

LAW ENFORCEMENT INTENTIONAL USE OF DEADLY PHYSICAL FORCE RESPONSE PLAN

(SB 111 Plan)

Polk County
Intentional Use of Deadly Physical Force
Planning Authority

Revision Date 2022

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Members of the Planning Authority

Aaron Felton, Polk County District Attorney (co-chair)
Sheriff Mark Garton, Polk County (co-chair)
Lt. Chris Zohner, Oregon State Police
Chief Trevor Womack, Salem Police Department
Chief Isaiah Haines, Monmouth Police Department
Chief Robert Mason, Independence Police Department
Chief Jake McKnight, Grand Ronde Tribal Police Department
Chief Thomas Simpson, Dallas Police Department
Deputy David Shorter, Labor Union Representative
Evan Taylor, Public Member

Roster Updated May 18th, 2022

The original plan was approved in 2008 after passage of Senate Bill 111. The plan was modified 2017. This current plan was also approved by the planning authority and governing bodies in 2022. This proposed Plan was approved by the Planning Authority and later submitted to the local governing bodies of the following jurisdictions:

- Polk County-----Approved 09/17/2022
- City of Independence-----Approved 06/28/2022
- City of Monmouth-----Approved 07/05/2022
- City of Dallas-----Approved 07/18/2022
- City of Falls City-----Approved 08/08/2022
- City of Salem-----Presented 06/27/2022 (no vote taken)
- Confederated Tribes of Grand Ronde -----Approved 06/23/2022

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan will be submitted to the Department of Justice as outlined in ORS 181A.785 & 181A.790.

Preamble

Polk County law enforcement agencies recognize the importance to both their agencies and our communities to ensure that any intentional use of deadly physical force by a peace officer is investigated in a professional, competent and impartial manner. The openness with which we proceed in these investigations is critical to establishing and maintaining trust within the community. It is clear our citizens examine closely the

actions any law enforcement agency takes when their officers intentionally use deadly physical force, and it is our goal to ensure the community is confident and accepting of the actions Polk County law enforcement agencies take when involved in these situations.

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

- (1) In the event that a member of the planning authority is unable to continue to serve, a replacement shall be appointed as provided ORS 181A.790.
- (2) There shall be at least 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.

Section 2: Applicability of the Plan

This plan shall be applicable, as set forth herein, to any intentional use of deadly physical force by a peace officer acting in the course of and in furtherance of his/her official duties, occurring within Polk County.

Section 3: Definitions

Agency	Means the law enforcement organization employing the peace officer who intentionally used deadly physical force.
Plan	Means 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. Any approved revisions shall become a part of the 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.
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. (ORS 161.015(8))
Physical Injury	Means impairment of physical condition or substantial pain that does not amount to “serious physical injury.”

Involved Officer Means the peace officer whose official action was or whose official order precipitated an intentional use of deadly physical force. Also includes a peace officer who was involved before or during the intentional use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

Section 4: Immediate Aftermath

When a peace officer intentionally uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety and health of the officer and any member of the public.

After taking such steps, the officer shall immediately notify his or her agency of the intentional use of deadly physical force.

Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.

Upon request, the officer shall provide information regarding the circumstances as necessary to protect persons and property, preserve any evidence, and to provide a framework for the investigation.

Section 5: Intentional Use of Deadly Physical Force

When intentional deadly physical force is used against any person, in addition to the requirements of Section 4 (1) of this Plan and notwithstanding agency policy, the following provisions apply:

- (1) Upon the arrival of additional peace officers, sufficient to manage the scene, each Involved Officer shall be relieved of the above duties set forth in Section 4(1) of the Plan, and the duties shall be re-assigned to uninvolved peace officer personnel.
- (2) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain information relevant to public safety (e.g. outstanding suspects, location of evidence, direction of travel, etc.).
- (3) As soon as practicable, each Involved Officer shall leave the scene with a companion officer, as directed by his or her supervisor, and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a location designated by the investigative agency. Following the intentional use of deadly physical force, the officer's union representative shall be notified. Management or non-represented

employees shall be afforded the same opportunity to consult with legal representation.

- (4) After consultation with the involved officer, the agency or officer shall notify the officer's family according to the agency's policy regarding such notification.
- (5) Notification shall be made to the District Attorney as provided in Section 7(1) of this Plan. This provision does not prevent the agency from requiring additional notification requirements within their respective agency policies.
- (6) As soon as practicable, any weapon used by an involved officer shall be seized by investigators and, if appropriate, replaced with a substitute weapon. Other involved officers' weapons, even if not used, are also subject to seizure by the investigative agency.
- (7) Interview of an Involved Officer:

As used in this section "interview" refers to formal interview of an officer by assigned investigative personnel that occurs a reasonable time after the incident, and after the officer has had an opportunity to consult with counsel, if so desired. It's noteworthy that there may be multiple involved officers, and this process shall be followed with each of them.

- (a) The interview of the involved officer who intentionally used deadly physical force shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the officer(s). The interview shall occur no sooner than 48 hours after the incident, unless this waiting period is waived by the officer.
 - (b) The waiting period does not preclude an initial on-scene debriefing with the officer to assess and make an initial evaluation of the incident.
 - (c) The scene shall be secured and managed consistent with the control of any other major crime scene. Only personnel necessary to conduct the investigation shall be permitted access to the scene. When it is determined that no evidence will be contaminated or destroyed, the involved officer may conduct a "walk through" to assist in the investigation.
- (8) Immediately after the initial on-scene debriefing (see Section 5(7)(b)), an involved officer shall be placed on administrative leave until sufficient information exists to justify the intentional use of deadly physical force and the officer has had an opportunity for initial mental health counseling.
- (9) Notwithstanding subsection (8) above, for no less than 72 hours immediately following an incident in which deadly physical force was intentionally used by a peace officer, 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 force. (See also related subsection (10) below.)

