

W. I. O. a.

Memorandum Date: February 4, 2008

Order Date: February _____, 2008

TO: Board of County Commissioners

DEPARTMENT: Lane County District Attorney's Office/Lane County Sheriff's Office

PRESENTED BY: F. Douglass Harclerod, District Attorney

AGENDA ITEM TITLE: Lane County Deadly Physical Force Plan

I. MOTION

MOVE APPROVAL OF THE DEADLY PHYSICAL FORCE PLAN PURSUANT TO SENATE BILL 111.

II. AGENDA ITEM SUMMARY

Pursuant to Senate Bill 111, a planning authority for deadly force was created, the plan has been developed, and it is being submitted to the Board of County Commissioners for approval.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The 2007 Oregon legislature passed Senate Bill 111 which requires all counties to create a Use of Deadly Physical Force Planning Authority and develop a Deadly Physical Force Plan. The District Attorney and Sheriff in each county are the statutorily designated co-chairs of the Planning Authority. The Planning Authority met six times and held the required public hearing under the statute. Pursuant to the statute, the Planning Authority shall submit the plan developed to the governing body of each law enforcement agency within the county. The police chiefs and the city managers of the affected cities are preparing the required submittals for their cities. The District Attorney and Sheriff are preparing the presentation through this agenda cover memo to the Board of County Commissioners. Senate Bill 111 requires approval by at least two-thirds of the governing bodies to which the plan is submitted. Then the plan is submitted to the Attorney General for approval.

B. Policy Issues

The legislature passed Senate Bill 111 to require the counties and cities to develop a deadly physical force plan that is implemented when a police officer uses deadly physical force.

C. Board Goals

The Board will be following the law set forth in Senate Bill 111 when it reviews and hopefully approves the Deadly Physical Force Plan.

D. Financial and/or Resource Considerations

When the plan is implemented there are costs associated with the investigation of the use of deadly physical force by a police officer. We currently have these costs and do not anticipate any additional financial cost for the investigation. However, the plan also requires an education and

outreach component which will have some additional cost albeit fairly minor. I do not expect the Sheriff's Office or the District Attorney's Office to budget separately for these costs.

E. Analysis

Over the years there have been several controversial uses of deadly force by police officers in the Portland area. I believe this is the reason we now have a state-wide statute requiring deadly physical force plans in all counties. Our plan incorporates much of what we have been doing for many years and lays out a standard procedure for how these use of deadly force incidents will be handled in the future.

F. Alternatives/Options

Under Senate Bill 111, the Board of County Commissioners and the city councils either approve of the plan as written or disapprove of the plan as written. Senate Bill 111 does not allow for the amending of the plan by individual cities or the County.

IV. RECOMMENDATION

The District Attorney and the Sheriff recommend that the Lane County Board of Commissioners approve the plan as submitted.

V. TIMING/IMPLEMENTATION

After the plan is submitted to all of the cities having a law enforcement agency in their jurisdiction and the County Commissioners, then assuming a two-thirds vote of approval, the plan will be forwarded to the Attorney General's office for approval. The plan, with all the approvals necessary, must be completed by July 1, 2008.

VI. FOLLOW-UP

When the plan has received the approvals, we will implement it immediately and follow it when deadly force is used by a police officer in Lane County.

VII. ATTACHMENTS

Deadly Physical Force Plan.

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER) IN THE MATTER OF APPROVING THE DEADLY
NO.) PHYSICAL FORCE PLAN PURSUANT TO SENATE
) BILL 111
)

WHEREAS, the 2007 Oregon legislature passed Senate Bill 111 which requires the Sheriff and District Attorney as co-chairs of the planning authority to prepare a Deadly Physical Force Plan; and

WHEREAS, the Lane County Use of Deadly Physical Force Planning Authority has prepared a plan and submitted it to the Board of County Commissioners for approval or disapproval; and

WHEREAS, the Board has considered the plan and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Lane County Board of Commissioners approves the Deadly Physical Force Plan submitted to it by the Lane County Use of Deadly Physical Force Planning Authority.

APPROVED this _____ day of February, 2008.

Chair, Lane Board of County Commissioners

In the Matter of Approving the Deadly Physical Force Plan Pursuant to Senate Bill 111.

RECEIVED AS TO FORM
DATE 2/6/08
211
OFFICE OF COUNTY ATTORNEY

DEADLY PHYSICAL FORCE PLAN

Lane County
Use of Deadly Physical Force
Planning Authority

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Members of the Planning Authority

Doug Harclerod, Lane County District Attorney (co-chair)
Russ Burger, Lane County Sheriff (co-chair)
Lt. Mike Bloom, Oregon State Police
Chief Jerry Smith, Springfield Police Department
Deputy Les Sieczkowski, Labor Union Representative
David Crowell, Public Member
Officer Corey Mertz (non-voting member)

On January 2, 2007, this Plan was approved by the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Lane County-----	Approved/Disapproved (date)
City of Coburg-----	Approved/Disapproved (date)
City of Cottage Grove-----	Approved/Disapproved (date)
City of Eugene-----	Approved/Disapproved (date)
City of Florence-----	Approved/Disapproved (date)
City of Junction City-----	Approved/Disapproved (date)
City of Oakridge-----	Approved/Disapproved (date)
City of Springfield-----	Approved/Disapproved (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 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

- (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 Lane County.

Section 3: Definitions

Agency – Means the law enforcement organization employing the officer who 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.

Police-Officer	Means a police officer or reserve officer as defined in ORS 181.610 and who is employed by a law enforcement agency to enforce the criminal laws of the State of Oregon.
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	Has the same meaning as “serious physical injury” as defined in 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 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.

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 to 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.
- (2) If the use of deadly physical force results in physical injury, the Agency may employ its own resources to investigate and document the incident.

