

MULTNOMAH COUNTY, OREGON

PLAN REGARDING USE OF

DEADLY PHYSICAL FORCE

[Senate Bill 111]

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ARTICLE I PREAMBLE

The use of deadly physical force by law enforcement personnel is a matter of critical concern to law enforcement agencies and the communities and citizens they serve. Law enforcement is entrusted by the citizens of Oregon with the authority and responsibility to lawfully use deadly physical force to protect themselves or others. The use of deadly physical force that results in a death significantly impacts citizens, communities, police agencies and the involved officers. The purpose of this plan is to promote a common, respectful understanding of these impacts through interaction and communication; to provide a framework for a consistent response to law enforcement use of deadly force that treats all people affected by the event fairly; and to promote public confidence in law enforcement and the criminal justice system.

The 2007 Oregon Legislative Assembly passed Senate Bill 111 (Appendix A) relating to the use of physical force by police officers employed by state and local law enforcement agencies. SB 111 requires each county in the state to develop, approve and submit to the state a plan relating to deadly physical force.

SB 111 created in each county a deadly physical force planning authority which is charged with developing the plan. The planning authority is required to submit the county plan to each governing body that maintains a law enforcement agency. The plan must be approved by at least two thirds of those governing bodies. If the plan is approved by two thirds of the governing bodies, the planning authority must submit the approved plan to the state's Attorney General, who shall periodically publish all approved plans.

This document constitutes the deadly physical force plan developed and approved by at least two-thirds of the governing bodies in Multnomah County that maintain a law enforcement agency.

The Multnomah County Deadly Physical Force Planning Authority wishes to thank the following community members for their thoughtful input and contributions to this plan:

Geri Washington: Oregon Action
Mireaya Medina: Oregon Action
Dan Handelman: Portland Cop Watch
Marc Jolin : JOIN
Liesbeth Gerritsen: Portland Police Bureau Crisis Intervention Team
June Vining: City of Portland Crisis/Trauma Intervention Program (TIP)
Bishop A.A. Wells: Emanuel Temple Church, Albina Ministerial Alliance
Pastor Robin Wisner: Albina Ministerial Alliance
Sadie Feibel: Latino Network
Anabertah Alvarado: Latino Network

ARTICLE II DEFINITIONS

Section 1. Definitions

As used in 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.

“Employ” when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

“Involved officer” means:

(a) A police officer whose official conduct, or official order to use deadly physical force, was a cause in fact of the death of a person. As used in this paragraph, “order to use deadly physical force” means an order issued to another officer to use deadly physical force in a specific incident or an order or directive establishing rules of engagement for the use of deadly physical force for a specific incident.

(b) A police officer whose official conduct was not a cause in fact of the death of a person but whose official involvement in an incident in which the use of deadly physical force by a police officer resulted in the death of a person:

(A) Began before or during the use of the deadly physical force; and

(B) Was reasonably likely to have exposed the police officer to greater stresses or trauma than other police officers experienced as a result of their involvement in the incident before or during the use of the deadly physical force.

“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).

“Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas or chemical agent.

“Physical Injury” means impairment of physical condition or substantial pain.

“Plan” means this document.

“Planning Authority” means the deadly physical force planning authority established by section 2 (1) of SB 111 and defined in Article III of this plan.

“Police officer” means a person who is:

(a) A police officer or reserve officer as defined in ORS 181.610; and

(b) employed by a law enforcement agency to enforce the criminal laws of this state.

“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.

ARTICLE III PLANNING AUTHORITY

Section 1. Membership

Multnomah County's deadly physical force planning authority shall consist of the following members:

- The Multnomah County District Attorney or designee;
- The Multnomah County Sheriff or designee;
- A nonmanagement police officer selected by the district attorney and sheriff from among candidates nominated by the unions representing police officers within the county.
- A police chief selected by the police chiefs within the county;
- A representative of the public selected by the district attorney and sheriff. The person selected under this paragraph may not be employed by a law enforcement agency.
- A representative of the Oregon State Police selected by the Superintendent of State Police.

Multnomah County's 2007-2008 deadly physical force planning authority members are:

- Don Rees, Senior Deputy District Attorney – District Attorney designee; co-chair
- Lt. Bruce McCain – Multnomah County Sheriff designee; co-chair
- Robert King, Portland Police Bureau – nonmanagement police officer
- Chief Phillip Klahn, Port of Portland Police Department – police chief
- Sam Sachs – public representative
- Lt. Richard Evans – Oregon State Police representative

Section 2. Release of Nonmanagement Police Officer

The law enforcement agency that employs the nonmanagement police officer selected by the district attorney and sheriff shall release the officer from other duties for at least 16 hours per year to enable the officer to serve on the planning authority. The agency shall compensate the officer at the officer's regular hourly wage while the officer is engaged in planning authority activities.

Section 3. Plan Development

(1) The planning authority shall develop a plan consisting of the following:

(a) An element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

(b) An element dealing with the immediate aftermath of an incident in which a police officer used deadly physical force.

