

JEFFERSON COUNTY

USE OF DEADLY PHYSICAL FORCE PLAN

**Jefferson County
Use of Deadly Physical Force
Planning Authority**

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Members of the Planning Authority

Co-chair – Peter Deuel – Jefferson County DA
Co-chair – Sheriff Jack Jones
Chief Tom Adams – City of Madras Police Department
Sergeant Tom Kipp – Oregon State Police
Detective Tanner Stanfill – Madras Police Department (Labor Union Representative)
Patty Lieuallen - Citizen

On February 29, 2008, this Plan was approved by unanimous vote of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Jefferson County----- Approved: May 7, 2008
City of Madras----- Approved: May 13, 2008
City of Culver ----- Approved: May 19, 2008
City of Metolius ----- Approved: May 5, 2008



Sheriff Jack E. Jones
Co-chair



District Attorney Peter L. Deuel
Co-chair

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, that results in a death of a person, by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Jefferson County.

Section 3: Definitions

Parent Agency - Means the law enforcement organization or organizations employing the involved officer or officers.

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.

Police Officer-	Means a police officer or reserve officer as defined in ORS 181.610 who is employed by a law enforcement agency to enforce the criminal laws of the State of Oregon.
Law Enforcement-Agency	Means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon and a municipal corporation of the State of Oregon, that maintains a law enforcement unit as defined in ORS 181.610 (12) (a) (A).
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	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.
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.
LEA of-Primary Responsibility	Means the agency with jurisdictional authority where an officer involved incident takes place, however, it may or may not be the parent agency for involved officer(s). The Law Enforcement Agency (LEA) of Primary Responsibility may relinquish the role upon consultation with the District Attorney and agreement from another agency to assume the role.

Section 4: Immediate Aftermath

- (1) When an officer uses deadly physical force that results in a death of a person, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety of any member of the public and of the officer.
 - (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) Upon arrival at the scene, the Supervisor shall:
- (A) Assess the scene,
 - (B) Initiate the Tri-County Major Incident Team, per our MOU,
 - (C) Continue to maintain scene security, protect evidence and witnesses,
 - (D) Notify the DA, Sheriff or, if in the incorporated city limits, the Police Chief,
 - (E) Inform the officer that he/she will have a weapon exchange, be placed on light duty where there is no risk of them needing to use deadly force, or placed on administrative leave with pay pending the outcome of the investigation.
 - (F) If requested by the officer involved, notify a trained co-worker or union representative to be there for the officer involved.
 - (G) Ensure the involved officer is comfortable, has access to liquids, has the ability to attend to personal needs and has the opportunity to contact family members.
 - (H) Brief the Major Incident Team upon arrival and transfer Incident Command as determined by the Major Incident Team and provide all available assistance as requested by investigators.
- (3) 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 shall not return an Involved 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 discharging his or her firearm that results in a death to any person 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.
- (4) In the 6 months following a use of deadly physical force incident that results in a death, the Parent 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 professional 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.

Section 5: Investigation Protocols

- (1) There will be two investigations regarding officer involved critical incidents that occur in Jefferson County. A Criminal Investigation will be conducted by a Law Enforcement Agency (LEA) of Primary Responsibility to determine if any criminal conduct occurred during a critical incident. The Parent Agency of the involved officer(s) will conduct a secondary personnel investigation regarding the policies of the parent agency.
- (2) The LEA of Primary Responsibility (Incident Commander) may or may not be the parent agency for the involved law enforcement personnel. The LEA of Primary Responsibility for incidents within Jefferson County shall be selected from the Jefferson County Sheriff's Office, Oregon State Police or the Madras Police Department. All of the criminal investigative activities shall be directed and coordinated by the Incident Commander. The primary responsibility of the Incident Commander is direction and coordination of the entire investigation. The Incident Commander may appoint personnel from the LEA of primary responsibility or other partner agencies to his/her command staff. The LEA of Primary Responsibility may relinquish the role upon consultation with the DA and agreement from another agency to assume the role.
- (3) The Incident Commander shall ensure that at least one officer not employed by the Parent Agency of involved officer(s) is assigned as an active investigative participant until the conclusion of the investigation.
- (4) The Incident Commander shall activate and enlist the assistance of all or part of the Tri-County, (Deschutes, Crook, Jefferson), Major Incident Team to assist in the investigation. (The Tri-County Major Incident Team Memorandum of Understanding will be attached to this plan.) The Incident Commander may enlist other specialized investigators such as, but not limited to, the Oregon State Police Crime Laboratory, scale diagram specialists, polygraph examiners, medical personnel, the County Medical Examiner, the State Medical Examiners Office, firearm experts, use of force experts and other officers experienced in the criminal investigation of critical incidents to assist in the investigation.

