

Umatilla County Deadly Physical Force Plan

Updated November 2020

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Members of the Planning Authority

Umatilla County District Attorney Daniel R. Primus, co-chair

Umatilla County Sheriff Terry Rowan, co-chair

Chief Jason Edmiston, Hermiston Police Department

Lieutenant Karl Farber, Oregon State Police

Officer Cass Clark, Pendleton Police Department

Umatilla County Citizen Susan McHenry

On 11/2/2020, this plan was approved by the Planning Authority and submitted for approval to governing bodies for the following jurisdictions:

Umatilla County

City of Hermiston

City of Milton-Freewater

City of Pendleton

City of Pilot Rock

City of Stanfield

City of Umatilla

Oregon State Police

PREAMBLE

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 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 the law enforcement officer 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 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(s).

SECTION 2: APPLICABILITY OF THE PLAN

- (1) This plan shall be applicable, as set forth herein, to any use of deadly physical force, by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Umatilla County.

SECTION 3: DEFINITIONS

Employing Agency -	Means the law enforcement organization or organizations employing the involved officer or officers.
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 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.
Physical Injury -	Means impairment of physical condition or substantial pain that does not amount to "serious physical injury."
Involved Officer –	Means the person whose official conduct, or official order, was the cause in fact of the death of a person. "Involved Officer" also means an officer/deputy whose conduct was not the cause in fact of the death, but who was involved in the incident before or during the use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

LEA of Primary Responsibility -	Means the agency with jurisdictional authority over the involved officer(s). The Law Enforcement Agency (LEA) of Primary Responsibility may relinquish the investigative role upon consultation with the District Attorney, and agreement from another agency to assume the investigative role.
Incident Commander -	Is the person responsible for directing and/or controlling resources by virtue of explicit legal, agency, or delegated authority.

SECTION 4: IMMEDIATE AFTERMATH

- (1) When an officer uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety of the officer and any member of the public.
 - a. After taking such steps, the officer shall immediately notify his or her agency of the use of deadly physical force.
 - b. Thereafter, the officer, if able, shall take such steps as are reasonably necessary preserve the integrity of the scene and to preserve evidence.
 - c. 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: INVESTIGATION PROTOCOLS

- (1) There will be two investigations regarding officer(s) involved in a deadly force incident that occurs in Umatilla County. A criminal investigation will be conducted by a Law Enforcement Agency (LEA) of Primary Responsibility to determine if any criminal conduct occurred during the use of deadly physical force. The Employing Agency of the involved officer(s) will conduct a secondary administrative investigation regarding the policies of the parent agency.

If a deadly force incident involves one or more members of the multi-jurisdictional Blue Mountain Enforcement Narcotics Team (BENT), the Employing Agency of the involved officer(s) will be responsible for the administrative investigation. The agency of Primary Responsibility will be determined post incident by a minimum of two BENT Board members in consultation with the District Attorney.

If a deadly force incident involves one or more members of the Umatilla/Morrow County Major Crime Team, the Employing Agency of the involved officer(s) will be responsible for the administrative investigation. The agency of Primary Responsibility will be determined

post incident by an administrator of the Employing Agency in consultation with the District Attorney.

- (2) The LEA of Primary Responsibility will designate an Incident Commander. All the criminal investigative activities shall be directed and coordinated by the Incident Commander. The primary responsibility of the Incident Commander is direction and coordination of the entire investigation. The Incident Commander may request personnel from the LEA of Primary Responsibility or other partner agencies to his/her command.
- (3) The Incident Commander shall ensure that at least one officer not employed by the Employing Agency of the involved officer(s) is assigned as an active investigative participant until the conclusion of the criminal investigation.
- (4) The Incident Commander may activate and enlist the assistance of all or part of the Major Crime Team to assist in the investigation. The Incident Commander may enlist other specialized investigators such as, but not limited to, the Oregon State Police Crime Laboratory, scale diagram specialists, polygraph examiners, medical personnel, the Medical Examiner, the State Medical Examiner's Office, firearm experts, use of force experts, and other officers experienced in the criminal investigation of critical incidents to assist in the investigation.
- (5) The Incident Commander shall ensure that the investigation, at a minimum, consists of:
 - a. Eyewitness interviews.
 - b. Evidence collection.
 - c. Background interviews.
 - d. Involved Officer(s) interview(s).
- (6) The Incident Commander shall ensure that the investigation is documented in written reports, and that the reports are filed with the LEA of Primary Responsibility, the Employing Agency and the District Attorney.

