

LAW ENFORCEMENT USE OF DEADLY PHYSICAL FORCE RESPONSE PLAN

Marion County
Use of Deadly Physical Force
Planning Authority

Revision Date 3/2013

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Members of the Planning Authority

Walt Beglau, Marion County District Attorney (co-chair)
Jason Myers, Marion County Sheriff (co-chair)
Lt. Steve Duvall, Oregon State Police
Chief Jerry Moore, Salem Police Department
Officer Jeff Staples, Labor Union Representative
Don Frederickson, Public Member
Lt. Tim Fox (OSP, non-voting member)
Capt. Doug Garrett (Woodburn Police Department, non-voting member)

On March 20, 2008, this Plan was approved by the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Marion County-----Approved on 4/23/2008
City of Aumsville-----Approved 5/12/2008
City of Aurora-----Approved 5/13/2008
City of Detroit-----Approved 4/8/2008
City of Donald-----Approved 5/13/2008
City of Gates-----Approved 3/20/2008
City of Gervais-----Approved 5/1/2008
City of Hubbard-----Approved 4/8/2008
City of Idanha-----Approved 4/14/2008
City of Jefferson-----Approved 3/27/2008
City of Keizer-----Approved 5/19/2008
City of Mill City-----Approved 4/8/2008
City of Mt. Angel-----Approved 4/8/2008

City of St. Paul-----
City of Salem----- Approved 5/5/2008
City of Scotts Mills-----
City of Silverton----- Approved 5/5/2008
City of Stayton----- Approved 4/7/2008
City of Sublimity ----- Approved 4/14/2008
City of Turner----- Approved 4/10/2008
City of Woodburn----- Approved 4/28/2008

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on July 3, 2008.

Preamble

Marion County Law Enforcement recognizes the importance to both their agencies and our communities to ensure any use of deadly force is investigated in a professional, competent and impartial manner. The openness with which we proceed in these investigations is critical to establishing and maintaining trust within the community. It is clear our citizens examine closely the actions any law enforcement agency takes when their officers utilize deadly physical force, and it is our goal to ensure the community is confident and accepting of the actions Marion County Law Enforcement agencies take when involved in these situations.

Section 1: Administration

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

Section 2: Applicability of the Plan

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

Section 3: Definitions

Agency – Means the law enforcement organization employing the officer who used deadly physical force.

Plan – Means the final document approved by the Planning Authority, adopted by two-thirds of the governing bodies employing law enforcement agencies, and approved by the Attorney General. Any approved revisions shall become a part of the Plan.

Deadly – Physical Force – Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

- Serious - Physical Injury** 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. (ORS 161.015(8))
- Physical - Injury** Means impairment of physical condition or substantial pain that does not amount to “serious physical injury.”
- Involved - Officer** Means the person whose official conduct, or official order, was the cause in fact of the death of a person. “Involved Officer” also means an officer whose conduct was not the cause in fact of the death, but who was involved in the incident before or during the use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

Section 4: Immediate Aftermath

- (1) When an officer uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety and health of the officer and any member of the public.
 - (a) After taking such steps, the officer shall immediately notify his or her agency of the use of deadly physical force.
 - (b) Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.
 - (c) Upon request, the officer shall provide information regarding the circumstances as necessary to protect persons and property, preserve any evidence, and to provide a framework for the investigation.
- (2) When the use of deadly physical force results in physical injury to any person, the Agency may employ its own resources to investigate and document the incident. This section does not prohibit the Agency from requesting assistance from an outside law enforcement agency.

Section 5: Serious Physical Injury/Death

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

- (1) Upon the arrival of additional officers, sufficient to manage the scene, each Involved Officer shall be relieved of the above duties set forth in Section 4(1) of the Plan, and the duties shall be re-assigned to uninvolved police personnel.
- (2) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain information relevant to public safety (e.g. outstanding suspects, location of evidence, direction of travel, etc.).
- (3) As soon as practicable, each Involved Officer shall leave the scene with a companion officer, as directed by his or her supervisor, and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a location designated by the investigative agency. Following the use of deadly physical force, the officer's union representative shall be notified. Management or non-represented employees shall be afforded the same opportunity to consult with legal representation.
- (4) After consultation with the involved officer, the Agency or officer shall notify the officer's family according to the Agency's General Order, or other policy regarding such notification.
- (5) Notification shall be made to the District Attorney as provided in Section 7(1) of this Plan. This provision does not prevent the Agency from requiring additional notification requirements within their respective agency policies.
- (6) As soon as practicable, the duty weapon of any officer who fired his/her weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate. Other involved officers' weapons are subject to seizure by the investigative agency.
- (7) Interview of an "Involved Officer":

As used in this section "interview" refers to formal interview of the 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.

- (a) The interview of the involved officer(s) who discharged a firearm during a use of deadly physical force incident resulting in death or serious physical injury, shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the

officer(s). The interview shall occur no sooner than 48 hours after the incident, unless this waiting period is waived by the officer.

