

## **610.00 – Post-Deadly Physical Force and Death-In-Custody**

### **Refer:**

- ORS §131.005(11)
- ORS § 161. 015(3)
- ORS §161.015(8)
- Policy 605.00 – Use of Force
- Policy 615.00 – Reporting Efforts to Control a Person
- Policy 620.00 – Control Event Report Reviews

### **Definitions:**

- **Communication Warning Order:** An order issued in writing during an investigation that prohibits involved members from attempting to alter or prevent the testimony of any potential witnesses to an incident under investigation by the Sheriff's Office. Members are further prohibited from concealing or destroying, or attempting to destroy evidence relevant to an investigation or potential investigation.
- **Deadly Physical Force:** Physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. ORS § 161.015 (3)
- **In-Custody Death:** Any death that occurs when a subject is in the physical custody or control of the Sheriff's Office.
- **Involved Member:** A member who applies deadly physical force or who orders an application of deadly physical force. In the case of an in-custody death, a member who applies control measures possibly related to the death, has physical control of the person at the time of death (other than by suicide) or administers a conducted electrical weapon, or has possession of a subject who dies in custody.
- **Member:** For purposes of this Policy, the term member refers to any Multnomah County Sheriff's Office member trained in use of force.
- **Negligent Discharge:** Any unintentional discharge of a firearm by a member that is not due to equipment malfunction.
- **On-Scene Interview:** A voluntary interview or walk through with the involved member to help detectives develop an overview of the incident and process the scene. An on-scene interview may include, but is not limited to, the identification of the scene(s), other members present or involved, potential witnesses and evidence.
- **Physical Force:** The exertion of physical strength against another person, which includes, but is not limited to, the application of aerosol agents and other non-lethal devices used against another person. Escort holds and handcuffing, without resistance by the subject, does not constitute a reportable amount of force.
- **Probable Cause:** A substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it. ORS §131.005(11).

- **Serious Physical Injury:** 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 function of any bodily organ. ORS §161.015(8)
- **Witness Member:** For the purpose of this policy, a Sheriff's Office employee who observes or has firsthand knowledge of the events related to a use of deadly physical force or an in-custody death.

**Policy:**

1. The Sheriff's Office recognizes the importance to the involved member, the Sheriff's Office, and the community of conducting thorough, impartial, and timely investigations into the use of deadly physical force by members and in-custody deaths.
2. It is the responsibility of all members to assist in these investigations for the purpose of determining justification, as well as to identify any training and/or performance deficiencies. The Sheriff's Office also recognizes the impact these traumatic incidents have on members and acknowledges the need to be sensitive when conducting the investigation and offering access to Employee Assistance Programming or counseling. This policy recognizes these dual responsibilities and is designed to meet both goals.
3. The Detectives Unit, in partnership with the East County Major Crimes Team, is responsible for investigating all incidents involving the use of deadly physical force and/or an in-custody death.
4. Public accountability requires that the Sheriff's Office provide information to the public in a timely manner. Information that could jeopardize the integrity or value of any investigation or any pending prosecution may be withheld from the public until release is appropriate.

**Procedure:**

1. **Deadly Physical Force/In-Custody Death in Multnomah County:**
  - 1.1. **Member Responsibilities:**
    - 1.1.1. Members will notify the on-duty supervisor and advise them of the member's role in the incident (e.g. involved member, witness member, assisted at the scene), as soon as it is safe and tactically sound to do so.
    - 1.1.2. The purpose of this notification is to identify involved and witness members so that the on-duty supervisor can best manage the scene.
    - 1.1.3. This notification is not intended to compel a statement or the production of evidence by any involved member.
  - 1.2. **Involved Member Responsibilities:**
    - 1.2.1. An involved member must, as soon as it is safe to do so, provide notice of the incident and their status as an involved member to an on-duty supervisor with responsibility for operations at the location of occurrence. Once relieved of operational responsibilities at the scene, an involved member must notify the member's own supervisor, if different.
    - 1.2.2. An involved member, unless injured, will remain at the scene until released by the Detectives Sergeant. The member will not be held at the scene any longer than necessary.
    - 1.2.3. The involved member(s) will be afforded all rights guaranteed under the United States, and the State of Oregon Constitutions, and the benefits of the current collective bargaining agreement throughout the investigation.
    - 1.2.4. The involved member will comply with the Communication Warning Order.

