

Approved
4/13/08
PDS

CURRY COUNTY DEADLY PHYSICAL FORCE PLAN

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


Curry County
Use of Deadly Physical Force
Planning Authority

Table of Contents


| | |
|--|----|
| MEMBERS OF THE PLANNING AUTHORITY | 3 |
| PREAMBLE | 4 |
| SECTION 1: ADMINISTRATION | 4 |
| SECTION 2: APPLICABILITY OF THE PLAN | 4 |
| SECTION 3: DEFINITIONS | 4 |
| SECTION 4: IMMEDIATE AFTERMATH | 5 |
| SECTION 5: SERIOUS PHYSICAL INJURY/DEATH and PRIMARY INVESTIGATIVE AGENCY | 6 |
| SECTION 6: INVESTIGATION PROTOCOLS | 9 |
| SECTION 7: DISTRICT ATTORNEY | 9 |
| SECTION 8: DEBRIEFING AND REPORTING | 10 |
| SECTION 9: TRAINING, OUTREACH | 11 |
| SECTION 10: FISCAL IMPACT | 12 |
| SECTION 11: PLAN REVISION | 12 |
| SECTION 12: EXHIBITS | 12 |

Members of the Planning Authority:

Voting Members:

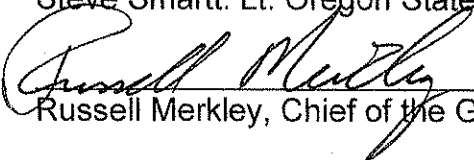


Everett Dial, Curry County District Attorney, (co-chair) 3/20/08
Date



Allen Boice, Curry County Sheriff, (co-chair) 032008
Date

Steve Smartt, Lt. Oregon State Police, Date



Russell Merkley, Chief of the Gold Beach Police Department 3/20/08
Date

Joel Hensley, Labor Union Representative, Curry County Deputy Sheriff Date

Robert Wiechers, Public Member, Date

Non Voting Member:

Date

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

Curry County -----Approved Date: 03/17/08

City of Brookings-----Approved Date: _____

City of Gold Beach-----Approved Date: 03/10/08

City of Port Orford-----Approved Date: 03/18/08

This plan has also been approved by the Oregon State Police

Date

Upon receiving a vote of approval from two -thirds 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

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 Curry 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. This includes, but is not limited to, all use of physical force by a peace officer which causes death or serious physical injury to another person. It does not include the use of Tasers unless serious physical injury or death results. Nor does it include the drawing of a service firearm by a peace officer unless the firearm is fired towards another person.

Serious Physical Injury: Serious physical injury means 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.

Lead Investigator: Means the officer from the Major Crime Team in charge of investigating the use of deadly force incident.

Major Crime Team: The Major Crime Team means members of the Major Crime Team and/or their designees. See Exhibit a.

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 resulted in the use of deadly force. "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.

Outside Agency: Means a police agency other than the agency for which the Involved Officer worked.

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. The agency shall then immediately notify the members of the Major Crime Team of the incident.
 - (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 to the responding officers as is necessary to protect persons and property, preserve any evidence, and provide a framework for the investigation.
- (2) If the use of deadly force results in physical injury or death then the Agency may initially employ its own resources to investigate and document the incident only until such time that the protocols outlined in Section 6 shall be employed. The use of deadly force protocols shall be employed as quickly as possible.
- (3) In cases where an officer's use of force resulted in the death of a person the agency shall collect the following information and submit said information to the Department of Justice. The information shall include but not be limited to: 1. The name, gender, race, ethnicity and age of the decedent. 2. The date, time and location of the incident. 3. A brief description of the circumstances surrounding the incident.
- (4) Nothing in this section shall limit an officer's constitutional rights should he decide to invoke them.

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's 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 Involved Officer who fired his/her weapon shall be seized by investigators, and replaced with a substitute weapon which will be supplied by the officer's agency, if appropriate. Further, the weapons of all other officers who were at the scene of the incident at the time of the incident shall have their weapon 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 a 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 discharged a firearm during a use of deadly physical force incident 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.

(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.

(c) The first "not involved" peace officer to arrive at the scene of the incident shall take immediate action to stabilize the situation, ensure notification of the involved officer(s) agencies and of the Major Crime Team, 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.).

(d) 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 Involved Officer may participate in a "walk through" to assist in the investigation and shall be allowed to have his companion officer or representative accompany him.