- (10) In the six months following an intentional use of deadly physical force incident that results in a death, the agency shall offer each Involved Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.
 - (a) At agency expense, the involved officer (s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session with a follow-up session scheduled at a date determined by the mental health professional.
 - (b) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.
- (11) In the event of an intentional use of deadly physical force, it is recommended that members of an organization outside the involved officer's agency conduct the investigation under the direction of the District Attorney. Members of the involved officer's agency may assign personnel to assist in the investigation as directed by the lead investigative agency.
 - (a) An outside agency may include the Oregon State Police, the Polk County Major Crimes Team or any other agency which has the expertise necessary to investigate a deadly force situation.
 - (b) The District Attorney shall be consulted whenever one agency requests another to investigate any intentional use of deadly physical force.
 - (c) At least one officer from an outside agency shall be assigned to the investigative team in the event an agency investigates their own officer's intentional use of deadly physical force.
- (12) The assignment of outside investigative personnel does not preclude the agency involved from conducting a concurrent investigation for administrative purposes as established by that agency. Such investigations may be necessary for civil preparation, determination of policy violations or training issues.
- (13) In order to preserve the integrity of the investigation, the scene supervisor and investigative supervisor shall notify all involved officers to refrain from making public statements about the investigation, until such time as the investigation has concluded and the District Attorney has made a determination regarding the criminal responsibility of all involved persons.
- (14) The law enforcement agency shall collect at least the following information relating to the incident 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;
 - (d) Shall promptly submit the information collected under section (a) of this subsection to the Department of Justice.
- (15) As soon as practical, and in conjunction with the District Attorney's Office and the lead investigative agency, the involved officer's agency shall release an initial public statement about the incident. The statement shall include, as appropriate:
- (a) The time and location of the incident;
 - (b) The condition of any suspect;
 - (c) The nature of the intentional use of deadly physical force;
 - (d) Any other information the District Attorney, lead investigative agency, or the involved officer's agency deems necessary given the particular circumstances of the incident.

Section 6: Investigation Protocols

- (1) The investigation, at a minimum, shall consist of the following:
 - (a) Eyewitness and involved party interviews
 - (b) Evidence collection
 - (c) Scene documentation
 - (d) Involved Officer(s) interview(s)
- (2) The investigation shall be documented in written reports, and all police reports and taped statements shall be provided to the investigative agency, the Involved Officer(s) agency(ies), and the District Attorney.

Section 7: District Attorney

- 1) When an intentional use of deadly physical force by an officer occurs the agency shall immediately notify the District Attorney's Office. Notification shall be made through the established on-call procedure.
- 2) When an intentional use of deadly physical force by an officer occurs, the District Attorney or his or her designee will consult with the agency regarding the investigation and implementation of 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) The District Attorney will consult with the investigating agency and make a decision on whether to present the case to a Grand Jury.
 - (b) The timing of the decision will be made by the District Attorney based upon all considerations.
 - (c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer through his or her representative.
 - (d) Upon a final decision by the Grand Jury or the District Attorney, the District Attorney shall notify the investigating agency and the involved officer's agency of the conclusions of the Grand Jury proceeding under this plan.
 - (e) The District Attorney shall release the Grand Jury conclusions to the public.

Section 8: Debriefing

The intentional use of deadly physical force by a peace officer has the potential to create strong emotional reactions which have the potential to interfere with an officer's ability to function. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers within the agency.

The requirements of this section provide a minimum framework and are not intended to take the place of agency policy. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following an intentional use of deadly force

incident. Such policies should include a procedure that are implemented from the time of the incident and continue over time.

- (1) Upon a final determination by the District Attorney, the agency shall conduct an internal review of the matter for compliance with agency policy. Such review, at a minimum shall include a review of the incident with the involved officer(s).
- (2) Each agency shall provide a process for any officer(s) who make(s) a request, to participate in a critical incident debriefing.
- (3) If available, agencies should encourage officers to take advantage of Employee Assistance Programs, and if appropriate, agencies should request assistance from other agencies that may have in place formal programs for dealing with critical incidents.

Section 9: Agency Reporting, Training, Outreach

- (1) Each law enforcement agency within Polk County shall make available a copy of this Plan to every officer and shall incorporate the Plan into agency policies and provide training to officers on the implementation of the plan.
- (2) Upon the conclusion of an investigation, the announcement by the District Attorney pursuant to Section 7(3) of the Plan, and the debriefing, the agency shall complete the Attorney General's report regarding the use of force, and submit the report to the Attorney General.
- (3) Each agency subject to this Plan shall comply with the Department of Public Safety Standards and Training rules on use of force training, as well as establish department training requirements on the use of force. The training must include education on the agency's use of force policy. This training may also include, but is not limited to the following:
 - (a) Defensive Tactics
 - (b) Tactical Shooting
 - (c) Use of force in making an arrest
 - (d) Use of non-lethal force

Each agency shall have a written policy and monitoring system to ensure that the training standards and reporting requirements are met.

- (4) After adoption of this Plan, to the extent they are fiscally able, each agency shall take steps to publicize the Plan to their respective communities, by providing information to the media, general public, community organizations, and quasi-governmental bodies.

Section 10: Fiscal Impact

The Planning Authority has noted only de minimis fiscal impact resulting from the above process.

Section 11: Plan Revision

The Planning Authority shall conduct a biennial review of the Plan. If a revision of the 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 12: Agency Use of Force Policies

Agency Use of Force Policies attached for the following agencies:

Dallas Police Department
Independence Police Department
Monmouth Police Department
Salem Police Department
Oregon State Police
Polk County Sheriff's Office
Grand Ronde Tribal Police Department