

RESPONSE TO DEADLY PHYSICAL FORCE PLAN

Policies and procedures relating to the response and investigation of the use of deadly physical force by law enforcement personnel

Douglas County
Response to Use of Deadly Physical Force
Planning Authority

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Members of the Planning Authority

Assistant District Attorney, Rick Wesenberg, co-chair
Deputy District Attorney, Deb Stoll (Non-voting Member)
Sheriff Jim Burge, co-chair
Lt. Doug Ladd, Oregon State Police
Lt. Darin Lux, Oregon State Police (Non-voting Member)
Chief Tom Boggs, Sutherlin Police Department
Detective Doug Walton, Roseburg Police Department, Labor Union Representative
Lieutenant John Hanlin, Douglas County Sheriff's Office (Non-voting Member)
Shawn Walker, Public Member – Primary
Barbara Hurtienne, Public Member – Alternate (Non-voting Member)

On February 27, 2008, this Plan was approved by a unanimous vote of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Douglas County----- Approved/Disapproved (date)
City of Myrtle Creek----- Approved/Disapproved (date)
City of Oakland----- Approved/Disapproved (date)
City of Reedsport----- Approved/Disapproved (date)
City of Roseburg-----Approved/Disapproved (date)
City of Sutherlin-- -----Approved/Disapproved (date)
City of Winston-----Approved/Disapproved (date)

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 ***. [This is made part of the document after we get the plan approved.](#)

Preamble

The use of deadly physical force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. The purpose of this Plan is not to set the standards for the use of such force, or to be a substitute for agency policy regarding use of force, but rather to provide a framework for a consistent response to an officer's use of deadly physical force that treats the law enforcement officer fairly, and promotes public confidence in the criminal justice system.

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.
- (4) Any meeting of a quorum of the voting members of the Planning Authority is subject to Oregon's open meeting law.

Section 2: Applicability of the Plan

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

Section 3: Definitions

Agency: 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. Issues related to the revision of this plan are addressed in Section 12 of this 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: Has the same meaning as “serious physical injury” as defined in 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.

Preliminary Statements: Those statements provided by involved officers to supervisors or investigators immediately after a deadly force incident related to officer safety, public safety and necessary information to secure the scene, apprehend others that may be of concern to the investigation, and provide a framework for the investigation.

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 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 may provide preliminary statements.
- (2) If the use of deadly physical force results in the physical injury, the Agency may employ its own resources to investigate and document the incident.

- (a) 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 Peace 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) As soon as practical, each Involved Peace Officer shall leave the scene, 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 the Agency's office. If requested by the Involved Peace Officer, the officer's union representative shall be notified.
- (3) As soon as practical, the duty weapon of any peace officer who fired their weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate.
- (4) Interview of an "Involved Peace Officer":

As used in this section "interview" refers to formal interview of the officer by assigned investigative personnel that occurs within a reasonable time period 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 applied deadly physical force that resulted 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 preliminary statement with the officer to assess and make an initial evaluation of the incident.
- (5) For at least 72 hours immediately following an incident in which the use of deadly physical force by a peace officer resulted in the death of a person, a law

enforcement agency may not return an Involved Peace Officer to duties that might place the officer in a situation in which the officer has to use deadly force.

- (a) Officer(s) involved in applying deadly physical force that results in death or serious physical injury shall immediately be placed on paid 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.
- (6) In the 6 months following a use of deadly physical force incident that results in a death, the Agency shall offer each Involved Peace 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.
- (7) As soon as practical and 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.
- (8) As soon as practical after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 8 (1) of this Plan.
- (a) This provision does not prevent the Agency from requiring additional notification requirements within their respective agency policies.
- (9) In the event of a use of deadly force that results in death or serious physical injury, the investigation shall be conducted by the Douglas County Major Crimes Investigation Unit (MCIU). A written agreement shall be adopted and approved by each jurisdiction employing a law enforcement agency. At a minimum the agreement shall provide for:
- (a) A mission and scope statement
 - (b) Authority and supervision
 - (c) Administration

- (d) Operations
 - (e) The assignment of at least one officer from an agency other than the involved officer's agency.
 - (f) The assignment of at least one officer from the involved officer's agency.
- (10) The Agency shall designate a representative to make an initial public statement about the incident. Such statement shall include:
- (a) The time and place of the incident.
 - (b) The condition of any suspect.
 - (c) The nature of the use of deadly physical force.
- (11) Prior to a final determination being made by the District Attorney, the District Attorney and the primary investigative agency shall consult with each other and make a public release of information as is deemed appropriate.

Section 6: Primary Investigative Agency

- (1) After consulting with the District Attorney, the Agency shall decide what law enforcement agency will be the primary investigating agency. In the event that the involved officer's own agency will be the primary investigating agency, and the incident resulted in a death, the Agency will promptly make arrangements for at least one investigator from outside the Agency to participate in the investigation.
- (a) In the event that a use of deadly physical force resulting in death or serious physical injury involves officers from multiple jurisdictions, the District Attorney and each involved agency shall consult and agree upon a primary investigative agency.