- (b) The waiting period does not preclude an initial on-scene debriefing with the officer to assess and make an initial evaluation of the incident.
 - (c) The scene shall be secured and managed consistent with the control of any other major crime scene. Only personnel necessary to conduct the investigation shall be permitted access to the scene. When it is determined that no evidence will be contaminated or destroyed, the officer(s) involved may conduct a “walk through” to assist in the investigation.
- (8) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, 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. Officer(s) involved in discharging his or her firearm that results 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 for mental health counseling.
- (9) In the six months following a use of deadly physical force incident that results in a death, the Agency shall offer each Involved Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.
- (a) At agency expense, the involved officer (s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session with a follow-up session scheduled at a date determined by the mental health professional.
 - (b) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.
- (10) In the event of a use of deadly force that results in death or serious physical injury, it is recommended that members of an organization outside the involved officer’s agency conduct the investigation under the direction of the District Attorney. Members of the involved officer’s agency may assign personnel to assist in the investigation as directed by the lead investigative agency.
- (a) An outside agency may include the Oregon State Police, the Marion County Homicide Assault Response Team (HART), or any other agency which has the expertise necessary to investigate a deadly force situation.

- (b) The Marion County District Attorney shall be consulted whenever one agency requests another to investigate any deadly force situation which results in death or serious physical injury.
 - (c) At least one officer from an outside agency shall be assigned to the investigative team in the event an agency investigates their own officer's use of deadly force.
- (11) The assignment of outside investigative personnel does not preclude the agency involved from conducting a concurrent investigation for administrative purposes as established by that agency. Such investigations may be necessary for civil preparation, determination of policy violations or training issues.
- (12) In order to preserve the integrity of the investigation, the scene supervisor and investigative supervisor shall notify all involved officers to refrain from making public statements about the investigation, until such time as the investigation has concluded and the District Attorney has made a determination regarding the criminal responsibility of all involved persons.
- (13) As soon as practical, and in conjunction with the District Attorney's Office and the lead investigative agency, the involved officer's agency shall release an initial public statement about the incident. The statement shall include, as appropriate:
- (a) The time and location of the incident;
 - (b) The condition of any suspect;
 - (c) The nature of the use of deadly physical force;
 - (d) Any other information the District Attorney, lead investigative agency, or the involved officer's agency deems necessary given the particular circumstances of the incident.

Section 6: Investigation Protocols

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

- (2) The investigation shall be documented in written reports, and all police reports and taped statements shall be provided to the investigative agency, the Involved Officer(s) agency and the District Attorney.

Section 7: District Attorney

- 1) When an incident of the use of deadly physical force by an officer occurs, and death or serious physical injury results, the agency shall immediately notify the District Attorney's Office. Notification shall be made through the established on-call procedure.
- 2) When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney or his or her designee will consult with the agency regarding the investigation and implementation of elements of this plan.
- 3) The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a Grand Jury.
 - (a) The District Attorney will consult with the investigating agencies and make a decision on whether to present the case to a Grand Jury.
 - (b) The timing of the decision will be made by the District Attorney, considering the availability of admissible evidence.
 - (c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer through his or her representative.
 - (d) Upon a final decision by the Grand Jury, the District Attorney shall notify the investigating agency and the involved officer's agency of the conclusions of the Grand Jury proceeding under this plan. The District Attorney shall also release the Grand Jury conclusions to the public.

Section 8: Debriefing

The use of deadly physical force by an officer has the potential to create strong emotional reactions which have the potential to interfere with an officer's ability to function. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers within the Agency.

The requirements of this section provide a minimum framework, and are not intended to take the place of Agency policy. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following a use of deadly force incident. Such policies should include a procedure that are implemented from the time of the incident and continue over time.

- (1) Upon a final determination by the District Attorney, the Agency shall conduct an internal review of the matter for compliance with agency policy. Such review, at a minimum shall include a review of the incident with the involved officer(s).
- (2) Each agency shall provide a process for any officer(s) who makes a request, to participate in a critical incident debriefing.
- (3) If available, agencies should encourage officers to take advantage of Employee Assistance Programs, and if appropriate, agencies should request assistance from other agencies that may have in place formal programs for dealing with critical incidents.

Section 9: Agency Reporting, Training, Outreach

- (1) Each law enforcement agency within Marion County shall make available a copy of this Plan to every officer, and incorporate the Plan into agency policies and provide training to officers on the implementation of the plan.
- (2) Upon the conclusion of an investigation, the announcement by the District Attorney pursuant to Section 7(3) of the Plan, and the debriefing, the Agency shall complete the Attorney General's report regarding the use of force, and submit the report to the Attorney General.
- (3) Each agency subject to this Plan shall comply with the Department of Public Safety Standards and Training rules on use of force training, as well as establish department training requirements on the use of force. The training must include education on the agency's use of force policy. This training may also include, but is not limited to:
 - (a) Defensive Tactics;
 - (b) Tactical Shooting;
 - (c) SWAT training;
 - (d) Use of force in making an arrest;
 - (e) Use of non-lethal force.

Each agency shall have a written policy and monitoring system to ensure that the standards are met.

- (4) Prior to the adoption of this Plan, the Planning Authority shall have taken steps to engage the Marion County community in a discussion regarding the purpose of the Plan, and the elements contained therein. Such steps shall include, but are not limited to general public release of the draft, discussion with the media, providing the draft to agency employees, union representatives, elected officials, and members of relevant boards or commissions.
- (5) After adoption of this Plan, to the extent they are fiscally able, each agency shall take steps to publicize the Plan to their respective communities, by providing information to the media, general public, community organizations, and quasi-governmental bodies.

Section 10: Fiscal Impact

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

Section 11: Plan Revision

The Planning Authority shall conduct a biennial review of the Plan at the conclusion of the Legislative Session. If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. If the Planning Authority adopts a revision, such revision shall be submitted for approval as provided by statute.

Section 12: Agency Policies

Agency Policies attached.