



DEPARTMENT OF JUSTICE

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July 18, 2007

Honorable Matt Shirtcliff
District Attorney of Baker County
Baker County Courthouse
1995 3rd Street
Baker City, OR 97814

Sheriff Mitch Southwick
Baker County Sheriff's Office
3410 K Street
Baker City, OR 97814

Re: Enrolled Senate Bill 111 (2007) (Peace Officer Use of Deadly Force)

Dear District Attorney Shirtcliff and Sheriff Southwick:

Enclosed is a copy of Enrolled Senate Bill 111 (SB 111) passed by the Legislative Assembly's 2007 regular session and awaiting the Governor's approval. I write to offer my ongoing assistance in implementing SB 111, to summarize some of its key provisions, and to invite your participation on a rulemaking advisory committee I intend to convene to help implement the bill.

In this letter and in an enclosure, I will review requirements of SB 111 that will be immediately effective when the measure becomes law. I have directed Department of Justice (DOJ) personnel to begin preparation of a website on which I will post detailed guidance about implementation of all aspects of the bill, including the many provisions that are not effective until July 1, 2008.

As finally passed, the measure makes no change in existing law as to inquest or grand jury proceedings. The Assembly appropriated \$182,161 for implementation of the measure during the 2007 - 2009 biennium.

SB 111 appoints Sheriffs and District Attorneys co-chairs of a local "Planning Authority" that must complete and circulate for local approval on or before July 1, 2008 a proposed plan about the use of deadly force by police officers. Section 2(2). Although the measure requires counties to engage in the planning process, specifies features of the process for developing the plan, and requires plans to contain, at a minimum, elements addressing six specific subjects involved in deadly force incidents, the content of the plan and of each of the required elements is almost entirely within the discretion of the Planning Authority and the governing bodies in the county. Sections two and three of the measure detail the planning process.

All expenses of the planning process, including personnel expenses, entitle participants to credits that are banked with DOJ and available in the future to increase the amount of subsidy the state will provide for execution of approved plans. Section 11. My office will soon post on the website a simple form intended to help participants in the planning process receive full credit for their participation.

Upon its becoming law, SB 111 immediately will require every law enforcement agency in the state to adopt "a policy dealing with the use of deadly force by its police officers. At a minimum, the policy must include guidelines for the use of deadly physical force." Section 5(2). Unlike the plan to be developed by the Planning Authority, the policy on deadly force required by Section 5(2) is specific to each agency. SB 111 imposes no special form of approval for agency-specific policies adopted to satisfy the requirement of Section 5(2).

Section 6 of the bill is an important provision that will be effective as soon as the Planning Authority creates its plan. Plans must include "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." Section 2 (4)(e). Section 6 provides:

Conclusions and recommendations for future action made by or for a law enforcement agency that result from activities conducted pursuant to the element of a plan described in section 2 (4)(e) of this 2007 Act are not admissible as evidence in any subsequent civil action or administrative proceeding.

Section 6 was inspired by the experience of county counsel and city attorneys whose duties include defending the use of deadly physical force in civil actions that often follow a deadly force incident. Without Section 6, written debriefing reports containing conclusions and recommendations for reform in agency practices were often admissible against the agency in civil lawsuits. Section 6 is intended to encourage meaningful after-action analysis by giving city attorneys and county counsel a basis to argue that the conclusions and recommendations in such analyses are inadmissible in subsequent civil or administrative proceedings.

DOJ's administrative rulemaking authority is the final item in the short list of immediately effective provisions of the measure. First, as noted above, participation in the planning process allows agencies to "bank" credits with DOJ. SB 111 authorizes DOJ to adopt rules detailing the process of accounting for and applying accumulated credits. Second, Section 4 of the measure requires DOJ to make grants "to law enforcement agencies to reimburse the law enforcement agencies for expenses incurred in implementing and revising" approved plans and authorizes DOJ to make rules to administer the grant program. Third, effective July 1, 2008, agencies will be required to submit certain information to DOJ about each incident in which an officer used deadly force in an incident in which a person died. Section 5(6). The measure authorizes DOJ to adopt rules specifying the form of such reports.

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My goal is to help every community smoothly and fully implement all aspects of SB 111. As to the exercise of DOJ's rulemaking authority in the three areas described above, that goal is best achieved with the benefit of extensive input from District Attorneys and Sheriffs, and others in the law enforcement community. To that end, I will be appointing a rulemaking advisory committee, chaired by Deputy Attorney General Peter Shepherd, to help craft any desirable rules. If you are interested in serving on the rulemaking advisory committee, please let Pete know. He may be reached by email at Pete.Shepherd@doj.state.or.us or by phone at (503) 378-6002.

Sincerely,

A handwritten signature in cursive script that reads "Hardy".

HARDY MYERS
Attorney General

AGS19966

c: Peter Shepherd