Section 7: Investigation Protocols

- (1) The investigation, at a minimum, shall consist of:
- (a) Eyewitness interviews.

- (b) Evidence collection.
 - (c) Scene documentation.
 - (d) Background interviews.
 - (e) Involved Officer interview(s).
- (2) The investigation shall be documented in written reports.
- (a) All written reports shall be filed with the investigator's agency, and copies provided to the lead investigative agency, and the Involved Officer's agency.
 - (b) All police reports shall be promptly provided to the District Attorney.

Section 8: District Attorney

- (1) When an incident of the use of deadly physical force by a peace officer occurs, and death or serious physical injury results, the agency shall, as soon as practicable, notify the District Attorney's Office.
- (a) Notification shall be made to the District Attorney, Chief Deputy, or other senior member of the District Attorney's staff.
- (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 and implementation of the 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) Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly force.
 - (b) The District Attorney will consult with the investigating agency and make the decision on whether to present the case to a Grand Jury.
 - (1) The timing of the decision will be made by the District Attorney at such time as he has determined that sufficient information is available to competently make the decision.

- (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's representative.
- (4) If the use of deadly physical force results in physical injury to someone other than a police officer, upon completion of the investigation, all investigative information shall be forwarded to the District Attorney for review.

Section 9: Debriefing and Reporting

- (1) Upon a final determination by the District Attorney, the Agency shall conduct an internal review of the matter according to Agency policy. Such review, at a minimum, shall include a review of the incident with the involved officer.
- (2) Upon the conclusion of the investigation, the announcement by the District Attorney pursuant to Section 8 (3), and the debriefing, the Agency shall complete and submit a report to the Attorney General's Office regarding the use of force as described in Section 5 (6) of Senate Bill 111, Oregon Laws 2007.

Section 10: Training, Outreach

- (1) Each law enforcement agency within Douglas County shall include in its policy regarding the use of deadly force, a provision regarding engaging members of the community in a discussion regarding the Agency's policies on the use of deadly force, as well as discussions regarding the use of deadly force by the Agency's personnel.
- (2) Each law enforcement agency within Douglas County shall make available a copy of this Plan to every officer in the local work site, and provide training to officers on the implementation of the plan.

Section 11: Fiscal Impact

- (1) 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 section (a) to (e) of Section 2 (4) of Senate Bill 111, Oregon Laws 2007.

Section 12: Plan Revision

- (1) Beginning January 1, 2009, and each year thereafter, the Planning Authority shall meet at least once to review and discuss the operation of the Plan.
- (2) 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.

APPENDICES

APPENDIX A

DOUGLAS COUNTY MAJOR CRIMES INVESTIGATION UNIT DOUGLAS COUNTY

Experience has demonstrated that a well-trained criminal investigations team, properly staffed coordinated and equipped, will have greater successes in the investigation and prosecution of major cases. Special teams are particularly suited to handle large or complex criminal incidents. They also have a distinct advantage investigating serial offenses. Their collective expertise helps ensure the evidence which is gathered and presented meets the rigorous standards of judicial process.

The relatively small size of individual agencies within Douglas County and the fiscal restraints under which they operate have meant that agencies faced with major crimes have encountered resources problems in these investigations. At the present time, no agency in the county has the ability to assign more than a few investigators to such crimes without diverting significant resources from pending investigations or patrol units.

The team concept has been accepted and endorsed by police agencies throughout Douglas County. The chiefs/administrators of the Myrtle Creek, Oakland, Reedsport, Roseburg, Sutherlin, and Winston Police Departments, Douglas County Sheriff's Office (DCSO) and Oregon State Police (OSP) have agreed to establish and maintain an interagency major crimes investigation unit. Hereinafter, the team shall be referred to as the Major Crimes Investigation Unit (MCIU). The Douglas County District Attorney's Office has a critical advisory and prosecutorial role and with the Douglas County Medical Examiner, have ultimate statutory authority in death investigations (ORS 146.090 – 146.100). They, therefore, are cosigners to this agreement.

The MCIU will be staffed with experienced investigators from participating agencies. Each agency shall be responsible for the selection of personnel assigned to the MCIU. Specialized training in the area of major case investigation will be encouraged with the financial and logistical support of participating agencies.

I. MISSION AND SCOPE

The mission of the MCIU shall be the cooperative investigation of most deaths by homicide or those of suspicious circumstances, for which its services are requested. The MCIU will also be available, on a case-by-case basis, for investigation of other major crimes when the required threshold for activation has been met. This could include serial sexual assaults, serial armed robberies, or other high profile or complex investigations. The MCIU will be activated to investigate all police officer involved deadly physical force incidents that result in death or serious physical injury.

II. DEFINITIONS

Agency of Jurisdiction – shall be the agency having primary responsibility for provision of law enforcement services within recognized geographic boundaries.

Participating Agency – a cosigner to this agreement.

Case Officer – investigator assigned to assume case investigation responsibility.

Threshold of Activation – scope or complexity of an investigation(s) requiring resources which exceed those of the agency of jurisdiction. Decision to activate will be by mutual consent.