(c) An element dealing with the investigation of an incident in which a police officer used deadly physical force.

(d) An element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.

(e) An element dealing with collecting information regarding a police officer's use of deadly physical force, debriefing after an incident in which a police officer used deadly physical force and revising a plan developed under this subsection based on experience.

(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in paragraphs (a) to (e) of this section.

(2) The Planning Authority may consult with anyone the planning authority determines may be helpful in carrying out its responsibilities.

Section 4. Public Hearing Required

The planning authority shall conduct at least three public hearings in three different county locations at times and places which are calculated to allow the greatest amount of public input before submitting the plan, or a revision of the plan, to the governing bodies in the county under section 5 of this Article.

Section 5. Submission of Plan to Governing Bodies

The planning authority shall submit the plan developed under section 1 of this Article, and revisions of the plan, to the governing body of each law enforcement agency within the county as defined in Article IV of this plan. A governing body shall approve or disapprove the plan submitted to it under this section within 60 days after receiving the plan. The governing body may not amend the plan. If the plan is not approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall develop and submit a revised plan.

Section 6. Submission of Plan to Attorney General

If the plan is approved by at least two-thirds of the governing bodies to which the plan is submitted, the planning authority shall submit the approved plan to the Attorney General. If the Attorney General approves the plan:

(a) Each law enforcement agency within the county is subject to the provisions of the plan; and

(b) Each law enforcement agency subject to the plan is entitled to grants as provided in section 4 of SB 111.

If the plan is not approved by the Attorney General, the planning authority shall develop and submit a revised plan.

Section 7. Subsequent Plan Revisions

The planning authority shall meet at least annually to review and discuss this plan. Law enforcement agencies subject to this plan shall submit to the planning authority a copy of any changes made to the agency's policy relating to use and investigation of deadly physical force. If the planning authority amends or revises the existing plan, such amendments and revisions shall be submitted for approval as provided by SB 111.

ARTICLE IV PARTICIPATING JURISDICTIONS & AGENCIES

Section 1. Governing Bodies

The planning authority shall submit the plan, and revisions of the plan, to the governing body of each law enforcement agency within Multnomah County except for the Department of State Police and the Department of Justice.

The governing bodies to which the plan shall be submitted are:

- City of Portland – City Council
- City of Gresham – City Council
- City of Troutdale – City Council
- City of Fairview – City Council
- Port of Portland – Commission
- Multnomah County – Board of County Commissioners

Section 2. Law Enforcement Agencies

Law enforcement agencies subject to the terms and conditions of the plan are:

- Portland Police Bureau (PPB)
- Gresham Police Department (GPD)
- Troutdale Police Department (TPD)
- Fairview Police Department (FPD)
- Port of Portland Police Department (PORT)
- Multnomah County Sheriff's Office (MCSO)
- Oregon State Police (OSP)

ARTICLE V EDUCATION, OUTREACH and TRAINING

Section 1. SB 111 Requirements

The plan shall contain an element dealing with education, outreach and training regarding the use of deadly physical force for police officers, attorneys employed by state or local government within the county and members of the community.

Section 2. SB 111 Compliance

Outreach programs for both members of law enforcement and community members will be developed and coordinated by the member agencies represented by the planning authority. These programs will be designed to facilitate listening and improved understanding of the social and legal issues surrounding the use of deadly force by police. These programs will be inclusive and will invite dialogue between participants. Programs may include, but will not be limited to, informal gatherings, meetings, listening sessions, scenario based training and multi-media presentations. Culturally specific programs will be developed to address particular needs.

Police training will be supplemented in Multnomah County through a roll call training program which may include perspectives from members of the community. Such training will be in addition to all currently required training and basic certification standards required by law and by member agencies regarding the use of deadly force.

The Multnomah County District Attorney's Office will conduct an annual continuing legal education program (CLE) addressing both the legal and societal issues surrounding police use of deadly force. This training program will be developed with the assistance and input of planning authority member agencies. Instructors will include community members as well as members of law enforcement and government attorneys. This training will address legal perspectives, law enforcement issues and community concerns related to police use of deadly force. This program will be in addition to any training currently provided to deputy district attorneys regarding use of force issues.

ARTICLE VI IMMEDIATE AFTERMATH

Section 1. SB 111 Requirements

(1) For each involved officer employed by a law enforcement agency, the law enforcement agency shall pay the costs of at least two sessions with a mental health professional that are attended by the officer. The sessions must be held within six months after the incident in which the officer was involved.

(2) An involved officer shall attend at least one of the sessions described in section 1(1) of this article.

(3) Sessions with a mental health professional under this subsection may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

(4) 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 an involved officer to duties that might place the officer in a situation in which the officer has to use deadly physical force. A law enforcement agency may not reduce an involved officer's pay or benefits as a result of the law enforcement agency's compliance with this subsection. Notwithstanding section 4 (1) of SB 111, a personnel cost incurred in complying with this subsection by a law enforcement agency employing 40 or fewer police officers is an expense for purposes of section 4 of SB 111.

