



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 1.05)
February 28, 2008**

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PREAMBLE

Law enforcement has the important role of protecting the public from crime. To fulfill that responsibility, law enforcement carries the additional vitally important burden of making the decision when deadly force is necessary to protect others. The proper exercise of this responsibility further enhances the public's trust in its public safety officers. That public trust is based on open, honest communication. The purpose of this plan is to advance that open communication, thereby further enhancing public confidence in law enforcement and the criminal justice system.

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 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 proposed plan. As required by the Senate Bill 111, it addresses the investigation of deadly 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	Clackamas County District Attorney
Craig Roberts	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 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 either a police officer whose official conduct involved the use of deadly physical force against a person, or who ordered the use of deadly physical force, either in a specific incident or through an established directive, such as rules of engagement governing such incidents.

SECTION 1 — INVESTIGATIVE PROTOCOL

- 1) Deadly force incidents involving police officers in Clackamas County are investigated by the Major Crimes Team, an established inter-agency working group that employs detectives 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.
- 2) 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 force, 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 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) Following all deadly force incidents, 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.
- 2) All law enforcement agencies to which this plan applies will establish and maintain internal mechanisms to review all deadly force incidents, with the goal of making changes to training and equipment to better prepare officers for similar encounters in the future.
 - a) Law enforcement agencies shall submit the findings of these internal reviews to the planning authority, to insure that the benefits of these experiences are shared as widely as possible, and also to guide the planning authority in the development of future amendments to this plan.
 - b) Conclusions and recommendations by a law enforcement agency that result from debriefing and incident as required by Senate Bill 111 are not admissible in subsequent civil lawsuits or administrative hearings.

SECTION 4 — EXERCISE OF DISTRICT ATTORNEY DISCRETION

- 1) The district attorney shall establish a clear and consistent policy for the review of incidents involving the use of deadly force by police officers in the course of and in furtherance of their official duties. This policy shall include the use or non-use of the grand jury in that review process.
- 2) Many District Attorneys in Oregon present officer involved shooting cases to a grand jury. The ultimate goal of a grand jury presentment is to reinforce the public's confidence that there has been an independent review of the facts by an impartial body of citizens to ensure that no criminal laws have been violated. However, Oregon law provides that all grand jury proceedings are strictly secret and their proceedings cannot be disclosed to the public. Therefore, the details of the grand jury review, other than the list of witnesses, are not available to the public. The grand jury may only return a criminal indictment if all the evidence before the grand jury taken together, if unexplained or contradicted, would warrant a conviction of a specific crime(s) by a trial jury.
- 3) According to ORS 146.135 (1), the district attorney for the county in which the death occurs may order a public inquest to obtain a jury finding of the cause and manner of death. However, it is recommended that the district attorney should not conduct an inquest until after the grand jury had 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 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 30 days of a new officer's initial start date.
 - 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 force by police officers. Furthermore, the

material will be transmitted to the media on all future occasions when a deadly 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 force by police officers.

SECTION 6 — FINANCIAL IMPACT

All of the law enforcement agencies to which this plan applies shall submit, at the earliest possible opportunity, an estimate of the financial impact of its implementation to the planning authority, as required by Section 2, Paragraph 4 (f) of Senate Bill 111.