



**Washington County  
Use of Deadly Physical Force  
by Police Officers Plan**

April 1, 2008

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## **Members of the Planning Authority**

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Sheriff Rob Gordon – co-chair  
District Attorney Robert Hermann – co-chair  
Lieutenant Marti West – Oregon State Police  
Chief Kent Barker – Tualatin Police Department  
Detective Wayne Hart – Forest Grove Police Department – Union Representative  
Richard Inukai - Citizen

## **Preamble**

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Police officers serve and protect their fellow Oregonians. 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 all people affected by the event fairly, and promotes public confidence in the criminal justice system.

## **Section 1: Administration**

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- 1) In the event that a member of the planning authority stops service, 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**

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This plan shall be applicable, as set forth herein, to any use of deadly physical force resulting in a serious physical injury or the death of a person by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Washington County, Oregon.

The planning authority shall submit the plan developed under Senate Bill 111, and revisions of the plan, to the governing body of each law enforcement agency within the county, except for the Department of State Police and the Department of Justice.

A governing body shall approve or disapprove the plan submitted to it under Senate Bill 111 within 60 days after receiving the plan. The governing body may not amend the plan.

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. No later than 30 days after receiving the plan, the Attorney General shall review the plan for compliance with the minimum requirements described in Senate Bill 111. If the Attorney General determines that the plan complies with the minimum requirements, the Attorney General shall approve the plan. Upon approval of the plan each law enforcement agency within the county to which the plan applies is subject to the provisions of the plan.

## Section 3: Definitions

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**Law Enforcement Agency:** 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).

**Plan:** 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 and including any approved revisions which shall become part of this Plan.

**Deadly Physical Force:** Physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. ORS 161.015 (3) Physical force that creates a substantial risk of death or serious bodily injury.

**Serious Physical Injury:** 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. ORS 161.015 (8)

**Physical Injury:** Impairment of physical condition or substantial pain. ORS 161.015 (7)

**Police Officer:** 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.

**Involved Officer:** (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 (or other law enforcement agency employee) 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. SB 111 SECTION 5 (1) (a) and (b)

## **Section 4: Education, Outreach and Training**

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### **Education, outreach and training regarding the use of deadly physical force**

*Police officers, attorneys employed by state or local government within the county and members of the community shall receive appropriate education, training and outreach regarding the use of deadly physical force.*

(1) Law enforcement agencies in Washington County shall continue to require appropriate training for all law enforcement officers to prepare them for appropriate and authorized use of force in the conduct of their assigned duties. Officers will also receive at least the training required by the Department of Public Safety Standards and Training to maintain certification to help ensure their appropriate use of deadly force. The training will include a review of state and county law and policy.

(2) Agencies are encouraged to provide ongoing education, training and other resources to the general public, including the mental health community. Such training may be a Citizens' Academy or other formalized education which includes municipal, county and state laws, policies and practices regarding use of deadly force.

(3) Agencies are encouraged to provide explanatory materials to help ensure general public understanding of the legal and policy requirements associated with use of deadly force without compromising the integrity of any investigation.

(4) At least once per calendar year the District Attorneys office shall conduct, co-sponsor, and/or endorse a seminar/training regarding the use of deadly force and the investigation of such incidents. Attorneys employed by state and local governments within the county will be notified and encouraged to attend.

## Section 5: Immediate Aftermath

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### **In response to any incident in which a police officer employed by a law enforcement agency in Washington County used deadly force:**

(1) The employee's law enforcement agency shall pay the costs of at least two sessions with a mental health professional that are attended by the officer. The first session should be held within 15 days of the incident, schedule permitting, and the second must be held within six months after the incident in which the officer was involved.

(a) Each involved officer shall attend at least one of the sessions described in paragraph (1) of this subsection.

(b) 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.

(c) 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 or serious physical injury 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 may have to use deadly physical force.

(d) A law enforcement agency is encouraged to employ additional procedures such as peer counseling, family counseling, spousal support, spiritual counseling, stress trauma response or other appropriate support.

(e) A law enforcement agency is encouraged to provide additional training, including re-qualification with the weapon used prior to return of the involved officer to their duties. Re-qualification provides reassurance for the officer's skills, willingness to engage in expected responsibilities, and the readiness of the officer's weapon system. It provides documentation for the agency that the officer maintains the required degree of weapon proficiency, and that the officer is fit to return to duty in the officer's assigned position.

## **Section 6: Investigation**

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### **Investigation of an incident in which a police officer used deadly physical force.**

(1) The Washington County Major Crimes Team will conduct all investigations in which a police officer uses deadly physical force.

