCE. In the event of either accidental or purposeful discharge of a firearm by an employee, the employee will immediately notify the supervisor of the incident, and shall immediately provide information requested in order to preserve and protect the scene, apprehend suspects, and protect officers and the public. The investigation into the discharge of the firearm will be conducted in accordance with the policy concerning firearms discharge, Section 13.04.00 et seq.

8.04.13 REVIEW OF ACCIDENTS. When an employee is involved in an accident with a Department vehicle, the employee will immediately notify the supervisor of the incident and will file a detailed report as provided in Section 8.04.04. The supervisor will conduct an investigation of the accident and make a preliminary finding of chargeable or nonchargeable. The Chief of Police will review the supervisor's investigation, issue final findings, and take appropriate remedial action.

8.05.00 BOARDS OF INQUIRY. Boards of Inquiry may be established at the discretion of the Chief of Police, for the purpose of investigating incidents in which Department personnel are involved, in order to evaluate methods and policies and to determine procedural or policy deficiencies. The composition of the Board will be determined by the Chief of Police based upon expertise, objectivity, and other traits deemed desirable. Objectives, operational guidelines, and the necessary authority to complete the assignment will be provided to the Board in writing by the Chief of Police.

CHAPTER 13. PHYSICAL FORCE, DEADLY FORCE AND FIREARMS

13.00.00 PURPOSE. The purpose of this policy is to provide officers with a single source of reference on the use of physical force and deadly force. For the purposes of this directive, "deadly force" means the use of a weapon that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

13.01.00 POLICY. All employees who are authorized to carry weapons shall become familiar with the following guidelines and procedures regarding the use of physical force, and the proper use of deadly force, use of firearms and maintenance of firearms, impact and restraint equipment and aerosol subject restraint/Oleoresin Capsicum.

13.01.01 CONTINUUM OF FORCE DEFINED. The Continuum of Force is a graphic description of the escalation and de-escalation of force used by police personnel in response to actions taken by a suspect or offender. It serves to illustrate the legal duty of an officer to use only reasonable force in response to the threat reasonably perceived by the officer.

A. Levels of Force. The Force Continuum is divided into six specific component parts: 1) Threat Assessment, 2) Considerations of Force Escalation, 3) Levels of Resistance, 4) Levels of Force, 5) Justification, and 6) Control Techniques. The above listed component parts are explained in greater detail below.

1. **THREAT ASSESSMENT.** The term "threat" is used to describe any person capable of causing physical injury, serious physical injury or death. The threat must exhibit the following elements to justify the use of force:

- a. Intent.
- b. Means.
- c. Opportunity.

2. **CONSIDERATIONS OF FORCE ESCALATION.**

- a. The Totality of the Circumstances.
- b. Has the Threat had the opportunity to comply with your commands, if commands were possible and appropriate.
- c. Is the current course of action achieving control or compliance?
- d. Does the Threat warrant the risk of injury to yourself or the Threat?

3. LEVELS OF RESISTANCE.

- a. **STATIC.** The Threat refused to comply with commands by continuing to possess a weapon in a non-threatening way balking, becoming dead weight, or grasping a solid object.
- b. **ACTIVE.** The Threat physically resists the officer's verbal commands and/or attempts to gain physical control by pulling away, attempting to run, or powering through a control hold, or holding a weapon when commanded to drop it.
- c. **OMINOUS.** The Threat demonstrates the willingness to engage in combat through verbal challenge, threats and/or aggressive behavior.
- d. **LETHAL.** The Threat possesses both the intent and the means to inflict serious physical injury or death. The means can be with a weapon or empty handed. Example: The Threat uses a deadly weapon (handgun, knife, shank) or a dangerous weapon (lead pipe, broken bottle, tire iron) to inflict or attempt serious physical injury. Or the Threat inflicts serious injury through superior size, strength or combative skill.

4. LEVELS OF FORCE.

- a. **PRESENCE.** The officer has an expectation inappropriate behavior will stop at the officer's arrival in uniform.
- b. **VERBAL COMMANDS.** The questioning of a subject, the attempt to persuade a subject, or giving a direct order to a subject.
- c. **PHYSICAL CONTACT.** Directing a subject by touch, or controlling a subject with an escort hold.
- d. **PHYSICAL CONTROL HOLDS.** Use of pressure points, joint manipulation techniques, or physical control holds.
- e. **SERIOUS PHYSICAL CONTROL.** Use of chemical weapons and electronic stun devices, focused blows, impact weapons, and the carotid restraint.
- f. **DEADLY FORCE.** Any force capable of causing serious physical injury or death.

5. BASIC PRINCIPLES OF JUSTIFICATION.

- a. If the level of force is justified, the implement (or delivery system) used is of no significance.
- b. If the level of force is justified, the degree of injury the Threat may sustain is of no significance.
- c. The Threat always dictates the degree of force to be used. Therefore, the Threat is responsible for any injury the Threat may incur while resisting.
- d. It is incumbent on the officer to overcome the Threat's resistance as quickly as possible to control the Threat and the situation.

6. CONTROL TECHNIQUES. Members should maintain proficiency in the following techniques:

- a. CONTROL HOLDS/TAKEDOWNS. Physical control through application of compliance holds or takedowns to control the threat on the ground. Proper use of Kubotan or similar device and aerosol subject restraint, i.e., Oleroresin Capsicum.
- b. RESTRAINTS. Chain or hinge metallic handcuffs, flex ties, leg hobble straps/cords, velcro/nylon restraints. Proper use for cooperative handcuffing (standing) and uncooperative handcuffing (kneeling/prone) and high risk handcuffing (felony prone).
- c. SEARCHING. Stop and Frisk, cursory check for weapons, handcuffed standing, kneeling and prone.
- d. BATON. Straight baton or ASP expandable steel baton. Proper use of flashlight as a defensive tool.
- e. BLOCKS, STANCES, AND STRIKES. Closed fist/open hand blocks, interview stance, combat stance, closed fist strikes, open hand strikes, front kick, angle kick, rear kick, knee and elbow strikes.
- f. PERSONAL DEFENSE. Defenses against: body holds, chokes, head lock, grabs and handgun retention and disarming techniques. Proper use of handcuffs as a defensive weapon. Evasive tactics and techniques for knives and other edged weapon threats.
- g. Full nelson, and disarming and handgun retention techniques.

- h. CUSTODY AND TRANSPORTATION. Removal of a Threat from the suspect vehicle, placing of a Threat in a patrol vehicle, and removal of a combatant from a patrol vehicle.

B. Procedures. When dealing with suspects and offenders, officers should attempt to apply the Force Continuum, starting at the lowest appropriate level. The mere presence of uniformed police personnel may be enough to control a suspect's actions. Should aggression or resistance escalate, then officers should respond with the level of force appropriate to control the situation. If during a situation suspect resistance de-escalates, then officers should decrease the level of force to an appropriate level to maintain control. If control is lost, the officer must escalate to the level of force necessary to regain and maintain control. It is important to recognize that a situation may require an officer to start at the highest level, or to skip levels due to suspect actions. By properly applying the Continuum of Force concept, officers will respond lawfully by using only the force necessary to control a situation.

Levels of force that may be applied and in most situations may be affected by the officer's training, experience, and the information and circumstances known to the officer at the time. The various levels of force and the circumstances under which they may be used, beginning with the least and elevating up the scale to deadly physical force, are illustrated on the chart which follows, and are discussed below.

