

OFFICER INVOLVED FATAL OR CRITICAL INCIDENT PROTOCOL

SUMMARY

Upon the occurrence of an Officer-Involved shooting or critical incident, this protocol is automatically in effect.

SHERIFF'S INITIAL RESPONSE

Personnel Management

The Sheriff will, whenever possible, authorize the following in a non-punitive manner for the sole purpose of aiding members involved in job related traumatic incidents:

***Removal from Line Duty**

Where a member or members are directly involved in a deadly force incident or where the use of force may result in a death, the agency shall place the member(s) on administrative leave for no less than 72 hrs. after the incident.

Directly involved means the member or members who were most closely associated with the actions that led to the death or injuries that may result in a death.

***Sheriff's Trauma Response Team Notification**

(If applicable)

The Sheriff or his designee will notify the Sheriff's Trauma Response Team to provide support of the actors involved in the critical incident and their families.

Media Management

The Sheriff will, whenever possible and if deemed necessary, withhold the name(s) of the involved member(s) from the press for at least 24 hours following the incident for the purpose of allowing a minimum adjustment period for the involved member(s) and family.

Appoint Administrative Assistance

The Sheriff or Under sheriff will assign an administrative command staff member(s) to coordinate all personnel logistical matters to include; critical incident stress debriefing, psychological appointments, scheduling, and return to duty evaluations.

THOROUGH INVESTIGATION

To properly recognize and accommodate the various interests and the various rules of law that may be involved in any incident, four separate forms of investigation can occur:

- (1) Criminal Investigation
- (2) Administrative Review
- (3) Internal Affairs Investigation (if applicable)
- (4) Civil Investigation (if applicable)

DEFINITIONS

Officer-Involved Shooting or Critical Incident: Incidents involving two or more people, in which a Sheriff's Office employee is involved as an actor, victim, or custodial officer, or where a "fatal or critical Injury" occurs or is highly likely to have occurred based on the actions taken.

Examples of such "Incidents" include:

1. Intentional and unintentional shootings.
2. Intentional and unintentional use of any other dangerous or deadly weapons.
3. Serious assaults upon police officers or serious assaults on other police employees who are on duty or are acting with a law-enforcement purpose.
4. Any fatal or critical injury to a person in police custody.
5. Any fatal or critical injury to a person who is a passenger of a police officer (such as ride-a-longs, emergency transports, etc.)
6. Vehicular collisions, specifically including any vehicle fatality or critical injury that occurs as a result of use of force. ("Enforcement Intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact".) The protocol would not apply to vehicular collisions where the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle that was not involved in a collision with any other occupied vehicle; these incidents shall be investigated by CART.

Actor. A person, including a supervisor who issues an order, whose act is a "proximate cause" of a fatal or critical injury to another person, or a person who intends that his act be a "proximate cause" of serious bodily injury or death to another person who is actually killed by another.

Administrative Investigators. Investigators who have been assigned by the Sheriff's Office to conduct the Administrative Investigation of the Incident.

Criminal Investigators. The investigators assigned by the Sheriff's Office(s) and/ or other law enforcement agencies partnered through an inter-agency investigation team.

Fatal or Critical Injury. Death or such severe injury that death is likely to result.

Office Member. This protocol applies to all Sheriff's Office staff whether on or off duty while performing a law enforcement function, and to informants when they are working under the direct control and supervision of a certified law enforcement officer.

Proximate Cause. A cause which in a natural and continuous sequence produces a fatal or critical injury.

Venue Agency. The agency with primary geographical jurisdiction over the incident.

Victim. The person who is injured by the act of the actor, whether intentional or not. In this document, this word does not imply existence of criminality; it is used simply to designate the person who is physically injured.

ROLES

Administrative Investigators

(Recommended)

Administrative investigators typically are knowledgeable or familiar with the Sheriff's Office policies, procedures, practices and/or able to offer knowledge in a specialized skill. They receive Sheriff's Office training in the performance an administrative review of a critical incident. Their primary focus will be an unbiased review of the incident and offer recommendations for agency improvement if necessary.

Civil Investigators

These investigators, if needed, will be assigned and work at the direction of County Counsel. This investigation would focus on details pertaining to the defense of the Sheriff's Office in civil litigation.

County Counsel

The role of County Counsel is to gather information to determine if the action taken by the involved officer is subject to defense and indemnification under the Tort Claims Act. County Counsel will also seek information that may eventually be needed to defend the Sheriff's Office and involved officers from claims and litigation that arise from the incident.

District Attorney

The focus of the District Attorney is receive and analyze documents and evidence surrounding the critical incident to determine criminal culpability for all parties involved.

