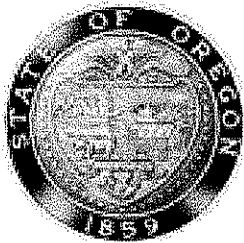


Approved
4/14/08
PDS

**Yamhill County
Officer Use of Deadly Force
Investigation Guidelines**

SB 111 (2007) Planning Authority



Bradley C. Berry
Yamhill County District Attorney
Co-Chair



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Yamhill County Sheriff
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Planning Authority Members:

Erma Vasquez, Citizen
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Lieutenant Marlene West, Oregon State Police
Officer Scott Liston, Newberg-Dundee Police Department

Yamhill County Officer's Use of Deadly Force Investigation Guidelines

CONTENTS	Page
Definitions	2
Objectives	3
Procedures	4
District Attorney	8
Reporting, training and outreach	9
Attachments	
A. Duties of the Initial Responding Officer	11
B. Responding Supervisor's Checklist	12
C. Criminal Investigation Notification	14
D. Yamhill County Major Crime Response Team 15 Protocol	

I. DEFINITIONS

1. Administrative investigator

Investigator assigned by the employer agency to conduct the civil investigation of the incident.

2. Criminal Investigator(s)

Those investigators assigned by the venue agency(ies), the employer agency(ies), or the district attorney's office to conduct the criminal investigation of the incident.

3. Employer Agency

The agency by which the involved police/ public safety employee is employed. (In many cases the venue agency will also be the employer agency.)

4. Injured/Deceased

A person who is injured or killed by the actor(s).

5. Internal Investigator

Investigator assigned by the employer agency to conduct the personnel investigation of the incident.

6. Involved Officer(s):

- A. A law enforcement officer who uses or attempts to use deadly physical force on another person; and
- B. A law enforcement officer whose act is a "proximate cause" of a serious physical injury or death to another person; or
- C. A person who intends that an act be a "proximate cause" of serious bodily injury or death to another person who is seriously injured or killed by another.
- D. A law enforcement officer whose official conduct was not a cause in fact of

the death of a person, but whose official involvement in an incident in which the use of deadly physical force by a police officer resulted in the death or serious physical injury of a person.

7. Lead Investigator

The investigator assigned pursuant to the Major Crime Response Team protocol to head and direct the investigation.

8. MCRT

Yamhill County Major Crime Response Team.

9. Proximate Cause

A cause which, in a chronological and continuous sequence, produces a serious or fatal injury.

10. Serious Physical Injury

"Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

11. Weapon

When the term "weapon" is used throughout this investigative guideline, it generally refers to a firearm. However, it is understood that in some situations instruments other than firearms may cause death or serious physical injury. This may include, but is not limited to, vehicles, Tasers, batons or Asps, etc.

II. OBJECTIVES

1. The Criminal Investigation

The District Attorney has ultimate authority for the prosecution of criminal cases, and specific shared responsibility with the Medical Examiner in death investigations.

A. Investigative Team Composition and Objective:

The criminal investigation has investigative priority over an administrative or personnel investigation and should begin immediately after an incident has occurred. The goal is to develop all available relevant information about the incident. This information will be used in two ways:

- 1) To determine the presence or absence of criminal liability on the part of all those involved in the incident. Specifically, to determine whether the conduct involved is prohibited or authorized by criminal statutes.
- 2) If criminal conduct does exist:
 - a) Determine the identity of the person(s) responsible for that conduct;
 - b) Determine the degree of the crime(s);
 - c) Determine the existence of any factual or legal defense to the crime; and
 - d) Determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

B. To provide factual information to the employer agency for its internal use.¹

C. The investigative team will be comprised of criminal investigators in Yamhill County MCRT and such other investigators as they may deem appropriate.

III. PROCEDURES

1. Incident Scene Procedures:

A. The initial responding officer has several important duties to perform upon arrival at the scene. See "Duties of Initial Responding Officer," Attachment

¹ While the criminal investigators do not direct their investigative attention to administrative or internal concerns, it is recognized that the criminal investigation results are available for that purpose.