Section 2. SB 111 Compliance

(1) To ensure compliance with the requirements of SB 111 relating to the immediate aftermath of the use of deadly physical force, the planning authority shall review the policy of each participating law enforcement agency relating to deadly physical force.

(2) The planning authority shall notify the law enforcement agency if its policy meets or fails to meet the requirements listed in section 1 of this article.

(3) If the law enforcement agency's policy fails to meet the requirements listed in section 1 of this article, the planning authority shall list the deficiencies in its notice to the law enforcement agency.

ARTICLE VII DEADLY PHYSICAL FORCE INVESTIGATIONS

Section 1. SB 111 Requirements

(1) A law enforcement agency employing an involved officer shall include at least one police officer from a different law enforcement agency in the investigation of the incident in which the involved officer was involved.

(2) The failure of a law enforcement agency to comply with section (1) of this section is not grounds for suppressing evidence obtained in the investigation.

Section 2. SB 111 Compliance

(1) To ensure compliance with the requirements of SB 111 relating to the investigation of the use of deadly physical force, the planning authority shall review the policy of each participating law enforcement agency relating to deadly physical force.

(2) The planning authority shall notify the law enforcement agency if its policy meets or fails to meet the requirements listed in section 1 of this article.

(3) If the law enforcement agency's policy fails to meet the requirements listed in section 1 of this article, the planning authority shall list the deficiencies in its notice to the law enforcement agency.

Section 3. Intergovernmental Agreements

(1) The planning authority recognizes the some participating jurisdictions have already entered into intergovernmental agreements relating to multi-agency investigations of the use of deadly physical force.

(2) Such multi-agency intergovernmental agreements include, but are not limited to:

- *East Multnomah County Major Crimes Team Inter-Agency Investigative Protocol*
(Parties are OSP, Gresham PD, Troutdale PD, Fairview PD, MCSO, MCDA)
- *Memorandum of Understanding between the Portland Police Bureau and East Major Crimes Team in the Investigation of Officer Involved Use of Deadly Force*
(Parties are PPB, OSP, Gresham PD, Troutdale PD, Fairview PD, MCSO, MCDA, Mult. County Medical Examiner's Office)
- *Intergovernmental Agreement re: Jurisdiction, Mutual Aid and Major Crimes Investigations*
(Parties are City of Portland and the Port of Portland)

ARTICLE VIII DISTRICT ATTORNEY DISCRETION

Section 1. SB 111 Requirements

The plan must contain an element dealing with the exercise of district attorney discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.

Section 2. SB 111 Compliance

The grand jury will review all cases involving a law enforcement officer's use of deadly physical force that results in death, serious physical injury or physical injury to another and cases where the use of physical force results in death or serious physical injury unless, in the discretion of the District Attorney, it is determined that grand jury review is unwarranted.

ARTICLE IX INFORMATION COLLECTION

Section 1. SB 111 Requirements

(1) A law enforcement agency shall collect at least the following information relating to incidents in which a police officer's use of deadly physical force resulted in the death of a person:

- (A) The name, gender, race, ethnicity and age of the decedent.
- (B) The date, time and location of the incident.
- (C) A brief description of the circumstances surrounding the incident.

(2) A law enforcement agency shall promptly submit the information collected under subsection (1) of this section to the Department of Justice.

Section 2. SB 111 Compliance

(1) To ensure compliance with the requirements of SB 111 relating to the collection of information relating to the use of deadly physical force that resulted in the death of a person, the planning authority shall review the policy of each participating law enforcement agency relating to deadly physical force.

(2) The planning authority shall notify the law enforcement agency if its policy meets or fails to meet the requirements listed in section 1 of this article.

(3) If the law enforcement agency's policy fails to meet the requirements listed in section 1 of this article, the planning authority shall list the deficiencies in its notice to the law enforcement agency.

ARTICLE X FISCAL IMPACT

Section 1. SB 111 Requirements

The planning authority shall compile an estimate of the fiscal impact on the law enforcement agencies to which the plan applies of each element described in articles V through IX herein.

Section 2. SB 111 Compliance

(1) The planning authority shall request each law enforcement agency to which the plan applies to identify and report to the planning authority the fiscal impact on the law enforcement agency of each element described in articles V through IX herein.

(2) Following the end of each fiscal year, the planning authority shall publish a report estimating the fiscal impact on the law enforcement agencies to which the plan applies of each element described in articles V through IX herein.

LIST OF APPENDICES

Appendix A – Senate Bill 111 (Enrolled)

Agency Use of Force Policies

Appendix B – Multnomah County Sheriff's Office

Appendix C – Portland Police Bureau

Appendix D – Gresham Police Department

Appendix E – Troutdale Police Department

Appendix F – Fairview Police Department

Appendix G – Port of Portland Police Department

Appendix H – Oregon State Police

Intergovernmental Agreements

Appendix I – East Mult. County Major Crimes Team Inter-Agency Investigative Protocol

Appendix J – MOU between Portland Police Bureau & East County Major Crimes Team

Appendix K – IGA between Portland Police Bureau & Port of Portland Police Dept.