- (a) This section does not prohibit the Agency from requesting assistance from an outside law enforcement agency.

Section 5: Serious Physical Injury/Death

When the use of deadly physical force results in death or serious physical injury to 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 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 an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to the Agency offices. If requested by the Involved Officer, the officer's union representative shall be notified.
- (3) As soon as practicable, the duty weapon of any officer who fired their weapon or who was in the immediate vicinity where weapons were fired, shall be seized by investigators, and replaced with a substitute weapon, if appropriate.

- (4) Interview of an "Involved Officer":

As used in this section "interview" refers to formal interview of the 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.

- (a) The interview of the involved officer(s) who discharged a firearm during a use of deadly physical force incident resulting in death or serious physical injury, 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 conversation with the officer to assess and make an initial evaluation of the incident.
- (c) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain a

preliminary statement from the involved officer as soon as possible. The purpose in obtaining this statement will be to obtain public safety information (e.g. outstanding suspects, location of evidence, direction of travel, etc.).

- (d) 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 officer (s) involved may conduct a “walk through) to assist in the investigation.
- (5) 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 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 has to use deadly force.
 - (a) Officer (s) involved in discharging his or her firearm that results in death or serious physical injury 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 that the officer (s) have had an opportunity for mental health counseling with an outcome that no issues would preclude the officer (s) from performing the duties of a police officer.
- (6) In the 6 months following a 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.
- (7) After consultation with the involved officer, the Agency or officer shall notify the officer’s family according to the Agency’s General Order, or other policy regarding such notification.
- (8) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 8 (1) of this Plan.

- (a) This provision does not prevent the Agency from requiring additional notification requirements within their respective agency policies.
- (9) In the event of a use of deadly force that results in death or serious physical injury, the investigation shall be conducted by the Interagency Deadly Force Investigations Team (IDFIT). A written agreement shall be adopted and approved by each jurisdiction employing a law enforcement agency. At a minimum, the agreement shall provide for:
 - (a) A mission statement.
 - (b) Who will be the supervisor of the investigating officers, and the manner in which conflicts of interest will be resolved.
 - (c) The membership of the team, and the manner for selecting the members.
 - (d) Investigative protocols that do not conflict with the requirements of this Plan.
 - (e) Training of the members in the investigation of use of deadly force incidents.
 - (f) The assignment of at least one officer from an agency other than the involved officer's agency.
 - (g) The assignment of at least one officer from the involved officer's agency.
- (10) In the event that a conflict exists in the use of the IDFIT, the Involved Officer's Agency and the District Attorney shall consult and determine the appropriate manner in which the investigation will proceed.
- (11) 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.
- (12) In order to preserve the integrity of the investigation and prosecution, if one occurs, 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.

- (13) The Agency 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.

- (14) Prior to a final determination being made by the District Attorney, the District Attorney and the primary investigative agency shall consult with each other and make a public release of information as is deemed appropriate.

Section 6: Investigation Protocols

- (1) The investigation, at a minimum, shall consist of:
 - (a) Eyewitness interviews.
 - (b) Evidence collection.
 - (c) Scene documentation.
 - (d) Background interviews.
 - (e) Involved Officer interview(s)

- (2) The investigation shall be documented in written reports.
 - (a) The IDFIT shall include in the Standard Operating Procedure, a provision regarding the filing of reports regarding the criminal investigation. All police reports regarding the criminal investigation shall be made available to the IDFIT.
 - (b) All police reports shall be provided to the District Attorney.

Section 7: District Attorney

- (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 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.
 - (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.
 - (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 officers 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.
- (4) If the use of deadly physical force results in physical injury to someone other than a police officer, upon completion of the investigation, all investigative information shall be forwarded to the District Attorney for review.

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 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 a use of deadly force incident. Such policies should include a procedure that is 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.
- (2) If the incident is of such a magnitude that agency-wide morale is implicated, the Agency shall take such steps as it deems necessary to ensure professional police services are provided, and to develop strategies to restore morale.
- (3) Each agency shall provide for a process for any officer who makes a request, to participate in a critical incident debriefing.
- (4) 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: Reporting, training, outreach

- (1) Each law enforcement agency within Lane County, shall include in the agency policy regarding the use of deadly force, a provision regarding engaging members of the community in a discussion regarding the Agency's policies on the use of deadly force, and well as discussions regarding the use of deadly force by the Agency's personnel.

- (2) Each law enforcement agency within Lane County shall provide a copy of this Plan to every officer, incorporate the plan into agency policy documents and provide training to officers on the implementation of the plan.
- (3) Upon the conclusion of the investigation, the announcement by the District Attorney pursuant to Section 8 (3) of this 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.
- (4) The Board and Department of Public Safety Standards and Training requires 8 hours per year, 24 hours over a 3 year period of training from either the "firearms" or "use of force" subject areas. Each agency subject to this Plan shall require that a minimum of 4 hours per year, 12 hours over a 3 year period, of that training be 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:
 - a. Defensive Tactics.
 - b. Tactical Shooting.
 - c. SWAT training.
 - d. Use of force in making an arrest.
 - e. Use of less than lethal force.
 - f. Crisis intervention and the use of force.
 - g. Use of force in dealing with the mentally ill.

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

- (5) Upon 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.
- (6) At least once per calendar year, the Agencies subject to this Plan shall collectively conduct a seminar intended to educate the media, government lawyers, and selected members of the Lane County community in the use of force by law enforcement officers, and the investigation of such incidents.
- (7) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Lane County community in a discussion regarding the purpose of the

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 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 11: Plan Revision

- (1) As provided in the IDFIT written agreement, the Planning Authority shall meet to review and discuss the operation of the Plan and the IDIFT.
- (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.

Section 12: Agency Policies