- (5) The Incident Commander shall ensure that 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)

- (6) The Incident Commander shall ensure that the investigation is documented in written reports and that the reports are filed with the LEA of Primary Responsibility, the District Attorney and at the discretion of the District Attorney, with the Parent Agency.

Section 6: Criminal Investigation

When the use of deadly physical force results in a death of 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 medical treatment as necessary. If the officer is not in need of medical treatment, the officer shall be taken to a local police or sheriff'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 officer who fired their weapon or who was in the immediate vicinity where weapons were fired, 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 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 waiting period does not preclude an initial on-scene conversation with the officer to assess and make an initial evaluation of the incident.
 - (b) 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.).
 - (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) After consultation with the involved officer, the Parent Agency or officer shall notify the officer’s family according to the Agency’s General Order, or other policy regarding such notification.
- (6) In order to preserve the integrity of the investigation and prosecution, if one occurs, the incident commander or his designee 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.
- (7) The Parent 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.
- (8) Prior to a final determination being made by the District Attorney, the District Attorney and the LEA of Primary Responsibility shall consult with each other and make a public release of information as is deemed appropriate.

Section 7: District Attorney

- (1) When an incident of the use of deadly physical force by an officer occurs, and death of a person 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 of a person 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 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.
 - (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.

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 perform his/her duties. 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 Parent Agency.

The requirements of this section provide a minimum framework, and are not intended to take the place of Parent Agency policy rules and regulations. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following a use of deadly force incident.

- (1) At the conclusion of the investigation the Incident Commander shall ensure that adequate time is allotted for a full critique of the operational effectiveness of the investigation and the plan. The critique shall be held in private and shall be attended by investigators or other personnel who were actively involved in the investigation.
- (2) If any item of significance is found as a result of the critique, the Incident Commander shall submit an after-action report to the LEA of Primary Responsibility and the Jefferson County Deadly Force Planning Authority.
- (3) The Incident Commander shall assure that the appropriate information is collected and provided to the District Attorney. The District Attorney will then submit the report to the Attorney General's Office. The report must include the date, time and location of the incident, the name, gender, race, ethnicity and age of the decedent, and a brief description of the circumstances surrounding the incident.

Section 9: Education, Training, Outreach

- (1) 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 the Deadly Physical Force Plan. 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.

- f. Range 3000.
- g. In-Service and Briefing Training.

Each agency shall have a written policy and monitoring system to ensure that the standards are met.

- (2) 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, quasi-governmental bodies.
- (3) At least once per calendar year the District Attorney's Office shall provide their employees training on the use of force by law enforcement officers, the investigation of such incidents and the Deadly Physical Force Plan.
- (4) At least once per calendar year, the Agencies subject to this Plan shall collectively conduct a seminar intended to educate the media, government bodies and selected members of the Jefferson County community in the use of force by law enforcement officers and the investigation of such incidents.
- (5) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Jefferson 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 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 Review

- (1) The Planning Authority will meet annually 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 12: Agency Policies

Use of Force policies, from all law enforcement agencies covered under this plan, are attached.

Attached Policies

- #1. **Tri-County Major Incident Team Memorandum of Understanding** (6 pages)
- #2. **Jefferson County Sheriff's Office "Use of Force"** (12 pages)
- #3. **Jefferson County Sheriff's Office "Deputy Involved Use of Force Investigation"** (4 pages)
- #4. **City of Madras Police Department "Physical Force, Deadly Force, and Firearms"** (26 pages)
- #5. **City of Metolius Police Department "Use of Force- Policy No. 2008-03"** (13 pages)
- #6. **City of Metolius Police Department "Use of Force- Specific Instrumentality Policy No. 2008-04** (22 pages)
- #7. **Culver Police Department "Use of Force Policy"** (30 pages)