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FORCE CONTINUUM

LEVEL OF FORCE		METHOD OF FORCE	LEVEL OF RESISTANCE	THREAT
VI	DEADLY FORCE	ANY FORCE READILY CAPABLE OF CAUSING SERIOUS PHYSICAL INJURY OR DEATH	LETHAL	R E S I S T I V E
V	SERIOUS PHYSICAL CONTROL	CAROTID RESTRAINT IMPACT WEAPONS FOCUSED BLOWS CHEMICAL/ELECTRICAL STUN WEAPONS AND DEVICES	OMINOUS	
IV	PHYSICAL CONTROL	PAIN COMPLIANCE TECHNIQUES	ACTIVE	
			STATIC	
III	PHYSICAL CONTACT	ESCORT HOLD DIRECTIONAL	VERBAL	U N D E C I D E D
II	VERBAL COMMANDS	DIRECT ORDER PERSUASION QUESTIONING	NONE	C O M P L Y I N G
I	PRESENCE	COMBAT STANCE INTERVIEW STANCE OPEN STANCE		

13.01.02 VERBAL COMMAND. In the majority of situations requiring police intervention the officer's verbal command is the only force necessary. The officer's tone of voice and attitude, the clarity of directions, and choice of words are factors which bear on the effectiveness of a verbal command.

13.01.03 HAND CONTROL. If the use of a verbal command is not effective, or is not likely to be effective in controlling an individual, an officer may need to resort to the second level of force which is the use of hand control or an aerosol subject restraint. When using hands or aerosol subject restraint, the officer may only use that force necessary to control the individual. This force may range from a gentle but firm hold of a person's arm to the use of escort/control holds or a Kubotan-type device. Once a person complies, the force used is reduced in proportion to the compliance and is maintained at a level necessary to maintain control. If an officer is unable (or if the officer believes the he or she will be unable) to control a subject by use of hand controls, the officer is justified in using a higher level of force, or prior to making any physical contact, may opt to use an aerosol restraint prior to making actual physical contact where there is a likelihood of injury to the officer or any other person.

13.01.04 AEROSOL SUBJECT RESTRAINT. The use of oleoresin capsicum to subdue a person who is resisting arrest or is otherwise combative is authorized when resistance or threats of violence represents potential escalation of necessary force and officers fear potential injuries to the officers, the arrestee, or others present. The officer should consider that the officer utilizing Oleoresin Capsicum may be affected to a greater degree than the person who is resisting, and that the effect of the Oleoresin Capsicum on a particular person cannot be predicted.

13.01.05 IMPACT WEAPONS. The baton is a defensive weapon that is designed for blocking, jabbing, and striking. The use of the baton is proper to overcome force of resistance and to control.

The use of the baton is proper to overcome force of resistance to arrest oppression.

All officers are required to carry the Department issued baton provided the officer has satisfactorily completed an approved training session regarding the use of the baton. Related training shall be documented in the officer's training file.

13.01.06 CAROTID CONTROL. The carotid control hold is utilized to overcome aggressive resistance in which a lower level of force is ineffective or inappropriate under the circumstances.

13.01.07 DEADLY PHYSICAL FORCE. No action on the part of a law enforcement officer can have more far-reaching consequences for the officer, Department and community than the use of deadly physical force. Use of deadly physical force is documented at length beginning with Policy 13.03.01.

13.02.00 USE OF PHYSICAL FORCE (POLICY). Officers are confronted daily with situations where control must be exercised to effect arrests and to protect the public's safety. Such control may be achieved through advice, warnings, and persuasion or by the use of reasonable force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances. Officers are permitted to use only that force which the officer reasonably believes is reasonable and necessary to protect others or themselves from bodily harm. The officers authority to use physical force is provided for under ORS 161.235 and this policy is intended to conform to the provisions of this statute.

13.02.01 REPORTING USE OF PHYSICAL FORCE. Whenever an officer must employ an amount of force capable of causing injury in the course of effecting an arrest, overcoming resistance, or controlling a dangerous situation (assault), appropriate criminal allegations should be charged immediately.

The arresting officer and any other officer notified by a supervisor shall report the use of physical force in the narrative section of a written report when:

- a. Any injury is apparent to either an officer or citizen;
- b. Medical treatment is required or requested;
- c. The force used relates to a criminal charge, i.e., resisting arrest, assault, endangering or harassment.

The incident narrative shall describe the force used. The narrative shall also articulate the facts observed by the officer and the beliefs held by the officer had that lead the officer to decide that the level of force used was justified. Weapons used, injuries, medical care received, and details of the altercation shall be reported in detail. Witnesses shall be listed. If possible, a copy of medical records shall be attached.

13.02.02 REGULATIONS GOVERNING USE OF PHYSICAL FORCE. The unnecessary or excessive use of physical force against any person is prohibited. In making an arrest, an officer shall use only such force as is reasonably necessary to secure and detain the offender. What may be reasonable force under one set of circumstances may be unreasonable force under a different, though similar, set of circumstances. Only the nature and amount of force reasonably necessary to accomplish a lawful purpose shall be used. In all cases, such use of physical force shall conform to ORS 161.235 regarding the use of physical force in making an arrest or in preventing an escape.

13.02.03 FLASHLIGHTS. Officers may carry indestructible type flashlights, designed to serve as a flashlight. Such equipment will be subject to approval by the Department. If used as a baton in the absence of an impact weapon, Section 13.02.01 of this shall apply.

13.02.04 AEROSOL SUBJECT RESTRAINTS. Officers may utilize the authorized/department issued oleoresin capsicum aerosol restraint spray following the orientation and training regarding the use, its affects, ingredients, means of delivery and first aid to be administered. Following use of the chemical agent, the subject shall be treated by rinsing the contaminated areas with cool, clean water. Any vehicles or interiors of buildings should be ventilated. Officers must complete a Oleoresin Capsicum Documentation form outlining details of use. Oleoresin Capsicum may be used on animals as a deterrent to aggressive behavior when an officer reasonably believes that such aggression may cause injury to the officer or any other person who is present.

13.02.05 RESTRAINTS/HANDCUFFS. Every person taken into custody shall be handcuffed with their hands behind the back, unless such handcuffing is impossible (e.g., an amputee) or impracticable. In such an event, an officer shall use appropriate safeguards to secure the person. These may include the use of flex ties and waist hobbles.

13.02.06 FOLDING KNIVES AND UTILITY TOOLS. Officers may carry knives or Leatherman-type utility tools. Officers shall carry such equipment in one or more of the following ways: (1) in a pouch of color, design and material matching the uniform duty belt or (2) in a pant or shirt pocket or (3) concealed elsewhere on their person. All such equipment, whether departmentally supplied or personally owned, must be approved by the Department.

13.02.07 CAROTID RESTRAINT. A carotid restraint is any physical hold applied to the neck of another person that is:

- A. Intended to inhibit blood flow through the carotid arteries of the neck by exerting pressure, to one or both sides of the neck through the member's use of hands, arms, or any other instrument; or
- B. Intended to inhibit breathing by compressing the airway in the neck, by the member's use of hands, arms, or any other instrument.

Carotid holds constitute deadly force. It is the policy of this Department that a carotid hold will not be applied to any person except in the protection of life, for the prevention of serious bodily injury, or in the apprehension of a person who the officer reasonably believes poses a serious danger to the officer or the public.

