

DEADLY PHYSICAL FORCE PLAN

Revised 2019

**Policies and procedures relating to investigating use of deadly
physical force by law enforcement personnel**

Table of Contents

MEMBERS OF THE PLANNING AUTHORITY	i
APPROVAL HISTORY	i
SIGNATURE PAGE	ii

Deadly Physical Force Plan

PREAMBLE	1
SECTION 1: ADMINISTRATION	1
SECTION 2: APPLICABILITY OF THE PLAN	1
SECTION 3: DEFINITIONS	1
SECTION 4: IMMEDIATE AFTERMATH	2
SECTION 5: PRIMARY INVESTIGATING AGENCY	2
SECTION 6: ENSUING ACTIONS	2
SECTION 7: INVESTIGATION PROTOCOLS	3
SECTION 8: INVOLVED OFFICERS	3
SECTION 9: PUBLIC STATEMENTS	4
SECTION 10: DISTRICT ATTORNEY	4
SECTION 11: EVENT DEBRIEFING AND REPORTING	5
SECTION 12: TRAINING AND OUTREACH	5
SECTION 13: FISCAL IMPACT STATEMENTS	5
SECTION 14: PLAN REVISIONS	6

Appendices

Agency Policies ¹	Appendix I
Public Meeting Documentation	Appendix II
Government Approval Resolutions	Appendix III

¹ ORS 181.790(2) and 181.785(1)(a)-(b). Citations given to show what statute this provision complies with.

Members of the Planning Authority²

Linn County District Attorney, Doug Marteeny, co-chair
Linn County Sheriff, Michelle Duncan, co-chair
Oregon State Police, Lt. Nathan House
Police Department, Chief Marcia Harnden, Albany Police Department
Labor Union Representative, Sean Potter, Sweet Home Police Department
Public Member, Jay Burcham
Non-Voting Member, Taylor Jackson, Lebanon Police Department.
Non-Voting Member, Colin Pyle, Linn County Sheriff’s Office.
Non-Voting Member, Kevin Guilford.

Approval History³

On May 29, 2019, this plan was presented and approved by the planning authority in a public meeting at the Albany Police Department.

Later, this plan was submitted for approval by the governing bodies of the following jurisdictions:

Linn County.....Approved August 8, 2019
City of Albany.....Approved June 26, 2019
City of Lebanon.....Approved July 10, 2019
City of Sweet Home.....Approved (date)

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this plan was submitted to the Attorney General. Recoding of these dates made part of the document upon approval from respective bodies;

² ORS 181A.780(1)-(2).

³ ORS 181A.780 (7)-(8).


Signatures

I have reviewed the Linn County Deadly Physical Force Plan and agree to the conditions contained therein. My signature confirms my agency's commitment to participation in these policies and procedures relating to the use of deadly physical force by law enforcement personnel.




Sheriff Michelle Duncan

4-21-22
Date



District Attorney Doug Marteeny

4-21-22
Date



Lt. Jeff Lewis

4-21-22
Date




Chief Frank Stevenson

4-21-22
Date



Chief Jeff Lynn

4/21/22
Date



Chief Marcia Harden

4/25/22
Date

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 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 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 ORS 181A.780.
- (2) There shall be six voting members of the planning authority. The approval of the plan, 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

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

Section 3: Definitions

Agency: The law enforcement organization employing the officer who used deadly physical force.

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.

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 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.

Physical Injury: Has the same meaning as “physical injury” as defined in ORS 161.015(7).

Plan: Means the final document approved by the planning authority, adopted by two-thirds of the governing bodies employing law enforcement agencies, and published to the Attorney General.

Preliminary Statements: Those statements provided by involved officers to supervisors or investigators immediately after a deadly force incident related to officer safety, public safety and necessary information to secure the scene, apprehend others that may be of concern to the investigation, and provide a framework for the investigation.

Serious Physical Injury: Has the same meaning as "serious physical injury" as defined in ORS 161.015(8).

Section 4: Immediate Aftermath⁴

When an officer uses deadly physical force, the officer, when able, shall immediately:

- (a) Take reasonable measures to preserve life;
- (b) Notify his or her agency of the use of deadly physical force;
- (c) Take such steps as are reasonably necessary to preserve the integrity of the scene and evidence; and
- (d) Upon request, the officer may provide preliminary statements.

Section 5: Primary Investigating Agency⁵

After consulting with the District Attorney, the agency shall decide what law enforcement agency will be the primary investigating agency. In the event that the involved officer's own agency will be the primary investigating agency, and the incident resulted in a death, the agency will promptly arrange for at least one investigator from outside the agency to participate in the investigation.

In the event that a use of deadly physical force resulting in death or serious physical injury involves officers from multiple jurisdictions, the District Attorney and each involved agency shall consult and agree upon a primary investigative agency.

Section 6: Ensuing Actions

When an officer becomes an "involved officer," as defined in Section 3 of this plan, in addition to the provisions of Section 4 of this plan, and notwithstanding agency policy, the following also applies:

- (1) Upon the arrival of additional officers, sufficient to manage the scene, each involved peace officer shall be relieved of the above duties set forth in Section 4 of the Plan, and the duties shall be re-assigned to uninvolved police personnel.