A.

B. The initial responding supervisor, or any subsequent supervisor who assumes responsibility of the scene, shall ensure that the duties are completed. See "Responding Supervisor Checklist" Attachment B.

2. The Lead Investigator, as set forth in the MCRT protocol, is ultimately accountable to ensure the following procedures are completed:

When the use of force by an officer results in death or serious physical injury, the following provisions apply:

A. Upon the arrival of additional officers sufficient to manage the scene, each Involved Officer shall be relieved of their duties and the duties shall be reassigned to uninvolved personnel.

B. As authorized by the Lead Investigator, and at the direction of the Involved Officer's supervisor, the Supervisor of the Involved Officer shall, as soon as possible, assign an officer to act as a companion to the Involved Officer. The Assigned Officer shall be reminded that any communication between the Involved Officer and the Assigned Officer is not deemed confidential.

C. If practical, obtain an initial statement from Involved Officers covering only that information necessary for public safety and scene management. This statement may include, but need not be limited to, information necessary for public safety necessary to protect persons and property, possible witnesses, participants, location of weapons or other hazards, incident location(s), etc. The initial statement is intended to provide a framework for the investigation and ensure the preservation of evidence. The following statements should preface any questions:

1. "I am going to ask you some questions concerning public safety and scene management."

2. "You are not required to answer my questions."

D. As soon as practicable, each Involved Officer shall leave the scene and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a private location. The Supervisor shall see that the officer's union representative is notified.

The Supervisor shall inquire of the Involved Officer if he/she wishes an attorney, family member, or another person be notified of the incident.

- E. As soon as practicable, the weapon(s) and any ammunition of any officer who fired their weapon or who was in the immediate vicinity where weapons were fired, shall be seized by investigators and replaced with a substitute weapon, if appropriate.
 - F. As soon as practical, and after making every effort to obtain alternative personal clothing, the Involved Officer's clothing of potential evidentiary value shall be collected by investigators. Prior to the collection of the Involved Officer's duty weapon and clothing, the Lead Investigator shall direct that photographs of the Involved Officer be taken. This should be done in a discrete way and in a private setting.
 - G. The Lead Investigator shall see that the Involved Officer is requested to provide blood and urine as soon as possible. This should be done in a discrete way and in a private setting.
 - H. The Lead Investigator shall direct the Involved Officer's Supervisor to direct the Involved Officer to not discuss the incident with any individual, including other Involved Officers, or to review any media coverage of the incident. Nothing about this direction should preclude the Involved Officer from being able to engage in privileged communications, such as discussions with representing attorney, union representatives, spouse, clergy or medical or mental health professionals.
3. The scene(s) must be secured immediately with a perimeter of sufficient distance to safeguard evidence. In some circumstances, an inner and an outer perimeter may be appropriate.
- A. Access to the scene(s), except as otherwise provided by this agreement, shall be limited to only those officials who must enter for criminal investigative purpose.
 - B. A Crime Scene Log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
 - C. Except as necessary for scene investigation, upon completion of medical

and fire suppression duties, medical and fire personnel shall be excluded from the scene.

- D. Unless exigent circumstances exist, no items shall be moved inside the scene(s), or removed from a scene, without approval of the, Lead Investigator unless absolutely necessary for public or officer safety or the preservation of evidence. If removal without approval is necessary, the removal must be logged. The log shall state the identity of the person removing the described object, the reason for removal, and the time of removal. The item should be photographed in its original location, and if possible, diagrammed prior to removal.
 - E. Involved Officers or participant witnesses shall be separated as soon as practical after the incident and should refrain from discussing the incident prior to interviews.
4. Physical evidence at the scene should be video and still photographed, diagrammed, recorded, protected, and collected per MCRT protocol.
5. Interview of Involved Officer:
- A. As used in this section "interview" refers to formal interview of the Involved Officer by assigned investigative personnel that occurs a reasonable time after the incident and after the officer has had an opportunity to consult with counsel if so desired.
 - B. The interview of the Involved Officer(s) who used deadly force resulting in death or serious physical injury, shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the officer(s). The interview shall occur no sooner than 24 hours after the incident, unless this waiting period is waived by the officer or unless directed otherwise by the District Attorney.
 - C. The waiting period does not include an initial on-scene conversation with the officer as set forth in Paragraph III, 2, C above.
 - D. Once it has been determined that no evidence will be contaminated or destroyed, the Involved Officer(s) will be provided an opportunity for a "walk through" of the scene with a representative of their choosing.