The Carotid Hold MAY BE used as a controlling maneuver:

1. When other control techniques have failed and it is clear the person may be harmed in an effort to gain control.
2. A person will be rendered unconscious only when the use of deadly force is authorized. **ONLY THOSE OFFICERS TAUGHT THE USE**

OF "CAROTID HOLD" IN AUTHORIZED TRAINING AND WHOSE SKILLS ARE CURRENT MAY USE SUCH A HOLD. SUCH OFFICERS SHALL ALSO BE CURRENTLY CERTIFIED IN THE USE OF CARDIOPULMONARY RESUSCITATION (CPR).

3. Medical attention by qualified medical personnel shall be sought and administered following an unconscious state which is the result of the application. A use of force report shall be completed whenever the carotid hold is used.

13.03.00 USE OF DEADLY PHYSICAL FORCE (POLICY). No action on the part of a law enforcement officer can have more far-reaching consequences than the use of a firearm. As long as members of the public are victims of violent crimes and officers in the performance of their duties can be confronted with life threatening situations, it will remain necessary for the officers to be properly armed for the protection of society and themselves.

Officers are equipped with a firearm to defend themselves and others against deadly force, or threat of imminent deadly force. When a firearm is used by an officer, it must be with the realization that the death of some person may occur.

Officers will not be criticized for the use of deadly force when it is found that such force is justified and necessary based on the facts and circumstances as they reasonably appeared to the officer at the time. Justification for the use of a firearm by an officer is limited to the facts as they reasonably appeared to the officer at the time of the decision to shoot.

The Oregon Revised Statutes cover the Use of Physical Force and Deadly Force. Those dealing with Deadly Physical Force are ORS 161.219 to 161.239. These provide a general framework, and are relevant to the extent they are explained and modified by Tennessee v. Garner. This directive is intended to authorize the use of force to the extent authorized under the United States Constitution and Oregon law.

13.03.01 GENERAL GUIDELINES GOVERNING USE OF DEADLY FORCE. These guidelines re-state legal principles of justification for the use of force, which are represented by the Use of Force Continuum set forth at Section 13.01.01. Officers shall be directed by the following general guidelines:

- A. Use of Deadly Force. Deadly force will be used only for the protection of life, prevention of serious bodily injury or the apprehension of a person who the officer reasonably believes poses a serious danger to the officer or the public.
- B. Exhaust Reasonable Means. Reasonable and practical attempts for protection or apprehension will be exhausted before using deadly force. Reasonableness and practicality are to be judged based upon the circumstances which actually exist and are known to the officer at the time and place the firearm is used.

- C. Safety of Bystanders. Any discharge of a firearm must be done with proper regard for the safety of bystanders or other people in the immediate area.
- D. Officer Discretion. Even when an officer may be permitted to use deadly force, the officer may refrain from doing so if the officer believes the use of such force is inadvisable under the particular circumstances.
- E. Decision to Display Firearms. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer should, as soon as practical, secure or holster the firearm. These judgments are matters committed to the discretion of the officer in each instance. The officer must decide what actions are necessary in order to maintain control.
- F. Justification on Use of Deadly Force. An officer may not use deadly force simply to arrest or prevent the escape of persons committing a felony crime against property. Example: Deadly force may not be used to apprehend a person fleeing in a stolen vehicle, nor a person fleeing from a Burglary II (typically a commercial establishment), nor a person wanted for felony narcotics offense. The only exception is if any of such felons present immediate threat to the life of an officer or a citizen.

Justification for the use of deadly physical force must be limited to what reasonably appeared to be the facts known or perceived by the officer at the time the officer decided to use deadly physical force. Facts unknown to the officer, no matter how compelling, cannot be considered in later determining whether the officer's action was justified.

13.03.02 SPECIFIC GUIDELINES GOVERNING USE OF DEADLY FORCE.
General guidelines are set out above. Officers are directed by the following specific guidelines:

- A. Use of Deadly Force Authorized. An officer is authorized to employ deadly force whenever it appears to the officer that there is no reasonable alternative under the following circumstances:
 - 1. The officer reasonably believes that the use of deadly force is necessary to protect the officer or any other person from the use or threatened imminent use of deadly physical force;
 - 2. The officer reasonably believes that the use of deadly physical force is necessary to protect the officer or any other person from death or serious physical injury;

3. In effecting the arrest or preventing the escape of a person whom the officer reasonably believes committed or attempted to commit a felony involving the use or threatened imminent use of physical force against a person. In such situations, the officer must have a reasonable belief that the use of deadly force is necessary, and all other reasonable alternatives of apprehension or prevention of escape have been exhausted; and
4. If the officer reasonably believes that the suspect committed or attempted to commit a felony, and such felony is nondangerous in that it does not involve the use or threatened imminent use of physical force, the officer is authorized to employ deadly force to effect an arrest or prevent an escape only if the suspect reasonably poses a significant threat of death or serious physical injury to the officer or others.
5. Before using deadly force to prevent an escape, if feasible, some warning should be given.

B. Other Authorized Uses of Firearms. An officer is further authorized to discharge a firearm in the performance of the officer's official duties under the following circumstances with supervisor approval:

1. To kill or deter a dangerous animal or, with permission from a supervisor, to kill an animal so badly injured that it should be destroyed to prevent further suffering.
2. At a firing range pursuant to all safety rules and regulations.
3. To provide covering fire an officer may discharge firearms in a tactical situation to neutralize the use of deadly physical force by a suspect or suspects that police or other persons can maneuver in safety.

C. Firing from a Moving Vehicle Prohibited. Officers are prohibited from discharging firearms from a moving vehicle.

D. Signals Prohibited. Use of deadly force is not authorized as a signal or communication method, for reasons related to safety of bystanders. Discharging a firearm is authorized to disarm, to disable and to stop a perpetrator in order to control a situation which constitutes justification for the use of deadly force, not to communicate a warning or signal.

13.04.00 DISCHARGE OF FIREARMS REPORTS AND INVESTIGATION.

A. Discharge of Firearms Investigation.

1. The Department will investigate all incidents in which an officer discharges a firearm while acting in the capacity of a police officer, except:
 - a. The discharge of firearms at an approved range target practice or organized shooting matches, or firearms examinations in the furtherance of an investigation;
 - b. The discharge of a firearm for the purpose of killing a dangerous or injured animal as authorized by this directive (a log entry is required, unless in the opinion of the supervisor more documentation is necessary); and
 - c. At the discretion of the Chief of Police, where an outside agency may be requested to assist or conduct a firearms investigation.

B. Involved Officers Responsibilities.

1. Discharges Generally. Society vests substantial prerogatives in its police. Consequently, every police officer must recognize that a firearms investigation is part of the accountability that is owed to the public. Officers should prepare themselves in advance for the shock of a traumatic incident and the compounding effect of the investigation that follows.

Evidence taken at the scene of or following an officer involved shooting incident could prove critical as corroborating physical evidence in response to subsequent criticism or litigation.

