

DEADLY PHYSICAL FORCE PLAN

Baker County
Use of Deadly Physical Force
Planning Authority

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**BAKER COUNTY DEADLY PHYSICAL FORCE PLANNING
AUTHORITY**

Members: Matt Shirtcliff, Baker County District Attorney, Mitch Southwick, Baker County Sheriff, Wyn Lohner, Baker City Police Chief, Ray Duman, Oregon State Police Lieutenant

Co-Chairs: District Attorney Matt Shirtcliff and Sheriff Mitch Southwick

Citizen Member: Cory Parsons

Line Officer: Tracy Howard

On February 7, 2008, the Plan was approved by all members of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Baker County.....Approved on May 21, 2008

City of Baker City.....Approved on June 16, 2008

Upon receiving a vote of approval from all of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on _____, 2008.

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 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 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 Baker 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	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 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 or 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 should immediately take whatever steps are reasonable and necessary to protect their own safety, and any member of the public.
 - (a) After taking such steps, the Officer should notify his/her agency of the use of deadly physical force.
 - (b) Thereafter, the Officer, if able, should take such steps as reasonably necessary, to preserve the integrity of the scene, and to preserve the evidence.
 - (c) Upon request, the Officer may provide a preliminary statement.

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/her supervisor, and be offered an opportunity for a medical examination. If the Officer is not in need of medical treatment, the Officer should be taken to the his/her agency office. If requested by the involved Officer, the officer's union representative shall be notified.
- (3) 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.
- (4) Interview of an "Involved Officer":

As used in this section, "interview" refers to the formal interview of the Officer by assigned investigative personnel that occurs after a reasonable time from 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) involved in the use of a deadly physical force 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 forty-eight 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 to 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.

- (5) For at least seventy-two 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 may have to use deadly force.
 - (a) Officer (s) involved in the use of 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 six months following the use of a 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) 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 practicable, 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.
- (8) In the event of the use of a deadly force incident the investigation shall be conducted by the Baker County Major Crime Team. The Interagency Baker County Major Crime Team Agreement will be attached to this plan.
- (9) In the event that a conflict exists in the use of the Team, the involved Officer's agency and the District Attorney shall consult and determine the appropriate manner in which the investigation will proceed.
- (10) 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.
- (11) In order to preserve the integrity of the investigation and prosecution, the scene supervisor and investigative supervisor shall notify all involved Officer's 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.

- (12) The agency shall designate a representative to make an initial public statement about the incident. Such statements shall include:
 - (a) The time and place of the incident.
 - (b) The condition of the suspect.
 - (c) The nature of the use of deadly physical force.
- (13) The District Attorney will make a public release of information as is deemed appropriate.

Section 6: Investigative Protocols

Investigative assignments including Incident Commander, Team Supervisor and Lead Investigator will be determined at the scene by Supervisors in conjunction with the District Attorney per Major Crime Team protocol. The Lead Detective (Investigator) or Co-Lead will be from an agency other than the agency of the involved Officer. One or more investigators from the involved Officer's agency will be assigned to assist in the investigation.

- (1) The Incident Commander shall ensure that the investigation, at a minimum, consists 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 investigator's agency, and copies provided to the team 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 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 other elements of this plan.
- (3) The District Attorney has the sole statutory and constitutional duty to make the decision if 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 Major Crime Team Supervisor 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 Major Crime Team Supervisor, 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

- (1) Upon 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 by 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.

Section 9: Training, and Outreach

- (1) Each law enforcement agency within Baker 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 Baker County shall provide a copy of this plan to every officer, and provide training to officers on the implementation of the plan.

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 Team written agreement, the Planning Authority shall meet to review and discuss the operation of the Plan and the Team.
- (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.