III. AUTHORITY AND SUPERVISION

All MCIU investigations shall be conducted under authority of the chief/administrator of the agency of jurisdiction. Direct supervision for a specific case will be the responsibility of the designated supervisor and the case officer.

IV. ADMINISTRATION

4.1 Agency of Jurisdiction Responsibility

4.1.1 Provide all assistance requested by the MCIU per this agreement

4.1.2 Be responsible for the satisfactory completion of the investigation whether completed by the MCIU or its own investigative team after the MCIU is released

4.2 Participating Agency Responsibility

4.2.1 Members shall be full time sworn police personnel and experienced investigators as designated by the member's respective agency.

4.2.2 Members will be normally expected to attend all training sessions and meetings.

4.2.3 All salaries, benefits, and overtime/compensatory time for MCIU members shall be the responsibility of the member's respective agency.

V. OPERATIONS

5.1 MCIU Deployment

5.1.1 The Agency of Primary Responsibility is that agency in whose jurisdiction a crime occurred. A supervisor of the agency of Primary Responsibility shall designate a case officer.

5.1.2 The decision to active the MCIU shall be made by the agency of primary responsibility in consultation with the District Attorney or his designee or by the District Attorney or his designee.

5.1.3 In all investigations regarding crimes committed within the city limits of the 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 member agencies, the agency of jurisdiction will be the agency of primary responsibility. The Douglas County Sheriff's Office holds jurisdiction for crimes in the county while the Oregon State Police holds jurisdiction for crimes on state highways, interstates and state owned buildings. Exceptions regarding the assignment of primary responsibility could be made through mutual consent or at the direction of the District Attorney's Office.

5.1.4 By mutual consent between the appropriate participating agencies, another participating agency may be designated as the agency of primary responsibility.

5.1.5 A supervisor from each participating agency shall be responsible for the deployment of their personnel.

5.1.6 In the event of a deadly force investigation that results in death or serious physical injury:

5.1.6.1 At least one officer from an agency other than the involved officer's agency will be assigned to the MCIU investigation team.

5.1.6.2 At least one officer from the involved officer's agency will be assigned to the MCIU investigation team.

5.2 Agency of Jurisdiction Responsibility

5.2.1 The agency of jurisdiction's supervisor will cause the identification and documentation of witnesses and emergency response personnel until MCIU arrives.

5.2.2 The supervisor will ensure the crime scene is protected until it is released.

5.2.3 Any requests for additional resources (i.e., tow truck, mortuary or special equipment, etc.) will be made after consultation with the agency of jurisdiction.

5.2.4 Seized evidence will be appropriately processed at the direction of the case officer.

5.2.5 Media relations will be the responsibility of the agency of jurisdiction. Press releases will be coordinated with the MCIU and when feasible reviewed by the District Attorney's office.

5.2.6 All follow-up investigations, background and interviews requiring out-of-county or state travel will be coordinated with the agency of jurisdiction.

5.2.7 Administrative needs (e.g., interagency liaison, logistical support, etc.) shall be handled by personnel assigned by the agency of jurisdiction.

5.2.8 The agency of jurisdiction will be responsible for the satisfactory completion of the investigation whether by the MCIU or its own personnel after the MCIU is released.

5.3 MCIU Responsibility

5.3.1 The District Attorney's Office will be contacted as soon as practical and will designate an assigned deputy. The District

Attorney or his designate shall assist the MCIU by providing legal advice upon request or otherwise may be required. The District Attorney or his designate may request meetings of the MCIU as deemed necessary to discuss issues, procedures, or particular cases.

5.3.2 The designated supervisor shall assign a case officer.

5.3.3 The case officer shall be responsible for maintaining the case book. The assigned deputy D.A. will be provided a duplicate case book upon completion.

5.3.4 The case officer will consult with the assigned deputy D.A. and representative of the Douglas County Medical Examiner's Office when requesting and scheduling a pathologist for postmortem examinations. Requests for specialized examination/consultation should be reviewed by the assigned deputy D.A. and medical examiner.

5.3.5 Each MCIU member shall be responsible for timely completion of reports and submission of evidence. The member will also ensure copies of all reports are forwarded to the case officer.

5.3.6 The agency of jurisdiction's supervisor/administrator and designated supervisor shall attempt to minimize the impact of overtime/compensatory time.

5.3.7 MCIU members shall be accountable to their respective agency's supervisor/administrator for their performance, activities and conduct while engaged in an MCIU deployment.

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Jim Burge, Sheriff
Douglas County Sheriff's Office
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Doug Ladd, Lieutenant
Oregon State Police, Roseburg
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Mark Nickel, Chief
Roseburg Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Don Brown, Chief
Myrtle Creek Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Scott Gugel, Chief
Winston Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Tom Boggs, Chief
Sutherlin Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Shawn Essex, Chief
Reedsport Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Larry Henry, Chief
Oakland Police Department
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Jennifer Gall
Douglas County Chief Deputy Medical Examiner
Date: _____

VI. AGENCY SUPERVISOR/ADMINISTRATOR

I have reviewed this document and am in agreement with its contents. My signature below indicates my agency's support and participation in this endeavor as outlined in this document.

Jack Banta
Douglas County District Attorney
Date: _____