Major Crimes Team Investigators

Recommended

The Major Crimes Team is comprised of experienced investigators from various agencies throughout a specific County. Law Enforcement executives within the State of Oregon should agree that all officer involved shootings will be investigated by a Major Crimes Team or similar unit in a specific geographic area. This will ensure the citizens that a fair and impartial investigation is conducted.

Professional Standards Unit (Internal Affairs)

Investigators will review incidents when the Sheriff finds a concern of Sheriff's Office policy or procedure violation.

CRIMINAL INVESTIGATION

The criminal investigation begins immediately after an incident has occurred. It is performed by Sheriff's Office detectives and/or by investigators from a *Major Crimes Team*. ***Regardless, the investigation of any of these events should include at least one investigator from a local agency not directly involved in the actual incident.***

The criminal investigation has priority over the administrative or civil investigations. The criminal investigators will determine whether any laws were violated. Their duties include:

- Identification of the person(s) responsible for that conduct
- Seizure and preservation of evidence
- Determine the existence of any factual or legal defenses that may apply to the event
- Identify factors that would mitigate or aggravate punishment for a related crime

The investigation must be performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional effort that is free of conflicts of interest.

Submitting Reports to the District Attorney, Access by Sheriff

The criminal investigative report will be submitted to the District Attorney's Office. While the criminal investigators do not direct their investigative attention to administrative concerns, it is recognized that the results of the criminal investigation are of proper interest to Sheriff's Office management for internal use. Thus, the results of the investigation are fully available to the Sheriff and the administrative investigators for that purpose. The materials will include:

- Reports, written and collected.
- Access to physical evidence.
- Photographs, diagrams, and videotapes.
- Audio tape recordings

Periodic Briefing of Administrative Investigators

(If applicable)

The criminal investigators will promptly and periodically brief the administrative investigators on the status of the criminal investigation. The administrative investigators will have access to briefings, the scene(s), physical evidence, and interviewee's statements.

Physical Evidence

Investigators and/or their designees will document the scene(s) and collect and preserve physical evidence.

ADMINISTRATIVE REVIEW

The Sheriff *should* appoint a critical incident review team to perform an administrative investigation. The selection *should be* based on experience in law enforcement, appropriate training, and a background in survival skills such as firearms, defensive tactics, use of force, emergency vehicle operations, and use of defensive tools, etc. The goal of this investigation is to accomplish a preliminary briefing and a full administrative investigation report. The Sheriff's Office will initiate and define the scope of any administrative investigation.

Preliminary Administrative Briefing

Administrative investigators will brief the Sheriff *in a timely manner* on the facts discovered in the preliminary investigation of the incident. One goal of the preliminary administrative investigation is to provide the Sheriff sufficient information to use in determining leave, training and support requirements of the actors as well as, provide initial briefing to other staff members.

The investigators may make recommendations as to whether an Internal Affairs Investigation is appropriate.

Full Administrative Report

Administrative investigators will provide a comprehensive report of the incident to the Sheriff. The Sheriff *may* rely upon the details in this report when responding to the public, media and others who inquire about the incident. At a minimum, the report will include:

- Summarize the facts leading up to, during and after the incident
- Determine whether all related policy and procedures were followed
- Assess suitability of agency policy and procedure and recommend any needed modifications
- Assess whether the employee's actions were appropriate
- Recommend improvements to agency training or equipment, if any.
- Assess supervision and leadership involved in the incident; make recommendations for improvement
- Interview of Police employees by Administrative Investigators

INTERNAL AFFAIRS INVESTIGATION

Recommended but should be handled by Office specific policies or protocols

CIVIL INVESTIGATION (Optional) dependant on Area specifics.

Civil Investigation

In addition to the criminal and administrative investigations, County Counsel also has need for information about the incident. A civil investigation will provide information for the purposes of responding to or defending against claims and civil litigation which may be initiated against the involved officer(s) and the Sheriff's Office. The product of the civil investigation will be delivered directly to County Counsel and will be treated as attorney work product.

The Sheriff's Office may use an administrative investigation or a more specific "civil litigation investigation" format to investigate these concerns as it's deemed appropriate.

Criminal Investigation Takes Priority

While both the criminal investigation and the administrative investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence and the involved parties, and that it will prevent the criminal investigation from being compromised by untimely exercise of the Sheriff's Office's administrative rights.

Administrative/Civil/Internal Affairs Investigators Must Protect Certain Information from Criminal Investigators

Results of these investigations may or may not be privileged from disclosure to others, including the criminal investigators, depending upon applicable law. Specifically, interview statements, physical evidence, toxicology test results and investigative leads that are obtained *as a result of police employees being ordered to cooperate* shall not be revealed to criminal investigators. Thus the need for the criminal investigation to take precedence.