⁴ ORS 181A.780(4)(b).

⁵ ORS 181A.785(3) and ORS 181A.790(5)(a).

- (2) As soon as practicable, each involved peace officer shall leave the scene, as directed by his or her supervisor, and be offered an opportunity for a medical examination. If the involved officer is not in need of medical treatment, the involved officer shall be taken to another location. If requested by the involved officer, the involved officer's union representative shall be notified.
- (3) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney. Notification shall be made to the District Attorney, or other senior member of the District Attorney's staff. This provision does not prevent the agency from requiring additional notification requirements within respective agency policies.
- (4) As soon as practicable, the duty weapon of any peace officer who fired their weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate.

Section 7: Investigation Protocols⁶

- (1) The investigation, at a minimum, shall consist of:
 - (a) Eyewitness interviews.
 - (b) Evidence collection.
 - (c) Scene documentation.
 - (d) Involved officer interview(s).
- (2) The investigation shall be documented in written reports.
- (3) All written reports shall be filed with the investigator's agency, and copies provided to the lead investigative agency, and the involved officer's agency.
- (4) All police reports shall be promptly provided to the District Attorney.⁷

Section 8: Involved Officers

- (1) Interview of an Involved Officer:

As used in this section "interview" refers to a formal interview of the involved officer by assigned investigative personnel that occurs within a reasonable time period after the incident and after the officer has had an opportunity to consult with counsel, if so desired.

 - (a) The interview of an involved officer 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 preliminary statement with the officer to assess and make an initial evaluation of the incident.

⁶ ORS 181A.780(4)(c).

⁷ ORS 181A.780(4)(e).

- (2) For at least 72 hours immediately following an incident in which the use of deadly physical force by a peace officer resulted in the death of a person, a law enforcement agency may not return an involved peace officer to duties that might place the officer in a situation in which the officer has to use deadly force.⁸
- (3) Officers whose actions are the cause in fact of death or serious physical injury to another shall immediately be placed on paid administrative leave until sufficient information exists to determine the justification in the use of deadly physical force and that the officer(s) have had an opportunity for mental health counseling.
- (4) In the 6 months following a use of deadly physical force incident that results in a death, the agency shall offer each involved peace 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.⁹

Section 9: Public Statements

- (1) Every involved agency retains the ability to make public statements as deemed appropriate.
- (2) As soon as practicable, the agency employing any involved officer 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.
- (3) After the initial statement is made, the primary investigating agency has responsibility to take lead on all subsequent public statements about the incident. The primary investigative agency shall consult with the District Attorney and make public releases of information as deemed appropriate.

Section 10: District Attorney

- (1) 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 elements of this plan.
- (2) The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a grand jury. The timing of the decision will be made by the District Attorney at such time as it is determined that sufficient information is available to competently make the decision. The District Attorney will consult with the

⁸ ORS 181A.785(2) and ORS 181A.790(4).

⁹ ORS 181A.790(3)(a) and ORS 181A.785(2).

investigating agency and make the decision on whether to present the case to a Grand Jury.¹⁰

- (3) 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.
- (4) Preliminary hearings will not be used as a method of reviewing an officer's use of deadly force.
- (5) 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.

Section 11: Event Debriefing and Reporting¹¹

- (1) Upon a final determination by the District Attorney, the agency shall conduct an internal review of the matter according to agency policy. Such review, at a minimum, shall include a review of the incident by the involved officer.
- (2) Upon the conclusion of the investigation and final determination of the District Attorney and the Court (when applicable), the agency shall complete and submit a report to the Department of Justice in accordance with ORS 181A.790(6)(b).

Section 12: Training and Outreach

- (1) Each law enforcement agency within Linn County shall include in its use of deadly force policies a provision regarding training of law enforcement personnel regarding the deadly use of force. The policy shall also contain a plan for outreach to the community to educate the public on the agency's policies on the use of deadly force.¹²
- (2) Each law enforcement agency within Linn County shall provide a copy of this plan to every officer, and provide training to officers on the implementation of the plan.

Section 13: Fiscal Impact Statements

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 ORS 181A.780(4)(f).

¹⁰ ORS 181A.780(4)(d).

¹¹ ORS 181A.780(4)(e).

¹² ORS 181A.780(4)(a).

Section 14: Plan Revisions¹³

- (1) Each calendar year, the planning authority shall meet at least once to review and discuss the operation of the plan.
- (2) Revisions or updates to the Title, list of members of the planning authority, Table of Contents, Approval History, Appendices, and Agency Signatures shall be obtained and maintained by the co-chairs of the planning authority.
- (3) If a revision of the Plan (contained in sections 1-14) becomes advisable, the planning authority shall meet and vote on any proposed revisions. If the planning authority adopts a revision to the plan, such revision shall be submitted for approval as provided by statute¹⁴.

¹³ ORS 181A.780(4)(e).

¹⁴ ORS 181A.780(5)and(7).