2. Discharges Within the City. Whenever an officer discharges his/her firearms accidentally or intentionally, either on or off duty within the City except under circumstances which are not subject to investigation under Section 13.03.02 (B) (1 and 2), the officer shall immediately:
 - a. Notify the immediate supervisor and the dispatch center of the incident and location;
 - b. Determine the physical condition of any injured person, render first aid when appropriate and request any necessary emergency medical aid;

c. Protect the scene, save evidence and protect the weapons for appropriate examination. In any officer involved shooting, it is important that all ammunition casings and the officer's firearm be taken for examination as evidence. Evidence taken at the scene of or following the shooting incident may include powder residue from the officer's body, the officer's clothing and body fluids. Such evidence could prove critical if the officer and the department is later subject to criticism or litigation, since the physical evidence may tend to corroborate an account of how the incident occurred. The officer's property will be replaced as soon as practical. Officers should prepare themselves in advance for the shock of a traumatic incident, and the compounding affect of the investigation that follows. Every police officer must recognize that becoming subject to a firearms investigation is a consequence of the accountability we must demonstrate as a result of the substantial prerogatives society vests in its police.

d. As provided in Section 8.04.04, officers involved in significant incidents will detail their actions surrounding the incident in a Special Report prior to leaving work following the incident (unless injured; then the special report shall be completed as soon as practical). The Special Report may be written before or following an interview if one is conducted. In appropriate circumstances, the report may be deferred or tape recorded, or the written report of an investigator who interviews the officer may be substituted, as directed by the supervisor. Supervisors shall review the written report and ensure that all relevant issues have been addressed. Where a Special Report is found deficient, it shall be returned with direction to cover additional points.

All other involved officers shall also complete written reports of the incident before going off duty. Reports will contain information regarding the weapons involved, number of shots fired, persons involved, injuries or damage, names of witnesses and other pertinent information. The report should specifically state the facts and circumstances of the occurrence and the observations, apprehensions and underlying details, information and beliefs of the officer which justify the shooting.

e. The officer involved should not discuss the case with anyone except supervisory and assigned investigative personnel until the initial reports are completed. Thereafter, it is advisable to limit discussion to those who can be supportive of the officer during the time of personal trauma and adjustment such as the City Attorney, a chaplain, psychiatrist and psychologist, immediate family or significant others including other police officers who

have been involved in similar incidents. All officers are encouraged to seek professional help in this period of adjustment, which may extend for a prolonged period of time. Refer to Traumatic Incident Policy 5.31.00.

3. Discharges Outside the City. Officers who discharge firearms outside the jurisdiction either on or off duty, accidentally or intentionally except as authorized in section 13.03.02(B)(1) and (2) above (or for hunting or target shooting), shall immediately:
 - a. Notify the law enforcement agency having jurisdiction and the on-duty supervisor at this department; and
 - b. Complete reports as directed by the supervisor.

C. Supervisor Responsibilities.

1. Supervisors shall be responsible for command of the scene and complete initial and preliminary investigation of the incident, including the protection of the scene and of all evidence including the officer firearm, and all firearms or weapons involved. When possible, a supervisor shall obtain a brief verbal explanation of what occurred from involved officers in order to be able to guide the on-scene investigation.
2. All unauthorized persons, including police officers not required at the scene, will be directed to leave or stay clear of the scene. The scene will be protected until the completion of all investigations. The supervisor shall complete appropriate reports before going off duty. The ranking officer at the scene shall have the discretion to direct the officer involved to respond to another location.
3. Supervisors shall notify the District Attorney's office as soon as practical upon learning that an officer involved shooting has resulted in any injury or death to another person. The assistance of the Oregon State Police Crime Laboratory should be requested.
4. Copies of the supervisor's written report shall be submitted to:
 - a. The Chief of Police;
 - b. The assigned investigators; and
 - c. The Firearms Incident Review Board.

D. Responsibilities of the Chief of Police or the Designee.

1. Administrative Leave. The Chief of Police or designee shall, upon completion of the officer's preliminary report of the incident, place on "administrative leave" any officer directly involved in a shooting. This leave shall be without loss of pay or benefits pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly. While on administrative leave, the officer shall remain available for Departmental interviews and statements regarding the incident and shall be subject to recall to duty at any time.
2. Order an Investigation. The Chief of Police shall designate a peace officer to investigate the incident.
 - a. The investigator(s) may be appointed from qualified personnel within the Department, or the Chief of Police may exercise discretion and request that an outside agency assist or conduct the investigation.
 - b. The purpose of the investigation will be to determine whether the officer adhered to State law and Department policy in discharging the firearm.
 - c. Copies of the investigation report shall be submitted to the Chief of Police and the Firearms Incident Review Board.
3. Review the Investigation. Upon completion of the investigation, the Chief of Police may:
 - a. ~~Suspend the officer without pay if criminal charges are filed against the officer;~~
 - b. Suspend the officer pursuant to Chapter 9 pending further investigation of the matter, when the facts available clearly indicate that the officer may be guilty of misconduct, negligence, or recklessness in the use of or discharge of a firearm;
 - c. Retain the officer on administrative leave pending a final determination by the Firearms Incident Review Board, as provided in Section 13.05.00;
 - d. Direct further investigation.

13.05.00 FIREARMS INCIDENT REVIEW BOARD.

- A. Board Convened. The board may be convened at the direction of the Chief of Police following completion of the investigation.
- B. Board's Charge. The Firearms Incident Review Board shall recommend whether or not the use of a firearm was within the parameters of department policy. The Review Board shall not be concerned with penalties for violations of rules, regulations or procedure.
- C. Board Proceedings.
 - 1. The Review Board shall be composed of one or more supervisors and at least one officer of the same rank as the officer who discharged his/her weapon.
 - 2. All Review Board hearings are confidential and shall be conducted in private.
 - 3. The Review Board shall consider all reports and information concerning the incident and, if necessary, call witnesses.
 - 4. The Review Board will develop findings and, if appropriate, make recommendations to the Chief of Police in the following areas:
 - a. Tactical considerations,
 - b. Training considerations, and
 - c. Quality of supervision.
 - 5. The Review Board shall make one of the following findings:
 - a. The discharge was justified under the provisions of this policy.
 - b. The discharge was not justified under the provisions of this policy.
 - 6. Review Board recommendations will be by majority vote. All findings will be signed by all members of the Review Board, and will indicate whether the Review Board member agreed with or dissented from the recommendation. The Review Board's recommendations shall be submitted to the Chief of Police in a written report.
 - 7. Upon receipt of the Review Board's recommendation the Chief of Police may:

- a. Reinstatement of the officer to duty if it is determined that the incident was justifiable.
- b. Request the District Attorney to conduct an inquest of the incident.
- c. Take disciplinary action if appropriate.

13.06.00 AUTHORIZED FIREARMS. Authorized firearms for use listed in the following categories will be fully loaded with Department ammunition, kept clean and in good working order:

- A. **Uniform duty firearms** shall be an approved .45 or 9mm (or .357 for reserves) caliber, double action or automatic, of Smith & Wesson, Colt or Sig Sauer manufacture, double action, with a barrel length of not less than 3 1/2 inches and not more than 5 inches.
- B. **Nonuniform duty firearms** shall be an approved .45, 9mm or .357 caliber, double action or automatic, of Smith & Wesson, Colt, or Sig Sauer manufacture, or other weapon approved by the Chief of Police in writing.
- C. **Back-up (secondary) duty firearm** may be carried by officers after the firearm has been authorized by the Chief, approved by the Department Rangemaster, and the officer has demonstrated proficiency and safety skills to the designated rangemaster. The second firearm shall be totally concealed and carried in a safe and secure manner. It shall not be visible to public scrutiny and shall not be displayed or used except in emergency situations. Firearms will not be carried in a briefcase or other containers by uniformed personnel.
- D. **Individually owned firearms** carried by any officer on or off duty, shall be approved by the Chief of Police. Written authorization, make, model, type, caliber and serial number shall be kept in the officer's personnel file and the firearms record book.
- E. **Authorized Shotguns** shall be a 12 gauge pump action (slide action) of Remington, Winchester, Smith & Wesson or Mossberg manufacturer, with a minimum barrel length of 16 inches to a maximum barrel length of 20 inches and have a minimum magazine capacity of four (4) rounds of ammunition. All shotguns shall be loaded and unloaded in a safe and inconspicuous manner. Any shotgun in the possession of an officer will be secured at all times. When the shotgun is in a patrol unit, the operator is responsible for assuring that the weapon is secured in the locked gun rack. An officer will be assigned by the Duty Sergeant the responsibility of coordinating the cleaning of shotguns on a periodic basis. Individual officers are responsible for ensuring the assigned shotgun is operable.