6. For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in death of a person or serious physical injury, a law enforcement agency may not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force.
7. Officer(s) involved in the use of deadly force resulting in death or serious physical injury shall immediately be placed on administrative leave until such time as sufficient information exists to determine the justification in the use of deadly physical force and that the officer(s) have had an opportunity to meet with a mental health professional with an outcome that no issues would preclude the officer(s) from performing the duties of a police officer.
8. In the six months following a use of deadly physical force incident that results in death, the Agency shall offer each Involved Officer a minimum of two opportunities to meet with a mental health professional. The officer shall be required to attend at least one session with a mental health professional.
 - A. At agency expense, the Involved Officer(s) shall be scheduled for an appointment with a mental health professional for a counseling session with a follow-up session scheduled at date determined by the mental health professional.
 - B. The sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and the mental health professional.

IV. District Attorney:

1. When an incident of the use of deadly physical force by an officer, and resulting in the death or serious physical injury, the agency shall as soon as practicable, notify the District Attorney, the Chief Deputy District Attorney, or an assigned senior member of the District Attorney's Office.
2. When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney, and/or a senior member of his staff will consult with the agency regarding the investigation to ensure that the investigation is done in accord with the elements of this plan.
3. The District Attorney has the sole statutory and constitutional duty to make a decision on whether to present a matter to a Grand Jury.

- A. Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly force.
- B. After a review of the information and evidence developed from the investigation, and after consulting with the investigating agency, the District Attorney shall make the decision on whether to present the case to a Grand Jury.
- C. If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the Agency, the Involved Officer(s), the Involved Officer's representative and, when appropriate, the public.

V. Reporting, training and outreach:

- 1. Public outreach and education shall include the following:
 - A. A copy of this plan, and each agency's use of force policy, shall be posted on the Agency's website or available on the Yamhill County website and readily available to the public.
 - B. Citizen Academies, offered by any agency subject to this agreement, shall include a discussion on this plan and the agency's use of force policy.
 - C. The Yamhill County Sheriff's Office shall have personnel assigned to respond to public inquiries about this plan and the Sheriff's Office use of force policy.
 - D. Each agency subject to this agreement shall have a designated individual responsible for responding to questions about that agency's use of force policy.
 - E. Once adopted, this plan shall be readily available to the public and each agency subject to this plan, shall provide copies of the plan to members of the public or the press upon request.
- 2. Each law enforcement agency within Yamhill County shall provide a copy of this plan to every officer, incorporate the plan into agency policy documents and provide regular training to officers on the implementation and contents of the plan.

3. Upon the conclusion of an investigation into the use of deadly force resulting in death or serious physical injury, and following the decision of the District Attorney as set forth in Paragraph IV, 3, above, the Agency shall complete the Attorney General's report regarding the use of force and submit the report to the Attorney General.
4. The Department of Public Safety Standards and Training requires 24 hours over a 3-year period of training from either the "firearms" or "use of force" subject areas. Each agency's annual training must include education on the agency's use of force policy, the MCRT protocol, and this plan. Each agency shall have a written policy and system to monitor that these standards are met.