Civil Investigators Entitled to Criminal Investigative Information

The civil investigation will rely primarily upon the criminal investigation and any investigation that specifically addresses issues of civil law. All information gathered by the criminal investigators may be shared with the administrative investigators; however, certain information may not be disclosed to criminal investigators.

Defense of Claims and Indemnification

Under the Tort Claims Act, _____ County will defend and indemnify any police officer (employee) for their actions occurring within the scope of their employment with the County, except for cases where the employee is malfeasant or in willful or wanton neglect of duty.

Attorney-Client Privilege

In any situation where _____ County defends and indemnifies an employee, County Counsel may either represent the employee directly in which case the attorney-client privilege will apply, or County Counsel may choose to hire outside counsel if there appears to be a conflict of interest. When County Counsel is representing both the interests of the County and the actor, communications between the County Counsel and the actor may be shared with other County officials. *(This may be County specific)*

RETURN TO DUTY REQUIREMENTS

Prior to return to duty, the Sheriff's Office goal is to return the deputy to duty only after formal assessments have been made to ensure the deputy is ready to return to duty. Completion of the following steps must be documented before the actor receives the Sheriff's permission to return to full duty.

- The employee must be offered a voluntary stress debriefing by the Sheriff's Trauma Response Team *(if available)* or other qualified personnel. Normally such a session will be scheduled for all those involved in the critical or fatal incident. Individual sessions may be accommodated upon request.
- The employee must be assessed by a qualified person prior to returning to duty. The Sheriff will authorize at least two (2) psychological counseling sessions for the involved member. An actor's immediate families may be included in these sessions. The selection of the counselor will be a mutually agreed upon psychiatrist, clinical psychologist, or professionally qualified counselor selected by the member and the Sheriff. **The first session is mandatory** for the involved member(s) prior to returning to line duty; the following session or sessions may be specifically rejected by the member.
- The employee should attend Office training in the form of confrontational simulation or other similar training designed for the specific case. The goal is to test the employee's decision-making and reactions under stress conditions, and to facilitate smooth transition back into the workforce. *(Office specific)*



Oregon

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January 29, 2008

DA Cutsforth,

Tom, I am writing this letter in response to the Senate Bill 111 "Use of Force" correspondence I received from you this week. Upon reviewing the plan, I have a couple of questions.


I sat down with the Wasco County Committee and one of the areas we addressed was dealing with outreach and training of members of the community. We discussed needing to present the plan before it was approved through Public Hearings in a couple of the small towns in the county. I assume Sheriff Rouse most likely would want take care of that task. I would be more than happy to offer any assistance to your office or Sheriff Rouse regarding attending any meetings or assisting with getting the information out to the community.

I also wanted to submit Trooper Sean Carother's name to be on the Deadly Force Committee as a designee for the Oregon State Police.

I've included the Oregon State Police Use of Force Policy per your request.

I am available for any future meetings on this matter, please feel free to give me a call. 541-296-2163. Thank you for your time.

Sincerely,


Patrick Ashmore

Lieutenant OSP

The Dalles Area Command



Department of State Police

CHAPTER: 500.8
SUBJECT: USE OF FORCE
REVISED: August 7, 2000
SUPERSEDES: November 12, 1997

POLICY

This Department recognizes and respects the value of each human life. Sworn employees are vested with the lawful authority to use force in preserving the peace. A balancing of all human interests is required. It is the policy of this Department to use the force that is necessary and reasonable to bring an incident under control, while protecting the safety of the officer or other persons.

The use of force by police officers, whether deadly or non-deadly, is frequently closely scrutinized by the media, the criminal justice system, and the citizens we serve. Therefore, sworn employees must be prepared to articulate and justify the reasoning applied when the use of force is necessary. Toward that end, the totality of the circumstances leading to and justifying the use of force must be carefully documented.

Non-sworn employees are not expected to use physical force in the performance of their duties. Should they find themselves in a position requiring the use of physical force, they are to comply with statutes applicable to non-peace officers.

RELATED LAWS/REFERENCES

ORS 161.015, 161.235, 161.239, 161.245 and related statutes; Department Manual Chapters 300.1, 402.2, 402.3, 502.7-502.10

DEFINITIONS

1. **Deadly Physical Force (ORS 161.015)** - "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.
2. **Non-Deadly Physical Force** - Any use of physical force other than that which is considered deadly physical force.
3. **Physical Force** - Actual physical contact with a person, and/or the use of chemical agents on a person, for the purpose of overcoming resistance to lawful authority.
4. **Physical Injury (ORS 161.015 sub.6)** - Impairment of physical condition or substantial pain.
5. **Serious Physical Injury (ORS 161.015 sub.7)** - 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.

