

# Senate Bill 111B

## Key Features Of Measure

### Deadly Force Plan

Counties must create a “planning authority” co-chaired by the Sheriff and District Attorney. The county’s comprehensive deadly force plan must be approved by local governing bodies. It must be reviewed and approved by Attorney General. Plan approval entitles law enforcement agencies to reimbursement of certain expenses from state grant funds.<sup>1</sup>

Plans must address the following:

- ◆ Education, training, and outreach for police, district attorneys, and the community.
- ◆ Procedures for the “immediate aftermath” of an incident involving deadly force.
- ◆ Investigative procedures for deadly force incidents.
- ◆ The exercise of the district attorney’s discretion to resolve issues of potential criminal responsibility.
- ◆ Procedures for after-action examination of the incident for the purpose of improving response to a future incident.
- ◆ Estimates of the fiscal impact of the plan on local law enforcement agencies.

### Specific Requirements

In addition to the planning requirement, the bill contains eight specific requirements, five of which must also be addressed in the plan.<sup>2</sup>

1. Agency-specific deadly-force guidelines. Regardless of any additional requirement of the plan, SB 111B requires law enforcement agencies to adopt “guidelines for the use of deadly physical force.” The plan must explain how this requirement is to be met.
2. Counseling. Regardless of any additional requirement of the plan, SB 111B requires agencies to pay for at least two visits by involved officers to a mental health

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<sup>1</sup> Section 2.

<sup>2</sup> Section 3 (Listing the five minimum requirements for the plan).

professional within six months of a deadly force incident resulting in death. The plan must explain how this requirement is to be met.

3. Light Duty. Regardless of any additional requirement of the plan, SB 111B requires agencies to place involved officers on a minimum of a 72-hour period of light duty following an officer's involvement in a deadly force incident resulting in death. The plan must explain how this requirement is to be met.
4. Outside Agency Investigation. Regardless of any other requirement of the plan, SB 111B requires agencies to involve "at least one" police officer from an outside agency in the investigation of a deadly force incident resulting in death. The plan must explain how this requirement is to be met.
5. Data-Collection. Regardless of any other requirement of the plan, SB 111B requires agencies to collect and submit to the Attorney General basic information about deadly force incidents resulting in death. The plan must explain how this is to be done.
6. Inquests. Effective July 1, 2009,<sup>3</sup> inquests are forbidden for incidents in which officers use deadly force resulting in death.<sup>4</sup> The plan must explain the manner in which the district attorney will exercise his or her authority to preside over an inquest, if an inquest jury is convened before inquests are eliminated.<sup>5</sup>
7. Grand Jury Transcription/Eventual Public Release. Current law allows a district attorney to transcribe grand jury testimony.<sup>6</sup> As amended in the Joint Committee on Ways and Means, the measure adds to current law an optional procedure for public release of transcribed grand jury testimony about officer-involved deadly force incidents resulting in a death.<sup>7</sup> The measure allows specified individuals to challenge public release of all or part of transcribed grand jury proceedings. Where the option to transcribe is invoked, the Department of Justice (DOJ) pays 100% of the cost of transcription from General Fund appropriation SB 111B makes to DOJ.<sup>8</sup>
8. Training. The plan must address "training regarding the use of deadly physical force . . ." Section 2. No later than August 31, 2008, the Department of Public Safety Standards and Training must complete development of a "training program for" deadly force investigations.

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<sup>3</sup> Section 24.

<sup>4</sup> Section 14.

<sup>5</sup> Section 3.

<sup>6</sup> ORS 132.090.

<sup>7</sup> Section 12.

<sup>8</sup> Section 12.

## Additional Features Of The Measure

### Inadmissibility of “Lessons Learned” Reviews.

- ◆ Plans must provide for debriefing and revision based on experience.<sup>9</sup>
- ◆ Under current law, conclusions and recommendations for improvement in policies, training, or practices are generally admissible as evidence in civil cases against the law enforcement agency. Therefore, agencies often are counseled not to make written records of lessons learned from specific incidents. SB 111B excludes such conclusions and recommendations from evidence in civil or administrative proceedings.<sup>10</sup>

### Clarification Of Authority To Present Facts To A Grand Jury.

- ◆ Existing law permits a district attorney to submit an indictment to a grand jury “when the district attorney has good reason to believe that a crime has been committed . . . .” ORS 132.330.
- ◆ SB 111B affirms that a district attorney may submit facts to a grand jury about an officer’s use of deadly force whether or not the district attorney believes a crime has been committed by the officer.<sup>11</sup> SB 111B does not require district attorneys to submit incidents to a grand jury.

### State Funding.

- ◆ \$221,361 General Fund appropriation to DOJ for 2007 – ’09.<sup>12</sup> Appropriation creates grant fund administered by the Attorney General; grants are allowed for “expenses incurred in implementing and revising the plans.”<sup>13</sup> Appropriation also includes funds for DOJ’s payment of grand jury transcription costs.
- ◆ Law enforcement agencies that are subject to an approved deadly force plan are eligible for grants. Because the final deadline for adoption of plans is July 1, 2008,<sup>14</sup> DOJ anticipates that no grants will issue before that date. With some exceptions, grants are limited to 75% of the expense and do not include personnel costs.<sup>15</sup>

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<sup>9</sup> Section 2.

<sup>10</sup> Section 6.

<sup>11</sup> Section 8.

<sup>12</sup> Section 21.

<sup>13</sup> Section 4.

<sup>14</sup> Section 17. The Department of Justice “may not make a grant” unless the “law enforcement agency is subject to a plan that has been approved by the Attorney General” as provided in the measure. Plans must be adopted no later than July 1, 2008.

<sup>15</sup> Section 4 (Grants generally limited to 75% of expense); Section 5(4)(Agencies employing 40 or fewer police officers may seek grants to cover up to 75% of personnel costs associated with 72-hour “light-duty”

- ◆ Agencies participating in the initial planning process must track their expenses, including personnel costs; Those expenses entitle the agency to credits at the ratio of one credit for each dollar of expense. The credits may be spent by the agency to raise the reimbursement rate above 75% (to 100% if sufficient credits have accumulated) on future grant applications.<sup>16</sup>
- ◆ Agencies are excused from compliance with certain mandates if the grant fund runs dry.<sup>17</sup> District Attorneys are excused from the obligation to transcribe grand jury proceedings if insufficient state funds are available for reimbursement.<sup>18</sup>

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leave for involved officers); Section 18 (Participation in planning process entitles law enforcement agencies to bank credits allowing reimbursement of more than 75% of future reimbursable expenses);

<sup>16</sup> Section 18.

<sup>17</sup> Section 7.

<sup>18</sup> Section 7.