Attachment "A"

DUTIES OF THE INITIAL RESPONDING OFFICER

Introduction:

Pending the arrival of investigative staff at the scene, certain tasks should be undertaken by the Initial Responding Officer. The quality of evidence collected or information obtained can be greatly enhanced if law enforcement personnel take prompt action rather than waiting for the arrival of the investigative personnel.

Tasks which should be completed promptly, prior to arrival of investigative personnel:

1. Emergency life-saving procedures take first priority.
2. Take immediate steps to secure the scene, while controlling access to preserve evidence.
3. As appropriate and consistent with agency training, note the position and physical condition (cocked, uncocked, bloody, etc) of any weapons at the scene. If possible, preserve and/or leave in place any such evidence. If officer or public safety is a concern, photograph the weapon in its place and sketch the location and secure the weapon.
4. Protect and collect evidence in danger of being lost or destroyed, such as shoe impressions/prints or firearms evidence. Include the ambulance and emergency room as possible locations of evidence. Ambulances are routinely cleaned after each use; therefore, immediate attention for evidence collection will be necessary.
5. Record transient detail such as vehicles in the area, lighting (natural or artificial), windows and blinds or curtains (open/closed), doors (locked or unlocked), weather, furniture moved for emergency medical teams, etc.
6. Initiate a Crime Scene Log of all persons entering the scene(s), the time of their entry and exit, and the reason for entry until relieved, and document all persons present at the scene through proper identification.
7. Make a preliminary sketch of the scene without taking measurements. If the scene or a portion thereof is outdoors, start sketching this area first to minimize inadvertent alteration.

Attachment "B"

RESPONDING SUPERVISOR'S CHECKLIST

1. Life saving efforts are first priority.
2. Identify and secure all scenes (original felony; escape/chase route; fatal scene; collision scene; suspect vehicle; employee's vehicle; hospital; etc.) Establish generous perimeters. Prevent scene contamination. Adjust boundaries as necessary. Protect and collect physical evidence in imminent danger of being altered or destroyed.
3. Prohibit entry into scene(s) except for authorized personnel.
4. In the event of an officer's use of deadly force resulting in a death or serious physical injury, a homicide or other qualifying incident, activate the MCRT. Ensure that notifications are made per agency procedures, and immediately notify the District Attorney, the Chief Deputy District Attorney or their designate.
5. Request additional officers, as necessary.
6. As appropriate, assign an officer to ride in the ambulance with any involved person, with recorder if possible, for the purpose of:
 - A. Physical evidence protection, securing, recovery;
 - B. Custody of arrestee;
 - C. Spontaneous and other unsolicited statements;
 - D. Dying declarations;
 - E. Information to and from medical personnel;
 - F. Identifying medical personnel.
7. Protect sensitive investigative information; use caution on radio broadcasts. Use phone whenever possible.
8. If practical, obtain an initial statement from Involved Officers covering only that information necessary for public safety and scene management. This statement may include, but need not be limited to, information necessary for public safety necessary to protect persons and property, possible witnesses, participants, location of weapons or other hazards, incident location(s), etc. The initial statement is intended to provide a framework for the investigation and ensure the

preservation of evidence.

9. Disseminate information on outstanding suspects, vehicles, witnesses, etc.
10. Collect perishable evidence.
11. Ensure Crime Scene Log has been started, and is maintained, to record every entry and exit.
12. In the event of an officer involved shooting, if the shooting officer(s) has retained possession of their weapon, leave in holster until such time as it is collected at the direction of the Lead Investigator.
13. Check all firearms of all Witness Officers and seize as appropriate. Make notes on each.
14. Locate, identify, and separate civilian witnesses.
15. Determine what Responding/Scene Officer(s) have learned and what they have done.
16. The Supervisor shall see that the officer's union representative is notified.

Attachment "C"

CRIMINAL INVESTIGATION NOTIFICATION

1. You are advised that this investigation is criminal in nature.
2. A refusal to answer questions from the criminal investigations will not be a basis for disciplinary action against you. You have a right to not participate in the interview, and the right to terminate the interview, without resulting discipline.