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CHAPTER 13. PHYSICAL FORCE, DEADLY FORCE AND FIREARMS

13.00.00 PURPOSE. The purpose of this policy is to provide deputies with a single source of reference on the use of physical force and deadly force. For the purposes of this directive, "deadly force" means the use of a weapon that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

13.01.00 POLICY. All employees who are authorized to carry weapons shall become familiar with the following guidelines and procedures regarding the use of physical force, and the proper use of deadly force, use of firearms and maintenance of firearms, impact and restraint equipment and chemical agents.

13.01.01 CONTINUUM OF FORCE DEFINED. The Continuum of Force is a graphic description of the escalation and de-escalation of force used by Sheriff's Office personnel in response to actions taken by a suspect or offender. It serves to illustrate the legal duty of a deputy sheriff to use only reasonable force in response to the threat reasonably perceived by the deputy.

A. Levels of Force. The Force Continuum is divided into six specific component parts: (1) Threat Assessment, (2) Considerations of Force Escalation, (3) Levels of Resistance, (4) Levels of Force, (5) Justification, and (6) Control Techniques. The above listed component parts are explained in greater detail below.

1. **THREAT ASSESSMENT.** The term "threat" is used to describe any person capable of causing physical injury, serious physical injury or death. The threat must exhibit the following elements to justify the use of force:

- a. Intent.
- b. Means.
- c. Opportunity.

2. **CONSIDERATIONS OF FORCE ESCALATION.**

- a. The Totality of the Circumstances.
- b. Has the Threat had the opportunity to comply with your commands, if commands were possible and appropriate.
- c. Is the current course of action achieving control or compliance?

- d. Does the Threat warrant the risk of injury to yourself or the Threat?

3. LEVELS OF RESISTANCE.

- a. **STATIC.** The Threat refused to comply with commands by continuing to possess a weapon in a non-threatening way balking, becoming dead weight, or grasping a solid object.
- b. **ACTIVE.** The Threat physically resists the deputy's verbal commands and/or attempts to gain physical control by pulling away, attempting to run, or powering through a control hold, or holding a weapon when commanded to drop it.
- c. **OMINOUS.** The Threat demonstrates the willingness to engage in combat through verbal challenge, threats and/or aggressive behavior.
- d. **LETHAL.** The Threat possesses both the intent and the means to inflict serious physical injury or death. The means can be with a weapon or empty handed. Example: The Threat uses a deadly weapon (handgun, knife, shank) or a dangerous weapon (lead pipe, broken bottle, tire iron) to inflict or attempt serious physical injury. Or the Threat inflicts serious injury through superior size, strength or combative skill.

4. LEVELS OF FORCE.

- a. **PRESENCE.** The deputy has an expectation inappropriate behavior will stop at the deputy's arrival in uniform.
- b. **VERBAL COMMANDS.** The questioning of a subject, the attempt to persuade a subject, or giving a direct order to a subject.
- c. **PHYSICAL CONTACT.** Directing a subject by touch, or controlling a subject with an escort hold.
- d. **PHYSICAL CONTROL HOLDS.** Use of pressure points, joint manipulation techniques, or physical control holds.

- e. **SERIOUS PHYSICAL CONTROL.** Use of chemical weapons and electronic stun devices, focused blows, impact weapons, and the carotid restraint.
 - f. **DEADLY FORCE.** Any force capable of causing serious physical injury or death.
5. **BASIC PRINCIPLES OF JUSTIFICATION.**
- a. If the level of force is justified, the implement (or delivery system) used is of no significance.
 - b. If the level of force is justified, the degree of injury the Threat may sustain is of no significance.
 - c. The Threat always dictates the degree of force to be used. Therefore, the Threat is responsible for any injury the Threat may incur while resisting.
 - d. It is incumbent on the deputy to overcome the Threat's resistance as quickly as possible to control the Threat and the situation.
6. **CONTROL TECHNIQUES.** Members should maintain proficiency in the following techniques:
- a. **CONTROL HOLDS/TAKE DOWNS.** Physical control through application of compliance holds or TAKE DOWNS to control the threat on the ground. Proper use of an aerosol subject restraint, i.e., Oleoresin Capsicum.
 - b. **RESTRAINTS.** Chain or hinge metallic handcuffs, flex ties, leg hobble straps/cords, velcro/nylon restraints. Proper use for cooperative handcuffing (standing) and uncooperative handcuffing (kneeling/prone) and high risk handcuffing (felony prone).
 - c. **SEARCHING.** Stop and Frisk, cursory check for weapons, handcuffed standing, kneeling and prone.
 - d. **BATON.** Impact Weapon. Proper use of flashlight as a defensive tool.
 - e. **BLOCKS, STANCES, AND STRIKES.** Closed fist/open hand blocks, interview stance, combat stance, closed fist

strikes, open hand strikes, front kick, angle kick, rear kick, knee and elbow strikes.

- f. PERSONAL DEFENSE. Defenses against: body holds, chokes, head lock, grabs and handgun retention and disarming techniques. Proper use of handcuffs as a defensive weapon. Evasive tactics and techniques for knives and other edged weapon threats.
- g. Full nelson, and disarming and handgun retention techniques.
- h. CUSTODY AND TRANSPORTATION. Removal of a Threat from the suspect vehicle, placing of a Threat in a patrol vehicle, and removal of a combatant from a patrol vehicle.

B. Procedures. When dealing with suspects and offenders, deputies should attempt to apply the Force Continuum, starting at the lowest appropriate level. The mere presence of uniformed Sheriff's Office personnel may be enough to control a suspect's actions. Should aggression or resistance escalate, then deputies should respond with the level of force appropriate to control the situation. If during a situation suspect resistance de-escalates, then deputies should decrease the level of force to an appropriate level to maintain control. If control is lost, the deputy must escalate to the level of force necessary to regain and maintain control. It is important to recognize that a situation may require a deputy to start at the highest level, or to skip levels due to suspect actions. By properly applying the Continuum of Force concept, deputies will respond lawfully by using only the force necessary to control a situation.

Levels of force that may be applied and in most situations may be affected by the deputy's training, experience, and the information and circumstances known to the deputy at the time. The various levels of force and the circumstances under which they may be used, beginning with the least and elevating up the scale to deadly physical force, are illustrated on the chart which follows, and are discussed below.

