



Plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies

as mandated by Senate Bill 111,
74th Oregon Legislative Assembly

DRAFT PLAN (Version 1.11)

April 23, 2008

TABLE OF CONTENTS

Preamble	3
Explanation of Proceedings	3
Members of the Planning Authority	4
Administrative Procedures	4
Applicability of this Plan	4
Terms and Definitions	5
Section 1 — Investigative Protocol	6
Section 2 — Aftermath	7
Section 3 — Debriefing	8
Section 4 — Exercise of DA Discretion	9
Section 5 — Education, Outreach and Training	10
Section 6 — Financial Impact	12
Section 7 — Revision of the Plan	12

PREAMBLE

Law enforcement has the vitally important responsibility of protecting the public from crime. The use of deadly physical force by law enforcement personnel is a matter of critical concern to both the public and the law enforcement community. The purpose of this plan is to provide a framework for a consistent response to, and a thorough investigation of, the use of deadly physical force by law enforcement officers within Clackamas County.

This plan will not set specific standards for the use of deadly physical force in each law enforcement agency, nor will it function as a substitute for their individual policies. The goal of this plan is to maintain public confidence in the criminal justice system through open communication about deadly physical force incidents and the advancement of thorough and fair investigations.

EXPLANATION OF PROCEEDINGS

In 2007, the 74th Oregon Legislative Assembly passed Senate Bill 111, which Governor Ted Kulongoski signed into law on July 27. It requires each of Oregon's 36 counties to develop a plan addressing the use of deadly physical force by police officers.

In Clackamas County, District Attorney John Foote and Sheriff Craig Roberts convened a six-member planning authority, as prescribed by law, including: a representative of the Oregon State Police, a police chief from a local city, a representative of a local police union and a member of the public.

The planning authority has developed the following plan. As required by the Senate Bill 111, it addresses the investigation of deadly physical force incidents and their immediate aftermath, a system for gathering and reporting information about such incidents, a description of the district attorney's discretion in resolving questions of criminal responsibility, and a program of education, outreach and training for police officers, government attorneys and the public at large, as well as an estimate of the financial impact of the plan itself.

To become effective, two-thirds of the government bodies in Clackamas County with jurisdiction over a police force must approve this plan as written, along with Oregon Attorney General Hardy Meyers. The law requires final approval of this plan no later than July 1, 2008.

MEMBERS OF THE PLANNING AUTHORITY

John Foote	Co-Chair, Clackamas County District Attorney
Craig Roberts	Co-Chair, Clackamas County Sheriff
Rich Evans	Oregon State Police
Terry Timeus	West Linn Police Chief
Jeff Smith	Clackamas County Peace Officers' Association
Elaine Krause	Private Citizen

ADMINISTRATIVE PROCEDURES

- 1) In the event that a member of the planning authority becomes unavailable, 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, or any elements or revisions thereof, shall be by majority vote.
- 3) The presences of two-thirds of the voting members shall be required in order to hold any vote.
- 4) Any meeting of a quorum of the voting members of the planning authority shall be subject to Oregon's open meeting law.

APPLICABILITY OF THIS PLAN

- 1) All law enforcement agencies to which this plan applies are required to adopt a policy dealing with the use of deadly physical force. At a minimum, the policy must include guidelines for the use of deadly physical force. Each agency must adopt such a policy no later than July 1, 2008.
- 2) Having been approved as required by Senate Bill 111, 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 Clackamas County, on or after July 1, 2008.

TERMS AND DEFINITIONS

For the purposes of this plan, the following terms and definitions will be used:

Law Enforcement Agency means the Oregon Department of State Police, the Oregon Department of Justice, the district attorney's office, the sheriff's office or a municipal police department, or any other division of government that maintains a law enforcement unit.

The **Plan** is the final document, approved by the planning authority, as well as two-thirds of the governing bodies in Clackamas County having jurisdiction over law enforcement agencies and the Oregon attorney general. All revisions approved by the planning authority shall become 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, as described in ORS 161.015 (3).

Serious Physical Injury means a 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, as described in ORS 161.015 (8).

Physical Injury refers to an impairment of physical condition or substantial pain that does not rise to the standard of a "serious physical injury," as described in ORS 161.015 (7).

Police Officer means a person who is a police officer or a reserve officer as defined by ORS 181.610 and is employed by a law enforcement agency to enforce the criminal laws of Oregon.

Involved Officer means the person whose official conduct or official order to use deadly physical force was the cause in fact of the death of a person. Involved officer also means an officer whose official conduct was not the cause in fact of the death of a person, 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 1 — INVESTIGATIVE PROTOCOL

- 1) The use of deadly physical force by police officers may or may not result in a person sustaining a physical injury, a serious physical injury or death. The severity of the outcome will determine the investigative protocol to be followed in each case.
 - a) If deadly physical force is employed by an officer, but no person sustains a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, require the officer to make a report to his or her superior regarding the incident.
 - b) If deadly physical force is employed by an officer and a person sustains either a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, conduct an investigation of the incident. This section does not preclude the agency from seeking the assistance of an outside law enforcement agency in the conduct of that investigation.
- 2) Officer-involved deadly physical force incidents that result in the death of a person in Clackamas County are investigated by the Major Crimes Team, an established inter-agency working group that employs investigators from different police agencies across the county. The Clackamas County Major Crimes Team protocol provides specific details as to the makeup of the team and the conduct of such investigations.
- 3) The involvement of the Major Crimes Team automatically commits investigators from several different agencies to the case, fulfilling the Senate Bill 111 requirement that at least one officer from an outside agency be involved in the investigation.

