

DEADLY PHYSICAL FORCE PLAN



Lincoln County
Use of Deadly Physical Force
Planning Authority

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Members of the Planning Authority

Bernice Barnett, Lincoln County District Attorney (co-chair)
Dennis Dotson, Lincoln County Sheriff (co-chair)
Lieutenant Kelly Collins, Oregon State Police
Chief Steven Bechard, Lincoln City Police Department
Deputy Jason Kurtz, Labor Union Representative
Georgia Newton, Public Member

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

Lincoln County ----- Approved (03/26/08)

City of Lincoln City ----- Approved (03/10/08)

City of Newport ----- Approved (03/07/08)

City of Toledo ----- Approved (04/02/08)

Upon receiving the required minimum vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General on April 4, 2008. A letter dated May 12, 2008 from the AG's Office advises that the Plan was 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 police officer acting in the course of and in furtherance of his/her official duties, occurring within Lincoln 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.

<i>Deadly - Physical Force</i>	Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury in ORS 161.015(3).
<i>Serious-Physical Injury</i>	Means physical injury which creates a substantial risk of death or which causes serious and protracted impairment of health or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. ORS 161.015 (8)
<i>Physical-Injury</i>	Means impairment of physical condition or substantial pain. ORS 161.015(7).
<i>Involved-Officer</i>	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 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) If the use of deadly physical force results in physical injury, the Lincoln County Major Crime Team (MCT) will 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 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 practicable, each Involved 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 offices. The officer's association representative shall be notified.

As soon as practicable, the duty weapon of any officer who fired their weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate.

- (3) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain a preliminary statement from the involved officer as soon as possible. The purpose in obtaining this statement will be to obtain public safety information (e.g. outstanding suspects, location of evidence, direction of travel, etc.).
 - (a) The scene shall be secured and managed consistent with the control of any other major crime scene.
 - (b) Only personnel necessary to conduct the investigation shall be permitted access to the scene.
 - (c) When it is determined that no evidence will be contaminated or destroyed, by the on-scene supervisor or MCT, the officer (s) involved and, if utilized, their association representative, may assist in the investigation.
- (4) As soon as practicable after the arrival of a supervisor, 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.

- (5) After consultation with the involved officer, the Agency or officer may notify the officer's family according to the Agency's General Order, or other policy regarding such notification.

(6) 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) whose use of deadly physical 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 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 conversation with the officer to assess and make an initial evaluation of the incident.
 - (c) At the request of the MCT, and if utilized, their association representative,
- (7) 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 that Officer (s) to duties that might place the officer in a situation in which the officer has to use deadly force.
- (a) 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 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 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, at Agency expense or at no cost to the involved officer.
- (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) At agency expense and officer (s) option, the involved officer (s) family members shall be given a minimum of 2 counseling sessions.

- (c) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.
- (9) After consultation with the involved officer, the Agency or officer may notify the officer's family according to the Agency's General Order, or other policy regarding such notification.
- (10) In the event of a use of deadly force that results in death or serious physical injury, the investigation shall be conducted by the MCT.

The following will be determined by the MCT:

- (a) Who will be the supervisor of the investigating officers, and the manner in which conflicts of interest will be resolved.
 - i. The supervisor will not be a member of the involved officer's agency.
 - (b) Training of the members in the investigation of use of deadly force incidents.
- (11) In the event that a conflict exists in the use of the MCT, the Involved Officer's Agency and the District Attorney shall consult and determine the appropriate manner in which the investigation will proceed.
 - (12) The assignment of outside investigative personnel does not preclude the agency involved from conducting a concurrent independent investigation for administrative purposes as established by that agency. Such investigations may be necessary for civil preparation, determination of policy violations or training issues. The results of the Agency investigation will not be presented in public releases.
 - (13) In order to preserve the integrity of the investigation and prosecution, if one occurs, 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, and the Agencies internal investigation is concluded. The officer (s) shall be notified to refrain from discussing the incident with any other involved officer(s).
 - (a) Public discussion by Agency members of the incident beyond what has been officially released by the Agency to the media is not allowed without authorization from the Agency head.
 - (b) General briefing information will be provided by supervisors. Detailed discussion and conjecture will be avoided until an appropriate time provided by the critique.

- (14) 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.
- (15) 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: 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 lead MCT investigator's agency, and copies provided to the MCT, and the Involved Officer's agency.
 - (b) All police reports shall be provided to 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, 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/her staff will consult with the agency regarding the investigation and implementation of the other 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/she 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 MCT, the involved officer's agency, and the involved officer's representative.
 - (d) If the District Attorney decides that the investigation reveals that the officer's use of deadly force was justified under Oregon law, and that Grand Jury review is unnecessary, the District Attorney shall so notify the Agency, the involved officer, the involved officer's representative, and the public.
- (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 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 procedures 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.
- (2) If the incident is of such a magnitude that agency-wide morale is implicated, the Agency shall take such steps as it deems necessary to ensure professional police services are provided, and to develop strategies to restore morale.
- (3) Each agency shall provide for a process for any officer who makes a request, all involved personnel the ability to participate in a critical incident debriefing.
- (4) 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: Reporting, training, outreach

- (1) Each law enforcement agency within Lincoln 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 Lincoln County shall provide a copy of this Plan to every officer, incorporate the plan into agency policy documents and provide training to officers on the implementation of the plan.
- (3) Upon the conclusion of the investigation, the announcement by the District Attorney pursuant to Section 8 (1) of this 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.
- (4) The Board and Department of Public Safety Standards and Training requires eight hours per year, 24 hours over a three-year period of training from either the firearms" or "use of force" subject areas. Each agency subject to this Plan shall require that a minimum of four hours per year, 12 hours over a three-year period, of that training be on the use of force. The training must include education on that 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.

- (5) Upon 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.
- (6) At least once per calendar year, the Agencies subject to this Plan shall collectively conduct a seminar intended to educate the media and selected members of the Lincoln County community in the use of force by law enforcement officers and the investigation of such incidents.
- (7) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Lincoln 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 association representatives, elected officials, and members of relevant boards or commissions.

Section 10: 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 sections (a) to (e) of Section 2 (4) of Senate Bill 111, Oregon Laws 2006.

Section 11: Plan Revision

- (1) As provided in the MCT written agreement, the Planning Authority shall meet to review and discuss the operation of the Plan and the MCT.

- (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.

Section 12: Agency Policies

After adoption of the plan each Agency will inform and direct their employees to comply with the Deadly Physical Force Plan. The Major Crime Team will review and adopt protocols consistent with the plan.

Law enforcement agencies will post this plan on their respective websites to allow citizens and the members of the media the opportunity to review the plan at their convenience.

Participating agencies may elect to distribute printed material within their respective jurisdictions explaining the plan.

Once each year, the requirements of Section 9 (1) and (6) will be met during a regularly scheduled meeting of the Lincoln County Board of Commissioners. The Deadly Physical Force Plan will be placed on the BOC agenda. The public and media representatives attend BOC meetings in addition to the meetings being video recorded and broadcast on local cable throughout the county. The BOC also provides time for public comment on agenda items.