Involved Employee Signature

Date

Time

Signature of Officer Providing Notification

Attachment "D"

YAMHILL COUNTY MAJOR CRIME RESPONSE TEAM

PURPOSE

The purpose of the Yamhill County Major Crime Response Team is to ensure quality investigations of major crimes regardless of the size or resources of the venue agency. Further, this protocol sets forth the investigatory understanding when an officer has been involved in the use of deadly force resulting in the death or serious physical injury of another.

GENERAL STATEMENT

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 equally valuable when investigating a series of interrelated crimes such as serial killings and other criminal activities. The positive role of such teams can ensure that the evidence gathered as a result of their work shall meet the rigorous standards necessary for the admissibility of evidence in court.

The team concept to major criminal investigations has been accepted by the agencies executing this agreement. The name of this investigative team shall be the Yamhill County Major Crime Response Team (MCRT).

COMPOSITION

Each member agency as shown by their signature hereinbelow agrees to the following commitment:

1. As resources allow, assign one primary and at least one alternate experienced investigator to the MCRT.
2. Each investigator assigned to the team will be so assigned, within the practical limitations of the member agency, for a minimum period of two years.
3. Each member and their alternate will endeavor, as much as possible, to assist with all MCRT call outs (primary member only unless otherwise authorized), attend and participate in all post-investigation debriefings, and attend and participate in all MCRT regular meetings and training.

The selection of the individual members and their alternate(s) shall remain at the sole discretion of the participating member agency. The individual team member shall be accountable to his/her agency for their conduct, performance and activities as a law enforcement officer.

PROTOCOL

The decision to deploy MCRT shall be upon the determination of the jurisdictional agency's administrator, their designee, a representative to MCRT or their alternate, or the representative of the District Attorney's Office.

CRIMES FOR ACTIVATION:

Mandatory:

- All Homicides

- Any use of deadly force by a police officer resulting in the death or serious physical injury of another.

As Appropriate:

- Suspicious deaths;

- Major felony assaults involving serious physical injury.

- Other felony crimes as requested by a MCRT member and accepted by the member agency(s).

DEPLOYMENT OF MCRT WILL BE AS FOLLOWS:

The District Attorney or on call representative.

The MCRT member or District Attorney above shall deploy the MCRT by notifying Yamhill Communications (YCOM) to page the primary MCRT members to respond to the scene or other location.

YCOM shall be responsible for contacting and routing the primary investigator or their alternate, in his/her absence, to the location provided by the MCRT member activating the team. The local MCRT member shall be responsible for notifying their appropriate supervisor/ administrator of the deployment request and which employee(s) is responding pursuant to agency procedures. Each activated MCRT member shall respond to YCOM notifying whether they are able to respond to the scene (or other location) and their estimated time of arrival. YCOM will maintain a log and roster of the initial deployment and response.

Any requests for additional resources, i.e., tow truck, marked patrol car, special equipment, etc., will be made via the communications center of the agency or jurisdiction involved.

The Victim Assistance Program will not be a part of the initial deployment. They shall be contacted on an as-needed basis by specific request only by the District Attorney's Office representative and/or the Lead Investigator of the agency of jurisdiction.

RESPONSIBILITY

RESPONSIBILITY FOR VARIOUS FUNCTIONS OF MCRT WILL BE AS FOLLOWS:

All press releases and press relations concerning matters relating to any MCRT investigation will be handled by the District Attorney's Office or their designate after consultation with the agency of jurisdiction.

Each MCRT member shall be responsible for the timely completion of reports and submission of evidence to the Lead Investigator. They will also ensure that a copy of all reports is forwarded to the Lead Investigator of the agency of jurisdiction, or his/her designate, for review.

The Lead Investigator shall be assigned by the District Attorney or his designate after consultation with the supervisor/administrator of the agency of jurisdiction. In any investigation of a police officer's use of deadly force resulting in the death or serious physical injury of another, the District Attorney shall assign as the Lead Investigator, an officer from an agency not involved in the use of such deadly force.