6. **Use of Force Incident** - Any incident when deadly physical force, non-deadly physical force, or physical force is utilized in the furtherance of the Department's mission. Includes any discharge of a firearm (except to destroy an animal for public safety or humanitarian reasons, or during approved firearms training).
7. **Totality of the Circumstances** - All factors considered. With respect to use of force, circumstances may include comparative size; physical, emotional and mental condition; skill level of combatants; nature of the offense; weapons; and availability of assistance.
8. **Use of physical force in making an arrest or in preventing an escape [ORS 161.235, (in part)].**
 - A. A peace officer is justified in using physical force upon another person only when and to the extent the peace officer reasonably believes it necessary:
 1. To make an arrest or to prevent the escape from custody of an arrested person, unless the peace officer knows that the arrest is unlawful; or
 2. For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest, or while preventing or to prevent an escape.

RULES

1. A sworn employee shall only use that force reasonably necessary in the performance of his/her duties in the following circumstances:
 - A. To make the lawful arrest of a person;
 - B. To prevent the escape from custody of a person lawfully arrested;
 - C. In self defense; or
 - D. In the defense of another person.
2. No sworn employee shall use unreasonable or excessive force upon or toward any person.
3. All use of force by sworn employees shall comply with current statute; and Department rules, policies, procedures, and training.
4. The degree of force used shall be the amount necessary to overcome resistance being employed by the person, or the immediate threat the person poses to the sworn employee or other persons.
5. Any force employed shall, whenever feasible, be progressive in nature. Situations may require the officer to proceed directly to a higher level of force as identified in the force continuum guidelines of this policy.

6. Unless other circumstances exist, sworn employees will use only the weapons, tools, techniques and training authorized by the Department.

PROCEDURES

1. Five Step Communications Procedures

- A. Whenever feasible, verbal communication utilizing the tactical five step approach per prescribed Department training guidelines should be adhered to:
 1. Ask (Ethical appeal)
 2. Set context (Reasonable appeal)
 3. Present options (Personal appeal)
 4. Confirm (Practical appeal)
 5. ACT!

2. Progressive Use of Force

Force continuum guidelines - This section sets forth the definitions and progressive levels of the force continuum utilized by the Department.

- A. Officer presence - Compliance is gained through the professional bearing and demeanor exhibited by the officer.
- B. Verbal - Compliance is achieved through tactical communication, i.e., the Five Step Communication Procedure.
- C. Empty hand/Control techniques - Compliance is gained through physical contact utilizing Department trained techniques to overcome resistance.
- D. Chemical agent - Compliance is gained through oleoresin capsicum (o/c) and/or any other Department approved chemical agent.
- E. Strikes and kicks - Compliance is achieved through the use of empty hand strikes and kicks in accordance with prescribed training.
- F. Impact weapons - Use of an impact weapon to gain compliance.
- G. Deadly Physical Force - The use of deadly or dangerous weapons in a manner, degree or to the extent that death or serious physical injury is a reasonable consequence.

CHAPTER 500.8

3. Use of Deadly Physical Force

- A. Notwithstanding ORS 161.239, a sworn employee may use deadly physical force only when the officer reasonably believes the use of such force is necessary to:
 - 1. Defend the officer or another person from what the officer reasonably believes to be the infliction or threatened infliction of serious physical injury;
 - 2. Apprehend a person who the officer has probable cause to believe has committed, or is committing, a crime involving the infliction of serious physical injury;
 - a. However, where the suspect poses no threat to the officer or others of serious physical harm, the officer is not justified in using deadly physical force; or,
 - 3. Prevent the escape of a person from custody who the officer has probable cause to believe is inflicting, or threatening to inflict, serious physical injury as a means of escape.
- B. Deadly physical force may be used when and if, where feasible, some warning has been given.
- C. "Warning shots" are prohibited.
- D. Discharging a firearm at a motor vehicle constitutes the use of deadly physical force.
- E. When a sworn employee draws his/her firearm, baton, or other weapon as dictated by the totality of the circumstances, that act alone will not be considered "use of force" and does not necessitate notification to a supervisor.
- F. When a firearm is pointed at a person, the immediate supervisor shall be notified as soon as practicable.
- G. In addition to the circumstances previously outlined in this section, sworn employees may also discharge a Department authorized firearm:
 - 1. At Department sanctioned firearms practice or competitive shooting events; and
 - 2. In the destruction of an animal if it poses a threat to public safety or as a humanitarian measure if an animal is seriously ill or injured. (If unusual circumstances exist, i.e., prior intelligence for a search warrant, or an animal of obvious value, prior supervisor approval should be sought if feasible.) In all cases, a supervisor will be notified as soon as practicable.