SECTION 6: CRIMINAL INVESTIGATION

When an officer uses deadly physical force, in addition to the requirements of Section 4 (1) of this Plan, and notwithstanding agency policy, the following provisions apply:

- (1) Upon arrival of additional 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 police personnel.

- (2) As soon as practicable, each Involved Officer shall leave the scene, as directed by his or her supervisor, and be offered the opportunity for medical treatment as necessary. If the officer is not in need of medical treatment, the officer shall be taken to a local police or sheriff's office. If requested by the Involved Officer, the officer's union representative shall be notified.
- (3) The Involved Officer(s) duty weapon(s) will be collected at an appropriate time and place. If possible, the weapon(s) will be collected away from the scene and at a time when the weapon(s) can be replaced. The weapon(s) should be collected holstered, in order to maintain evidentiary value, condition of the weapon(s) and trace evidence. The Employing Agency will be responsible for the replacement of the Involved Officer's duty weapon. When other officers are present during the use of deadly physical force, their duty weapon(s) should be checked to determine if they had been "fired" or not.

(4) Interview of an "Involved Officer":

As used in this section, "interview" refers to the formal interview of the involved officer by assigned investigative personnel that occurs no sooner than 24 hours after the incident. An involved officer should seek counsel before providing their statement.

- a. The waiting period does not preclude an initial on-scene conversation with the involved officer(s) to assess and make an initial evaluation of the incident. Questions of the officer(s) should be limited to public safety, security issues, tactical issues, outstanding suspects and weapons, injured people, identity of those involved and physical evidence urgency.
 - b. The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, separate the involved officer(s) and assign someone to stay with the involved officers until investigative personnel can obtain a preliminary statement. The purpose in obtaining this statement will be to determine public safety information (e.g. outstanding subjects, location of evidence, direction of travel, etc.).
 - 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 as determined by the Incident Commander shall be permitted access to the scene. When it is determined that no evidence will be contaminated or destroyed, the officer(s) involved in the incident may be asked to participate in a "walk through" to assist in the investigation.
- (5) For at least 72 hours immediately following an incident in which deadly physical force was used by a police officer, the Employing Agency shall not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force.

- a. Officer(s) involved in discharging his or her firearm, as a result of a deadly force situation, shall immediately be placed on administrative leave until such time as sufficient information exists to determine the justification in the use of deadly physical force, and/or the officer(s) have been provided the opportunity to attend mental health counseling or have been evaluated to determine the officer's fitness for duty.
- (6) After consultation with the involved officer, the Employing Agency or officer shall notify the officer's family according to departmental policy regarding such notification.
- (7) In the 6 months following a use of deadly physical force incident, the Employing 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 by a licensed mental health counselor, of the officer's choice.
 - 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.
- (8) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 7 (1) of this Plan.
 - a. This provision does not prevent the Employing Agency from requiring additional notification requirements within their respective agency policies.
- (9) The assignment of outside investigative personnel does not preclude the Employing 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.
- (10) In order to preserve the integrity of the investigation and prosecution, if one occurs, the Incident Commander or his/her designee shall ask 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.
- (11) The Employing Agency, cooperation with the District Attorney, shall designate a representative to make an initial public statement about the incident. Such statement shall include:
 - a. The time and place of the incident.
 - b. The condition of any suspect.
 - c. The nature of the use of deadly physical force.

- (12) Prior to a final determination being made by the District Attorney, the District Attorney and the LEA of Primary Responsibility shall consult with each other before releasing any additional information concerning the investigation.