FORCE CONTINUUM

LEVEL OF FORCE		METHOD OF FORCE		LEVEL OF RESISTANCE	THREAT
VI	DEADLY	ANY FORCE READILY CAPABLE OF CAUSING DEATH OR SERIOUS PHYSICAL INJURY		LETHAL	RESISTIVE
V	SERIOUS PHYSICAL CONTROL	NECK RESTRAINT IMPACT WEAPONS FOCUSED BLOWS ELECTRICAL STUN MACE (CN/CS)	OCCUPATIONAL RESTRAINTS	OMINOUS	
III	PHYSICAL CONTROL	HAIR TAKEDOWN JOINT TAKEDOWN DIGITAL CONTROL JOINT COME-ALONG PRESSURE POINTS TEMP. RESTRAINTS		ACTIVE	
III	PHYSICAL CONTACT	ESCORT POSITION DIRECTIONAL CONTACT		VERBAL	UNDECEDED
II	VERBAL Communication	DIRECT ORDER QUESTIONING PERSUASION			
I	PRESENCE	DISPLAY OF FORCE OPTION BODY LANGUAGE/DEMEANOR IDENTIFICATION OF AUTHORITY			

13.01.02 VERBAL COMMAND. In the majority of situations requiring intervention the sheriff's verbal command is the only force necessary. The sheriff's tone of voice and attitude, the clarity of directions, and choice of words are factors which bear on the effectiveness of a verbal command.

13.01.03 HAND CONTROL. If the use of a verbal command is not effective, or is not likely to be effective in controlling an individual, a deputy sheriff may need to resort to the second level of force which is the use of hand control or an aerosol subject restraint. When using hands or aerosol subject restraint, the deputy may only use that force necessary to control the individual. This force may range from a gentle but firm hold of a person's arm to the use of escort/control holds or a Kubotan-type device. Once a person complies, the force used is reduced in proportion to the compliance and is maintained at a level necessary to maintain control. If a deputy is unable (or if the deputy believes that he/she will be unable) to control a subject by use of hand controls, the deputy is justified in using a higher level of force, or prior to making any physical contact, may opt to use an aerosol restraint prior to making actual physical contact where there is a likelihood of injury to the deputy or any other person.

13.01.04 AEROSOL SUBJECT RESTRAINT. The use of Oleoresin Capsicum to subdue a person who is resisting arrest or is otherwise combative is authorized when resistance or threats of violence represents potential escalation of necessary force and deputies fear potential injuries to the deputies, the arrestee, or others present. The deputy should consider that the deputy utilizing Oleoresin Capsicum may be affected to a greater degree than the person who is resisting, and that the effect of the Oleoresin Capsicum on a particular person cannot be predicted.

13.01.05 IMPACT WEAPONS. The baton is a defensive weapon that is designed for blocking, jabbing, and striking. The use of the baton is proper to overcome force of resistance and to control.

The use of the baton is proper to overcome force of resistance to arrest oppression.

All deputies are required to carry the Sheriff's Office issued baton provided the deputy has satisfactorily completed an approved training session regarding the use of the baton. Related training shall be documented in the deputy's training file.

13.01.06 CAROTID CONTROL. The carotid control hold is utilized to overcome aggressive resistance in which a lower level of force is ineffective or inappropriate under the circumstances and will only be utilized if personnel is properly trained.

13.01.07 DEADLY PHYSICAL FORCE. No action on the part of a law enforcement officer can have more far-reaching consequences for the deputy, Sheriff's Office and community than the use of deadly physical force. Use of deadly physical force is documented at length beginning with Policy 13.03.01.

13.02.00 USE OF PHYSICAL FORCE (POLICY). Deputies are confronted daily with situations where control must be exercised to effect arrests and to protect the public's safety. Such control may be achieved through advice, warnings, and persuasion or by the use of reasonable force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances. Deputies are permitted to use only that force which the deputy reasonably believes is reasonable and necessary to protect others or themselves from bodily harm. The deputies' authority to use physical force is provided for under ORS 161.235 and this policy is intended to conform to the provisions of this statute.

13.02.01 REPORTING USE OF PHYSICAL FORCE. Whenever a deputy must employ an amount of force capable of causing injury in the course of effecting an arrest, overcoming resistance, or controlling a dangerous situation (assault), appropriate criminal allegations should be charged immediately.

The arresting deputy and any other deputy notified by a supervisor shall report the use of physical force in the narrative section of a written report when:

- a. Any injury is apparent to either a deputy or citizen;
- b. Medical treatment is required or requested;
- c. The force used relates to a criminal charge, i.e., resisting arrest, assault, endangering or harassment.

The incident narrative shall describe the force used. The narrative shall also articulate the facts observed by the deputy and the beliefs held by the deputy had that lead the deputy to decide that the level of force used was justified. Weapons used, injuries, medical care received, and details of the altercation shall be reported in detail. Witnesses shall be listed. If possible, a copy of medical records shall be attached.

13.02.02 REGULATIONS GOVERNING USE OF PHYSICAL FORCE. The unnecessary or excessive use of physical force against any person is prohibited. In making an arrest, a deputy shall use only such force as is reasonably necessary to secure and detain the offender. What may be reasonable force under one set of circumstances may be unreasonable force under a different, though similar, set of circumstances. Only the nature and amount of force reasonably necessary to accomplish a lawful purpose shall be used. In all cases, such use of physical force shall conform to ORS 161.235 regarding the use of physical force in making an arrest or in preventing an escape.

13.02.03 FLASHLIGHTS. Deputies may carry indestructible type flashlights, designed to serve as a flashlight. Such equipment will be subject to approval by the

Sheriff's Office. If used as a baton in the absence of an impact weapon, Section 13.01.05 of this policy shall apply.

13.02.04 AEROSOL SUBJECT RESTRAINTS. Deputies may utilize the authorized/department issued Oleoresin Capsicum aerosol restraint spray following the orientation and training regarding the use, its affects, ingredients, means of delivery and first aid to be administered. Following use of the chemical agent, the subject shall be treated by rinsing the contaminated areas with cool, clean water. Any vehicles or interiors of buildings should be ventilated. Deputies must complete a Oleoresin Capsicum Documentation form outlining details of use. Oleoresin Capsicum may be used on animals as a deterrent to aggressive behavior when a deputy reasonably believes that such aggression may cause injury to the deputy or any other person who is present.

Whenever a chemical agent is used, the deputy will submit an OCU Report, in the form set forth below:

13.02.05 RESTRAINTS/HANDCUFFS. Every person taken into custody shall be handcuffed with their hands behind the back, unless such handcuffing is impossible (e.g., an amputee) or impracticable. In such an event, a deputy shall use appropriate safeguards to secure the person. These may include the use of flex ties and waist hobbles.

13.02.06 FOLDING KNIVES AND UTILITY TOOLS. Deputies may carry knives or Leatherman-type utility tools. Deputies shall carry such equipment in one or more of the following ways: (1) in a pouch of color, design and material matching the uniform duty belt or (2) in a pant or shirt pocket or (3) concealed elsewhere on their person. All such equipment, whether departmentally supplied or personally owned, must be approved by the Sheriff's Office.

13.02.07 CAROTID RESTRAINT. A carotid restraint is any physical hold applied to the neck of another person that is intended to inhibit blood flow through the carotid arteries of the neck by exerting pressure, to one or both sides of the neck through the member's use of hands, arms, or any other instrument.

Carotid holds constitute deadly force. It is the policy of this Sheriff's Office that a carotid hold will not be applied to any person except in the protection of life, for the prevention of serious bodily injury, or in the apprehension of a person who the deputy reasonably believes poses a serious danger to the deputy or the public.