4. Non-Deadly Use of Force

- A. Sworn employees are provided and authorized to carry and use tools and techniques to gain compliance under circumstances when the use of dangerous or deadly weapons is not justified. Examples of these tools include handcuffs, chemical agents, mini-flashlight and hand control techniques.

1. Use of these and similar tools and techniques are not considered use of dangerous or deadly weapons when the manner, degree or extent in which they are used, would not be expected to result in serious physical injury or death.

5. Training

A. Deadly Weapons (Firearms)

1. Current guidelines in Department policy for firearms training will be strictly adhered to while on duty.

B. Non-Deadly Weapons

1. Current guidelines in Department policy for defensive tactics training will be strictly adhered to while on duty.

- C. Sworn employees shall be instructed in various aspects of verbal and non-verbal communication, officer safety techniques, defensive tactics, and firearms which encompass the prescribed force continuum guidelines.

6. Use of Force Notification

- A. Any sworn employee involved in a "use of force incident" is required to notify his/her immediate supervisor as soon as practicable after the incident.

1. If an officer is represented by the Oregon State Police Officers Association (OSPOA), the employee shall fill out the "Use of Force OSPOA Rights/Supervisory Notification Form" as formal notice that they understand their rights with respect to the use of force delivered.
 - a. The Use of Force OSPOA Rights/Supervisory Notification Form is attached to this chapter and may be reproduced.
2. The represented officer's immediate supervisor shall ensure this form is utilized.
3. The original Use of Force OSPOA Rights/Supervisory Notification Form will be retained at the station level.

7. Reporting Use of Force

- A. In circumstances other than those instances provided for in the Officer Involved Shooting or Major Incident Policy, all use of force incidents may be the subject of a supervisory investigation and/or a written report when:

1. Use of force results in an apparent or reported injury;

2. A non-deadly weapon is used on a person (baton, chemical agent) or a strike or blow is delivered to the body;
 3. A firearm is discharged in the furtherance of the Department's mission, except for firearms training or practice; or when necessary to kill an injured animal as discussed in this policy; or
 4. A supervisor deems a report of the use of force is necessary.
- B. A supervisor will review the specific circumstances of the incident and determine if a report to General Headquarters through the chain of command is needed.
1. In all use of force incidents required to be reported, the Use of Force After-Action Report will be utilized.
 2. When the incident is minor in nature and the use of force was justified and the level of force used was the most appropriate, the supervisor should document the facts, and a supervisor's report to Headquarters may not be necessary.
 3. A copy of the Use of Force After-Action Report will be sent to the Office of Professional Standards via District Headquarters.
 - a. When applicable, a copy of the Use of Force OSPOA Rights/Supervisory Notification Form will be attached to the Use of Force After-Action Report.
 - b. The station will maintain the original Use of Force After-Action Report.
8. Department Response
- A. Deadly Physical Force incident
1. The Department's policy on Employee Involved Fatal or Serious Injury Incident will be followed.
- B. Administrative Review
1. All reported use of force incidents will be reviewed at the appropriate Department level of authority to determine:
 - a. If Department rules, policy, or procedures, were followed;
 - b. If the current and relevant rules, policy and procedures were appropriate and effective for the incident; and
 - c. If Department training was, and is, adequate.

2. Findings of rule or policy violations or training inadequacies shall be forwarded to the proper level of authority for appropriate disciplinary action and/or resolution.
3. An annual review and summary analysis of use of force incidents shall be conducted by the Office of Professional Standards.
4. Upon request, the summary shall be made available for public inspection by the Office of Professional Standards.
5. The Training Division will review the annual summary of use of force incidents to determine if training policies and procedures are adequate. The Training Division shall submit a report describing their findings.
6. Use of force reports shall be retained as required by state law.

USE OF FORCE

OSPOA RIGHTS/SUPERVISORY NOTIFICATION FORM

Name of Officer

/

Name of Citizen

ADVICE OF USE OF FORCE RIGHTS

I, _____, understand that I have the right to, and will be allowed to consult with, an Association representative or Association attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of a statement.

I DO NOT WAIVE MY RIGHT

WAIVER TO USE OF FORCE RIGHTS

I waive my right to consult with an Association representative or Association attorney prior to giving an oral or written statement about the use of force.

Employee's Signature Date _____ Time _____

Supervisor notified: Date _____ Time _____

Supervisor's Signature _____

cc: Office of Professional Standards
District Headquarters