SECTION 2 — AFTERMATH

- 1) For a minimum of 72 hours immediately following an incident in which a police officer uses deadly physical force that results in the death of a person, as defined by this plan, the law enforcement agency employing that officer shall not return the involved officer to duties that might again require them to employ deadly physical force. The agency may not reduce the involved officer's pay or benefits as a result of its compliance with this requirement.

A law enforcement agency that employs 40 or fewer police officers and complies with this requirement may be eligible for a grant to reimburse the resulting expenses from the Oregon Department of Justice.

- 2) The law enforcement agency that employs the involved officer shall pay for at least two sessions with a mental health professional that are attended by the officer. The sessions must be held within six months of the incident in which the officer was involved, and these sessions may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

The involved officer shall attend at least one of these sessions, or be subject to the suspension or revocation of his/her certification by the Department of Public Safety Standards and Training, consistent with the provisions of ORS 181.662.

SECTION 3 — DEBRIEFING

- 1) All law enforcement agencies shall, where appropriate, conduct a debriefing following the use of deadly physical force by its officers.
- 2) Following all deadly physical force incidents that result in the death of a person, the law enforcement agency employing the involved officer is required to promptly provide the following information, at a minimum, to the Oregon Department of Justice:
 - a) The name, gender, race, ethnicity and age of the decedent, and;
 - b) The date, time and location of the incident, and;
 - c) A brief description of the incident and the circumstances surrounding it.
- 3) The planning authority shall meet once each year, at a minimum, to consider the information gained from debriefings and the information submitted to the Oregon Department of Justice, as described in paragraphs 2 and 3, to revise this plan, if necessary, as described in Section 7.

SECTION 4 — EXERCISE OF DISTRICT ATTORNEY DISCRETION

- 1) When an incident occurs involving the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, the police agency shall promptly notify the District Attorney's office. Notification shall be made to the District Attorney, the Chief Deputy or the Major Crimes Team Coordinator. The District Attorney's office shall consult directly with the Major Crimes Team and the involved police agency regarding the investigation and implementation of the elements of this plan.
- 2) The District Attorney has the sole statutory and constitutional responsibility to make all decisions regarding the review of incidents involving deadly physical force by a police officer that results in death or serious physical injury. The District Attorney shall establish a clear and consistent policy for the review of incidents of the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, including the use or non-use of the Grand Jury process. Pursuant to that policy, if the District Attorney determines that a grand jury review is not appropriate, the District Attorney shall conduct a thorough review of the facts to determine if the use of deadly physical force was justified under Oregon law. The purposes of presenting an officer involved shooting case involving death to a grand jury is to determine if any criminal laws have been violated and to maintain public confidence through an independent review of the facts by an impartial body of private citizens. However, grand jury proceedings are strictly confidential and the details of the grand jury review are not to public inspection. The grand jury may only return a criminal indictment if all the evidence taken together would warrant a conviction of a specific crime by a trial jury.
- 3) Preliminary Hearings (ORS 135.070) may not be used to review an officer's use of deadly physical force. The District Attorney may order an inquest (ORS 146.135-65) to obtain a jury finding of the cause and manner of any death within the county. However, if the District Attorney determines that an inquest is appropriate, it should not be conducted until after the grand jury has conducted its hearing or the District Attorney has determined that no crimes have been committed.

SECTION 5 — EDUCATION, OUTREACH AND TRAINING

- 1) To provide for the education of police officers, government attorneys and the community regarding the use of deadly physical force by the police, as required by Section 4 of Senate Bill 111, the Clackamas County Sheriff's Office will produce and share with other law enforcement agencies within the county such materials as may be useful for this purpose, including a video presentation and accompanying written material.
 - a) Said material will be disseminated to all police officers throughout the county at a time and place each agency deems convenient, provided it occurs within 90 days of this plan's final approval by the Oregon Attorney General, or within 1 year of a new officer's date of hire.
 - b) Said material will be sent within 90 days of this plan's final approval to all attorneys employed by the county, its constituent cities, or the State of Oregon within Clackamas County, to include public defenders.
 - c) Said material will be made available to the community at large through whatever means the sheriff and other chief law enforcement officers deem appropriate and feasible, which are to include, but are not limited to:
 - i) Broadcast on cable access and, if possible, commercial television stations, and;
 - ii) Websites belonging to the Clackamas County Sheriff's Office and other law enforcement agencies, and;
 - iii) Live presentations before the board of county commissioners, as well as the city council or city commission of each constituent city, and;
 - iv) Direct distribution to public safety partners throughout the region, such as fire districts and ambulance companies, and;
 - v) Live presentations before community groups, service organizations and quasi-governmental entities, such as local Rotary Clubs, Community Planning Organizations, Clackamas Community College, and other bodies.

- d) Said material will be provided to members of the media at the Public Safety Training Center. In addition to receiving the material, reporters will be given the opportunity to use the force options simulator and any other available facilities to provide them with a “hands on” experience related to the use of deadly physical force by police officers. Furthermore, the material will be transmitted to the media on all future occasions when a deadly physical force incident occurs in Clackamas County, to provide context for the incident.
- 2) All major public outreach efforts by all of the law enforcement agencies in Clackamas County, such as the Citizens Informational Sheriff’s Academy, shall include an educational component dealing with the use of deadly physical force by police officers.

SECTION 6 — FINANCIAL IMPACT

At the conclusion of each fiscal year following the adoption of the plan, each agency shall submit to the planning authority a report outlining the fiscal element of each aspect of the plan as described in sections (a) through (e) of section 2, paragraph 4 of Senate Bill 111.

SECTION 7 — REVISION OF THE PLAN

The planning authority will meet once each year, at a minimum, to review the functioning of the plan. If revisions to the plan become advisable, the planning authority shall meet to consider such a revision. If the planning authority adopts a revision, it shall be submitted for approval as provided by statute.