The Carotid Hold MAY BE used as a controlling maneuver:

1. When other control techniques have failed and it is clear the person may be harmed in an effort to gain control.
2. A person will be rendered unconscious only when the use of deadly force is authorized. **ONLY THOSE DEPUTIES TAUGHT THE USE OF "CAROTID HOLD" IN AUTHORIZED TRAINING AND WHOSE SKILLS ARE CURRENT MAY USE SUCH A HOLD. SUCH DEPUTIES SHALL ALSO BE CURRENTLY CERTIFIED IN THE USE OF CARDIOPULMONARY RESUSCITATION (CPR).**
3. Medical attention by qualified medical personnel shall be sought and administered following an unconscious state which is the result of the application. A use of force report shall be completed whenever the carotid hold is used.

13.03.00 USE OF DEADLY PHYSICAL FORCE (POLICY). No action on the part of a law enforcement officer can have more far-reaching consequences than the use of a firearm. As long as members of the public are victims of violent crimes and deputies in the performance of their duties can be confronted with life threatening situations, it will remain necessary for the deputies to be properly armed for the protection of society and themselves.

Deputies are equipped with a firearm to defend themselves and others against deadly force, or threat of imminent deadly force. When a firearm is used by a deputy, it must be with the realization that the death of some person may occur.

Deputies will not be criticized for the use of deadly force when it is found that such force is justified and necessary based on the facts and circumstances as they reasonably appeared to the deputy at the time. Justification for the use of a firearm by a deputy is limited to the facts as they reasonably appeared to the deputy at the time of the decision to shoot.

The Oregon Revised Statutes cover the Use of Physical Force and Deadly Force. Those dealing with Deadly Physical Force are ORS 161.219 to 161.239. These provide a general framework, and are relevant to the extent they are explained and modified by Tennessee v. Garner. This directive is intended to authorize the use of force to the extent authorized under the United States Constitution and Oregon law.

13.03.01 GENERAL GUIDELINES GOVERNING USE OF DEADLY FORCE. These guidelines re-state legal principles of justification for the use of force, which are represented by the Use of Force Continuum set forth at Section 13.01.01. Deputies shall be directed by the following general guidelines:

- A. Use of Deadly Force. Deadly force will be used only for the protection of life, prevention of serious bodily injury or the apprehension of a person who the deputy reasonably believes poses a serious danger to the deputy or the public.
- B. Exhaust Reasonable Means. Reasonable and practical attempts for protection or apprehension will be exhausted before using deadly force. Reasonableness and practicality are to be judged based upon the circumstances which actually exist and are known to the deputy at the time and place the firearm is used.
- C. Safety of Bystanders. Any discharge of a firearm must be done with proper regard for the safety of bystanders or other people in the immediate area.
- D. Deputy/Sheriff Discretion. Even when a deputy may be permitted to use deadly force, the deputy may refrain from doing so if the deputy believes the use of such force is inadvisable under the particular circumstances.
- E. Decision to Display Firearms. A deputy's decision to draw or exhibit a firearm should be based on the tactical situation and the deputy's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When a deputy has determined that the use of deadly force is not necessary, the deputy should, as soon as practical, secure or holster the firearm. These

judgments are matters committed to the discretion of the deputy in each instance. The deputy must decide what actions are necessary in order to maintain control.

- F. Justification on Use of Deadly Force. A deputy may not use deadly force simply to arrest or prevent the escape of persons committing a felony crime against property. Example: Deadly force may not be used to apprehend a person fleeing in a stolen vehicle, nor a person fleeing from a Burglary II (typically a commercial establishment), nor a person wanted for felony narcotics offense. The only exception is if any of such felons present immediate threat to the life of a deputy or a citizen.

Justification for the use of deadly physical force must be limited to what reasonably appeared to be the facts known or perceived by the deputy at the time the deputy decided to use deadly physical force. Facts unknown to the deputy, no matter how compelling, cannot be considered in later determining whether the deputy's action was justified.

13.03.02 SPECIFIC GUIDELINES GOVERNING USE OF DEADLY FORCE. General guidelines are set out above. Deputies are directed by the following specific guidelines:

- A. Use of Deadly Force Authorized. A deputy sheriff is authorized to employ deadly force whenever it appears to the deputy that there is no reasonable alternative under the following circumstances:
1. The deputy reasonably believes that the use of deadly force is necessary to protect the deputy or any other person from the use or threatened imminent use of deadly physical force;
 2. The deputy reasonably believes that the use of deadly physical force is necessary to protect the deputy or any other person from death or serious physical injury;
 3. In effecting the arrest or preventing the escape of a person whom the deputy reasonably believes committed or attempted to commit a felony involving the use or threatened imminent use of physical force against a person. In such situations, the deputy must have a reasonable belief that the use of deadly force is necessary, and all other reasonable alternatives of apprehension or prevention of escape have been exhausted; and
 4. If the deputy reasonably believes that the suspect committed or attempted to commit a felony, and such felony is non-dangerous in that it does not involve the use or threatened imminent use of physical force, the deputy is authorized to employ deadly force to

effect an arrest or prevent an escape only if the suspect reasonably poses a significant threat of death or serious physical injury to the deputy or others.

5. Before using deadly force to prevent an escape, if feasible, some warning should be given.

B. Other Authorized Uses of Firearms. A deputy is further authorized to discharge a firearm in the performance of the deputy's official duties under the following circumstances with supervisor approval:

1. To kill or deter a dangerous animal or, with permission from an on duty supervisor, to kill an animal so badly injured that it should be destroyed to prevent further suffering. This does not apply to injured wildlife.
2. At a firing range pursuant to all safety rules and regulations.
3. To provide covering fire a deputy may discharge firearms in a tactical situation to neutralize the use of deadly physical force by a suspect or suspects that sheriffs or other persons can maneuver in safety.

C. Firing from a Moving Vehicle Prohibited. Deputies are generally prohibited from discharging firearms from a moving vehicle unless they are able to justify the decision to do so based on an assessment of risks to others and the chances that such action will be effective.

D. Signals Prohibited. Use of deadly force is not authorized as a signal or communication method, for reasons related to safety of bystanders. Discharging a firearm is authorized to disarm, to disable and to stop a perpetrator in order to control a situation which constitutes justification for the use of deadly force, not to communicate a warning or signal.

13.04.00 DISCHARGE OF FIREARMS REPORTS AND INVESTIGATION.

A. Discharge of Firearms Investigation.

1. The Sheriff's Office will investigate all incidents in which a deputy discharges a firearm while acting in the capacity of a deputy sheriff, except:
 - a. The discharge of firearms at an approved range target practice or organized shooting matches, or firearms examinations in the furtherance of an investigation;

- b. The discharge of a firearm for the purpose of killing a dangerous or injured animal as authorized by this directive (a log entry is required, unless in the opinion of the supervisor more documentation is necessary); and
- c. At the discretion of the Sheriff, where an outside agency may be requested to assist or conduct a firearms investigation.

B. Involved Deputies/Sheriffs Responsibilities.

- 1. Discharges Generally. Society vests substantial prerogatives in its sheriffs. Consequently, every deputy sheriff must recognize that a firearms investigation is part of the accountability that is owed to the public. Deputies should prepare themselves in advance for the shock of a traumatic incident and the compounding effect of the investigation that follows.