The Lead Investigator shall be responsible for maintaining and distributing the case book(s). All MCRT investigative reports shall be forwarded to and distributed by the Lead Investigator. The Lead Investigator shall provide the District Attorney with the completed case book upon completion of the assignment.

The Lead Investigator or his/her designate shall take responsibility for the seizing, securing, documenting and analysis of all evidence, including but not limited to film, videotape, etc. All film shall be forwarded to the Lead Investigator immediately for appropriate handling as evidence. Evidence seized will be processed by the agency of jurisdiction under the direction of the Lead Investigator and the District Attorney or his designate. In an investigation into the use of deadly force by a police officer resulting in death or serious physical injury, the Lead Investigator's agency shall be responsible for the retention of all evidence seized until such time as authorized for release by the District Attorney. Upon the authorized release, the evidence will be returned to the agency of jurisdiction for retention or release at their direction.

The District Attorney or Medical Examiner shall determine whether an autopsy will be ordered.

All follow-up investigations, backgrounds and interviews requiring out of county or state travel will be conducted at the direction of the District Attorney or his designate and the supervisor/administrator of the agency of jurisdiction.

Administrative duties, such as interagency liaison, personnel and equipment logistics, notice of briefings/meetings, etc., shall be the responsibility of the agency of the jurisdiction who shall designate a supervisor/administrator for these responsibilities or the District Attorney.

Should the primary responding MCRT member be unavailable, the alternate shall be called out and will remain as the "primary" for the duration of the particular MCRT deployment unless circumstances dictate otherwise.

The primary and alternate(s) members shall attend all training sessions and meetings.

Each participating agency shall be responsible for agreeing to a minimum 72-hour commitment, if necessary. An extension after case evaluation and consultation may be granted by the participating agency.

All salaries, benefits, overtime/compensatory time, miscellaneous expense etc., incurred by or on behalf of the MCRT member, shall be the responsibility of the member's participating agency in accordance with their respective union and/or bargaining unit agreements or the agency's policies and procedures.

Each participating MCRT member shall be accountable to their respective agency's supervisor/administrator for their conduct, performance and activities while engaged in the MCRT deployment.

The participating agency supervisor/administrator shall have sole authority for the removal or replacement of MCRT members from their respective agencies as policy/procedure and internal staffing logistics may dictate.

In all cases where the MCRT has been activated, the District Attorney or his designate shall, within 10 days of the activation, schedule a meeting of the MCRT to review and "debrief" the activation, investigation, procedures and any ongoing need for continued investigation.

AGENCY OF JURISDICTION RESPONSIBILITIES

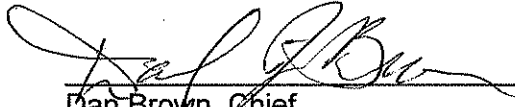
Upon response to the scene of a homicide, suspicious death / major felony assault, the agency of jurisdiction shall:

AGENCY SUPERVISOR / ADMINISTRATOR


I have reviewed this document and am in agreement with its contents. My signature below initiates my agency's support and participation in this endeavor as outlined in this document. Each party herein agrees to participate in an annual review of the effectiveness and operation(s) of the MCRT. Upon notice to the other participating agencies, a member agency may, at any time, withdraw from this agreement and participation with the MCRT.




Bradley C. Berry
Yamhill County District Attorney




Dan Brown, Chief
Amity Police Department



Sheriff Jack Crabtree 02-14-08
Yamhill County Sheriff's Office



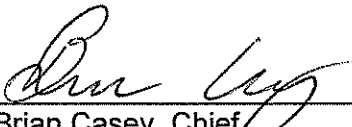
Frank Butler, Chief
Carlton Police Department



Ron Noble, Chief
McMinnville Police Department



Lt. Marlene West
Oregon State Police



Brian Casey, Chief
Newberg-Dundee Police Department



Gordon Rise, Chief
Yamhill Police Department