- (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, and/or serious physical injury to 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 has to use deadly force.
- (6) In the 6 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.

- (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) After consultation with the Involved Officer, the agency or officer shall notify the officer's family upon the officer's request pursuant to the agency's policy.
- (8) In order to preserve the integrity of the investigation the Lead Investigator and the scene 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 criminal responsibility of all involved persons.
- (9) As soon as practicable notification shall be made to all members of the Major Crime Team. The Major Crime Team shall conduct the investigation of all use of deadly force incidents. Should the Major Crime Team member or designee not be available to respond then the investigative team shall consist of those member's or designee's who are available to respond to the scene.
 - (a) After consulting with the Major Crime Team the District Attorney or his designee shall assign a lead investigator from the Major Crime Team. Unless forbidden by statute or agency policy the District Attorney shall appoint a lead investigator from an "outside agency". In incidents where a lead investigator is not from an outside agency at least one police officer from a outside agency shall be involved in the investigation.
 - (b) The lead investigator shall use members of the Major Crime Team to investigate the incident and may request other law enforcement assistance as he/she deems appropriate.
- (10) The District Attorney or his designee shall make an initial public statement about the incident when appropriate. 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 of the incident being made by the District Attorney, or his designee the District Attorney, the Lead Investigator, and the head of the Agency of the Involved Officer shall consult with each other and make any additional 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.

Copies of all police reports and other relevant documents shall be filed with the Lead Investigator's agency. The lead investigator shall compile the reports and present a copy to the District Attorney and to the Involved Officer's agency.

Section 7: 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, or to the Senior Deputy District Attorney should the District Attorney not be available.
- (2) 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) Neither Inquests nor Preliminary Hearings will 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. 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.

(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.

- (3) 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.
- (4) At any time following the use of deadly physical force should the District Attorney believe that a legal or ethical conflict of interest exists then the District Attorney shall request that an outside District Attorney or an attorney from the Attorney Generals Office assume the District Attorney's responsibilities in the investigation. Such an attorney is considered the District Attorney's designee for the purpose of this Plan.

Section 8: Debriefing and Reporting

The use of deadly physical force by an officer has the potential to create strong emotional reactions that 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 a procedure 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 according to Agency policy. Such review, at a minimum, shall include a review of the incident by 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, to participate in a critical incident debriefing.
- (4) If available, agencies should encourage officers to take advantage of available 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.
- (5) 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: Education, Training, Outreach

- (1) Each law enforcement agency within Curry County should include in its policy regarding the use of deadly force, a provision regarding engaging members of the community in a discussion about the Agency's policies on the use of deadly force.
- (2) Each law enforcement agency within Curry County shall make available a copy of this Plan to every officer, and provide training to officers on the implementation of the Plan.
- (3) The Board and Department of Public Safety Standards and Training requires 8 hours per year, 24 hours over a 3 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 4 hours per year, 12 hours over a 3 year period of that training be on the use of force. The training must include education on the agency's use of force policy and may also include but is not limited to: defensive tactics, tactical shooting, SWAT training, use of force in making an arrest, and use of non-lethal force.
- (4) 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 Curry County community in the use of force by law enforcement officers, and the investigation of such incidents.
- (5) Prior to submitting this Plan to the governing bodies in Curry County the Planning Authority shall conduct at least on public hearing on the plan.

- (6) The Planning Authority shall also take steps for the purpose of outreach and education including but not limited to releasing a draft of the plan to the general public, discussing a draft of the plan with the media, providing a draft of the plan to: agency employees, union representatives, elected officials, board members and commission members.

At least once a calendar year the planning authority and/or law enforcement agencies within the county shall engage in education, outreach and training for attorneys employed by state or local government within the County, for members of the public for the media and for police officers

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. The District Attorney or the Sheriff shall be the administrator of the plan.

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.

Section 13: EXHIBITS:

The following exhibits are attached hereto and by this reference incorporated herein.

- a. The Curry County Major Crime Team Protocols
- b. Port Orford Police Department Use of Deadly Force Guidelines
- c. Gold Beach Police Department Use of Deadly Force Guidelines
- d. Brookings Police Department Use of Deadly Force Guidelines
- e. Oregon State Police Department Use of Deadly Force Guidelines
- f. Curry County Sheriff's Office Use of Deadly Force Guidelines

Exhibit "a"

Preamble

Curry County Major Crime Team

The purpose of the Curry County Major Crime Team shall be to investigate homicides and other major crimes and, to investigate incidents involving the use of deadly force by peace officers, as a cooperative effort among law enforcement agencies in Curry County. The agencies, by this agreement have pledged to cooperate in investigations inside and outside of their local jurisdiction.