SECTION 7: DISTRICT ATTORNEY

- (1) When an incident of the use of deadly physical force by an officer occurs, the Employing Agency shall, as soon as practicable, notify the District Attorney's Office.
 - a. Notification shall be made to the District Attorney, Chief Deputy District Attorney, or the designated senior member of the District Attorney's staff as determined by the District Attorney.
- (2) When a use of deadly physical force by an officer occurs, the District Attorney, and/or designee of his/her staff, will consult with the Employing 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 will not be used as a method of reviewing an officer's use of deadly force.
 - b. The District Attorney will consult with the investigating agency and make the decision on whether to present the case to a Grand Jury.
 - i. 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.
 - 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's representative.
 - d. If the District Attorney decides that the investigation reveals that the officer's use of deadly physical force was justified under Oregon Law, and that Grand Jury review is unnecessary, the District Attorney shall so notify the Employing Agency of the officer, the involved officer's representative and the public.

SECTION 8: DEBRIEFING

The use of deadly physical force by an officer has the potential to create strong emotional reactions, which have the potential to interfere with an officer's ability to perform his/her duties. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in officer(s) directly involved in an incident, but also in other officers.

The requirements of this section provide a minimum framework, and are not intended to take the place of the Employing Agency's policies, rules and regulations. Agencies are encouraged to develop formal procedures to deal with an officer's stress in response to a deadly force incident.

- (1) At the conclusion of the investigation the Incident Commander shall ensure that adequate time is allotted for a full critique of the operational effectiveness of the investigation and the plan. The critique shall be held in private and shall be attended by investigators or other personnel who were actively involved in the investigation.
- (2) The Incident Commander shall submit an after-action report to the LEA of Primary Responsibility and the Umatilla County Deadly Force Planning Authority after every deadly force incident.
- (3) The Incident Commander shall assure that the appropriate information is collected and provided to the District Attorney. The District Attorney will then submit the report to the Attorney General's Office. The report will include the date, time and location of the incident, the name, gender, race, ethnicity and age of the decedent, and a brief description of the circumstances surrounding the incident.

SECTION 9: EDUCATION, TRAINING, OUTREACH

- (1) The Department of Public Safety Standards and Training requires 8 hours per year, 24 hours over a 3-year period of training in "firearms" and "use of force" disciplines. Each agency subject to this Plan shall require a minimum of 4 hours per year, 12 hours over a 3-year period, of training dedicated to use of force. The training must include education on the agency's use of force policy and the Deadly Physical Force Plan. This training may also include, but is not limited to:
 - a. Defensive Tactics
 - b. Tactical Shooting
 - c. SWAT training
 - d. Use of Force in making an arrest
 - e. Use of non-lethal force
 - f. Range 3000
 - g. In-service and Briefing Training
 - h. Confrontational Simulation
- (2) Upon adoption of this Plan, partner agencies shall take steps to publicize the Plan to their respective communities.

- (3) At least once per calendar year the District Attorney's Office shall provide their Attorneys training on the use of force by law enforcement officers, the investigation of such incidents and the Deadly Physical Force Plan.
- (4) At least once per calendar year, the Planning Authority shall conduct outreach intended to educate the media, government bodies and members of the Umatilla County community in the use of force by law enforcement officers and the investigation of such incidents.
- (5) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Umatilla County community in a discussion regarding the purpose of this Plan, and the elements contained therein. Such steps shall include, but are not limited to general public release of the draft, discussion with the media, providing the draft to agency employees, union representatives, elected officials, and members of relevant boards or commissions.

SECTION 10: FISCAL IMPACT

- (1) 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 each element of the Plan as described in sections (a) to (e) of Section 2 (4) of Senate Bill 111, Oregon Laws 2007.

SECTION 11: PLAN REVIEW

- (1) The Planning Authority will meet annually to review and discuss the operation of the Plan.
- (2) 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.

For the County of Umatilla District Attorney

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the County of Umatilla Sheriff

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Pendleton

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Milton-Freewater

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Stanfield

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the Oregon State Police

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Hermiston

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Umatilla

Signature: _____

Printed Name: _____

Title: _____

Date: _____

For the City of Pilot Rock

Signature: _____

Printed Name: _____

Title: _____

Date: _____

***For the Confederated Tribes of the Umatilla
Indian Reservation***

Signature: _____

Printed Name: _____

Title: _____

Date: _____