Evidence taken at the scene of or following a deputy involved shooting incident could prove critical as corroborating physical evidence in response to subsequent criticism or litigation.

- 2. Discharges Within the County. Whenever a deputy discharges his/her firearms accidentally or intentionally, either on or off duty within the County except under circumstances which are not subject to investigation under Section 13.03.02(B)(1 and 2), the deputy shall immediately:
 - a. Notify the immediate supervisor and the dispatch center of the incident and location;
 - b. Determine the physical condition of any injured person, render first aid when appropriate and request any necessary emergency medical aid;
 - c. Protect the scene, save evidence and protect the weapons for appropriate examination. In any deputy involved shooting, it is important that all ammunition casings and the deputy's firearm be taken for examination as evidence. Evidence taken at the scene of or following the shooting incident may include powder residue from the deputy's body, the deputy's clothing and body fluids. Such evidence could prove critical if the deputy and the Sheriff's Office is later subject to criticism or litigation, since the physical evidence may tend to corroborate an account of how the incident occurred. The deputy's property will be replaced as soon as practical. Deputies should prepare themselves in advance for the shock of a traumatic incident, and the compounding affect of the investigation that follows. Every deputy sheriff must recognize

that becoming subject to a firearms investigation is a consequence of the accountability we must demonstrate as a result of the substantial prerogatives society vests in its sheriffs.

- d. As provided in Section 8.04.04, deputies involved in significant incidents will detail their actions surrounding the incident in a Special Report prior to leaving work following the incident (unless injured; then the special report shall be completed as soon as practical). The Special Report may be written before or following an interview if one is conducted. In appropriate circumstances, the report may be deferred or tape recorded, or the written report of an investigator who interviews the deputy may be substituted, as directed by the supervisor. Supervisors shall review the written report and ensure that all relevant issues have been addressed. Where a Special Report is found deficient, it shall be returned with direction to cover additional points.

All other involved deputies shall also complete written reports of the incident before going off duty. Reports will contain information regarding the weapons involved, number of shots fired, persons involved, injuries or damage, names of witnesses and other pertinent information. The report should specifically state the facts and circumstances of the occurrence and the observations, apprehensions and underlying details, information and beliefs of the deputy which justify the shooting.

- e. The deputy involved should not discuss the case with anyone except supervisory and assigned investigative personnel until the initial reports are completed. Thereafter, it is advisable to limit discussion to those who can be supportive of the deputy during the time of personal trauma and adjustment such as the County Attorney, a chaplain, psychiatrist and psychologist, immediate family or significant others including other deputies who have been involved in similar incidents. All deputies are encouraged to seek professional help in this period of adjustment, which may extend for a prolonged period of time. Refer to Traumatic Incident Policy 5.31.00.

3. Discharges Outside the County. Deputies who discharge firearms outside the jurisdiction either on or off duty, accidentally or intentionally except as authorized in section 13.03.02(B)(1) and (2) above (or for hunting or target shooting), shall immediately:

- a. Notify the law enforcement agency having jurisdiction and the on-duty supervisor at this Sheriff's Office; and

- b. Complete reports as directed by the supervisor.

C. Supervisor Responsibilities.

1. Supervisors shall be responsible for command of the scene and complete initial and preliminary investigation of the incident, including the protection of the scene and of all evidence including the deputy firearm, and all firearms or weapons involved. When possible, a supervisor shall obtain a brief verbal explanation of what occurred from involved deputies in order to be able to guide the on-scene investigation.
2. All unauthorized persons, including deputies not required at the scene, will be directed to leave or stay clear of the scene. The scene will be protected until the completion of all investigations. The supervisor shall complete appropriate reports before going off duty. The ranking deputy at the scene shall have the discretion to direct the deputy involved to respond to another location.
3. Supervisors shall notify the District Attorney's office as soon as practical upon learning that a deputy involved shooting has resulted in any injury or death to another person. The assistance of the Oregon State Police Crime Laboratory should be requested.
4. Copies of the supervisor's written report shall be submitted to:
 - a. The Sheriff;
 - b. The assigned investigators; and
 - c. The Firearms Incident Review Board.

D. Responsibilities of the Sheriff or the Designee.

1. Administrative Leave. The Sheriff or designee shall, upon completion of the deputy's preliminary report of the incident, place on "administrative leave" any deputy directly involved in a shooting. This leave shall be without loss of pay or benefits pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the deputy has acted improperly. While on administrative leave, the deputy shall remain available for interviews and statements regarding the incident and shall be subject to recall to duty at any time.
2. Order an Investigation. The Sheriff shall designate a peace officer to investigate the incident.

- a. The investigator(s) may be appointed from qualified personnel within the Sheriff's Office, or the Sheriff may exercise discretion and request that an outside agency assist or conduct the investigation.
 - b. The purpose of the investigation will be to determine whether the deputy adhered to State law and Sheriff's Office policy in discharging the firearm.
 - c. Copies of the investigation report shall be submitted to the Sheriff and the Firearms Incident Review Board.
3. Review the Investigation. Upon completion of the investigation, the Sheriff may:
- a. Suspend the deputy without pay if criminal charges are filed against the deputy;
 - b. Suspend the deputy pursuant to Chapter 9 pending further investigation of the matter, when the facts available clearly indicate that the deputy may be guilty of misconduct, negligence, or recklessness in the use of or discharge of a firearm;
 - c. Retain the deputy on administrative leave pending a final determination by the Firearms Incident Review Board, as provided in Section 13.05.00;
 - d. Direct further investigation.

13.05.00 FIREARMS INCIDENT REVIEW BOARD.

- A. Board Convened. The board may be convened at the direction of the Sheriff following completion of the investigation.
- B. Board's Charge. The Firearms Incident Review Board shall recommend whether or not the use of a firearm was within the parameters of Sheriff's Office policy. The Review Board shall not be concerned with penalties for violations of rules, regulations or procedure.
- C. Board Proceedings.
 - 1. The Review Board shall be composed of one or more supervisors and at least one deputy of the same rank as the deputy who discharged his/her weapon.

2. All Review Board hearings are confidential and shall be conducted in private.
3. The Review Board shall consider all reports and information concerning the incident and, if necessary, call witnesses.
4. The Review Board will develop findings and, if appropriate, make recommendations to the Sheriff in the following areas:
 - a. Tactical considerations,
 - b. Training considerations, and
 - c. Quality of supervision.
5. The Review Board shall make one of the following findings:
 - a. The discharge was justified under the provisions of this policy.
 - b. The discharge was not justified under the provisions of this policy.
6. Review Board recommendations will be by majority vote. All findings will be signed by all members of the Review Board, and will indicate whether the Review Board member agreed with or dissented from the recommendation. The Review Board's recommendations shall be submitted to the Sheriff in a written report.
7. Upon receipt of the Review Board's recommendation the Sheriff may:
 - a. Reinstate the deputy to duty if it is determined that the incident was justifiable.
 - b. Request the District Attorney to conduct an inquest of the incident.
 - c. Take disciplinary action if appropriate.

13.06.00 AUTHORIZED FIREARMS. Authorized firearms for use listed in the following categories will be fully loaded with Sheriff's Office ammunition, kept clean and in good working order:

- A. **Uniform duty firearms** shall be approved 9mm, 40 or 45 caliber, double action, semi-automatic of the Beretta, Colt, Glock, H-K, Ruger, Smith & Wesson or Sig Sauer manufacture.