This protocol represents an agreement among participating agencies concerning the manner in which major crimes and use of deadly force incidents are investigated. It is anticipated that each incident involves unique circumstances, and flexibility must be allowed for minor modifications. This protocol, which is neither statute, ordinance nor regulation, is not intended to increase the civil or criminal liability of member agencies or their employees, and it shall not be construed as creating any mandatory obligations to, or on behalf of third parties.

CURRY COUNTY CRIME TEAM AGREEMENT

PROTOCOLS:

I. MAJOR CRIME TEAM

- A. The Major Crime Team, (hereinafter referred to as the Team) will consist of law enforcement officers selected by each participating agency administrator.
- B. The Team shall be under the joint direction of the agency of primary responsibility or its designee and the District Attorney or his designee; except in use of deadly force incidents where the District Attorney shall make the decision according to the Curry County Deadly Physical Force Plan.
- C. Determination to call for assistance from the Team shall remain with the agency of primary responsibility or the District Attorney. The Team shall be called by the initial responding agency or the District Attorney to investigate all homicides and all use of deadly force by a peace officer incidents. Responding agencies are strongly encouraged to call the Team to investigate instances of major sexual assault and automobile fatalities.
- D. The Team may use OSP Crime Lab and I.D. Bureau, and other outside law enforcement organizations and resources where appropriate.
- E. Copies of all reports will be submitted immediately to the lead investigator. The lead investigator shall keep the District Attorney apprised of the investigation and shall prepare a compilation of the reports for the District Attorney and for the involved agency.
- F. The Team members will attend training seminars, as available, and will provide their assistance as instructors in local training programs.
- G. The Team shall consist of the District Attorney and the agency administrators below and/or their designees.
- H. The Team member or his designee for the agency of primary responsibility shall be the lead investigator. Except in the use of deadly force incidents where the District Attorney shall designate the lead investigator pursuant to the protocols of the Curry County Deadly Physical Force Plan.

II Agency of Primary Responsibility

- A. Each agency shall be responsible for expenses incurred by their own members and only those members during the course of the investigation.
- B. In all major crime investigations inside city limits, the appropriate City Police agency shall be the agency of primary responsibility.

The Oregon State Police shall be the agency of primary responsibility for all motor vehicle crashes and all crimes occurring in or on State Parks, State Highways, or other State properties except when the Park, Highway or property is within a city limit.

The Sheriff's Department shall be the agency of primary responsibility for all major crimes which occur outside of the city limits and which are not within the primary responsibility of the Oregon State Police.

III Press Release

- A. All press releases shall be the joint responsibility of the agency of primary responsibility and the District Attorney.

IV. Evidence:

- A. The agency of primary responsibility shall arrange for storage and control of evidence in conformity with their established property control procedures. The lead investigator or his/her designee shall supervise the collection of evidence.
- B. Copies of property report forms must be included with the investigation reports.

The undersigned agency administrators are the members of the Curry County Major Crime Team. Additionally, any person they designate shall be a member of the team for the purpose of a specific investigation. By their signatures the administrators below pledge to cooperate in investigations inside and outside of their local jurisdictions, within the parameters of the Major Crime Team protocols above.



Mark Creighton,
Port Orford Chief of Police

3-20-08

Date



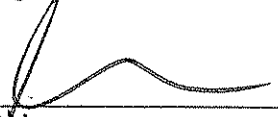
Russ Merkley,
Gold Beach Chief of Police

3/20/08

Date

Chris Wallace,
Brookings Chief of Police

Date



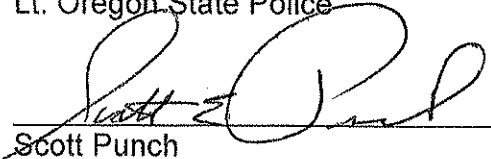
Allen Boice
Curry County Sheriff

032008

Date

Steve Smartt,
Lt. Oregon State Police


Date



Scott Punch
Sgt. Oregon State Police

3-20-08

Date



Everett Dial,
Curry County District Attorney

03/20/08

Date