(2) The Washington County Major Crimes Team Protocol provides specific detail on conducting such an investigation, including provision that an investigation will be led or co-led by an officer from a law enforcement agency other than the law enforcement agency which employs the officer involved in the use of deadly physical force. (See Appendix B)

## **Section 7: District Attorney's Discretion**

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**The district attorney for Washington County has discretion to resolve issues of potential criminal responsibility resulting from a police officer's use of deadly physical force.**

- (1) When an incident of the use of deadly physical force by an 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, 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 or serious physical injury 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 (ORS 135.070) will not be used as a method of reviewing an officer's use of deadly force.
  - (b) An inquest (ORS 146.135-165) will not be used as a method of reviewing an officer's use of deadly force.
  - (c) The District Attorney will review the Major Crimes Team's investigation 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.
  - (d) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the Major Crime Team's lead investigator, the involved officer's agency, and the involved officer's representative.
  - (e) 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. Additionally, the District Attorney will make records of the investigation available to the public, subject to Oregon public records laws.

## **Section 8: Reporting and Debriefing**

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**Certain actions shall be taken following an incident in which a police officer employed by a law enforcement agency in Washington County used deadly physical force.**

(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 paragraph (1) of this subsection to the Department of Justice and will provide a copy of the information to the District Attorney of Washington County.

(3) The Department of Justice shall compile and periodically publish information submitted under subsection (2) of this section. The department, by rule, may specify a form to be used by law enforcement agencies in submitting information under subsection (2) of this section.

(4) If a form is provided by the Department of Justice for submitting this information, it shall be used in submitting this information.

(5) The law enforcement agency employing a police officer involved in a use of deadly force incident shall conduct a debriefing after the incident as a normal part of their procedure.

(6) The debriefing conducted under subsection (5) of this subsection by the agency, including any suggested changes in agency policies, shall be submitted to the Planning Authority. The Planning Authority's plan for data collection, debriefing, and plan revision should include two distinct procedures for deriving lessons from deadly force incidents that result in the death. First, law enforcement agencies should conduct an evaluation of the incident to determine whether changes to the agency's use of deadly force policy or other procedures are advisable [subsection (5) of this section]. Second, the Planning Authority itself should conduct an assessment of existing County Use of Deadly Physical Force by Police Officers plans in light of experience. Based on that assessment, the Planning Authority could propose changes to those plans. Revised plans would require approval by the governing bodies in the same manner that those bodies approved or disapproved of the original plan.

## **Section 9: Estimated Costs**

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**The Planning Authority shall report the estimated fiscal impact on the law enforcement agencies to which the plan applies of each element of this plan.**

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 10: Plan Revision**

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The Washington County Use of Deadly Force Planning Authority will meet at least annually to review and discuss the operation of this plan.

If a revision of this 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 11: Governing Body Approvals**

( Please Circle "Approved" or "Disapproved" to indicate your selection. )

**Banks**

Approved or disapproved by:

Jeri Bessett

Date: 4/8/08

**Beaverton**

Approved or disapproved by:

Don Drake, Mayor

Date: 4/21/08

**Cornelius**

Approved or disapproved by:

Dennis

Date: 4-21-08

**Forest Grove**

Approved or disapproved by:

Michael J. Miller

Date: 4/14/08

**Gaston**

Approved or disapproved by:

Russ Loney

Date: 4-9-08

**Hillsboro**

Approved or disapproved by:

Scott D. A. Chapter

Date: 4/23/08

**King City**

Approved or disapproved by:

Justin Byrnes

Date:

4-16-08

**North Plains**

Approved or disapproved by:

COO

Cheri Olson, Mayor

Date:

4/28/08

**Sherwood**

Approved or disapproved by:

Ron E. S. Kelly

Date:

4/15/08

**Tigard**

Approved or disapproved by:

Craig Ross

Date:

4/23/08

**Tualatin**

Approved or disapproved by:

Spencer Johnson

Date:

4/28/08

**Washington County**

Approved or disapproved by:

Paul Davis

Date:

5/6/08

## **Appendix: Agency Policies**

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Beaverton Police Department

Cornelius Police Department

Forest Grove Police Department

Hillsboro Police Department

King City Police Department

North Plains Police Department

Oregon State Police

Sherwood Police Department

Tigard Police Department

Tualatin Police Department

Washington County Sheriff's Office

**Appendix B: Washington County Major Crimes Team Protocol**