- 1.2.5. Detectives will ask, but not require, the involved member to provide a voluntary interview or walk through at the scene to discuss the incident. The purpose of this request is to facilitate the prompt and accurate processing of the scene, and provide an overview of the incident.
- 1.2.6. When it is necessary to transport an involved or witness member, supervisors will assign a member not involved in the incident to drive them.

### 1.3. Witness Member Responsibilities:

- 1.3.1. Witness members will make their status known to the on-duty supervisor as soon as it is safe to do so.
- 1.3.2. All witness members, unless injured, will remain at the scene until released by the Detective Sergeant. Witnesses will not be held at the scene any longer than necessary.
- 1.3.3. Witness members, if requested, are required to give an on-scene interview to discuss the incident with detectives.
- 1.3.4. All witness members will be afforded all rights guaranteed under the United States, and the State of Oregon Constitutions, and the benefits of the current collective bargaining agreement throughout the investigation.
- 1.3.5. Witness members will comply with the Communication Warning Order.
- 1.3.6. Witness members will be required to submit to an audio recorded interview if requested prior to going off shift. If injured, the witness member will be interviewed when medically stable.
- 1.3.7. Exceptions must be limited to those situations where the number of witnesses or the complexity of the crime scene make it necessary for the investigators to obtain additional details of the incident prior to beginning an interview. Those exceptions must be approved by the Detective Sergeant.

### 1.4. First Arriving Supervisor Responsibilities:

- 1.4.1. After securing the scene and providing medical aid as needed, complete the following:
  - 1.4.1.1. If ambulance transport is required, ensure an uninvolved member is assigned to accompany the injured member or community member to the hospital (in the ambulance).
  - 1.4.1.2. Secure the primary and the outer perimeter of the scene with crime scene tape.
  - 1.4.1.3. Separate all involved members and witnesses. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective or designee will be posted to ensure that no communication regarding the incident takes place.
  - 1.4.1.4. Ensure that a single entry point into and out of the scene is established and advise the City of Portland's Bureau of Emergency Communications (BOEC) of its location.
  - 1.4.1.5. Ensure that a Crime Scene Log is maintained at the entry point.
  - 1.4.1.6. Make notifications in the following order:
    - 1.4.1.6.1. Chain of Command,
    - 1.4.1.6.2. Detectives Unit,
    - 1.4.1.6.3. Public Information Officer,
    - 1.4.1.6.4. Appropriate bargaining unit representative,
    - 1.4.1.6.5. Peer Support.
  - 1.4.1.7. Ensure involved member and witness member secure their weapons pending weapon examination by responding detectives.

### 1.5. Command Notification Responsibilities:

- 1.5.1. Unit Commander/Captain will notify the appropriate Division Chief.
- 1.5.2. The Division Chief will notify:
  - 1.5.2.1. The Sheriff and all other Chief Deputies,
  - 1.5.2.2. County Counsel,
  - 1.5.2.3. Professional Standards Unit, and the

#### 1.5.2.4. Training Unit.

#### 1.6. Detectives Sergeant Responsibilities:

##### 1.6.1. Make notifications:

- 1.6.1.1. Detective Unit Command,
- 1.6.1.2. On-call detectives,
- 1.6.1.3. District Attorney's Office,
- 1.6.1.4. Medical Examiner's Office, in the event of death.

1.6.2. Request assistance from the East County Major Crime Team, when appropriate.

1.6.3. Respond to the scene and assume responsibility for the scene after receiving a briefing from the supervisor in charge of the scene.

1.6.4. Take charge of the investigation.

1.6.5. Identify all involved and witness members and any members with pertinent investigative information.

1.6.6. Make investigative and scene processing assignments.

1.6.7. Regularly provide updates to the Detectives Unit Commander, the Public Information Officer, the Professional Standards Unit Manager, and the Sheriff.

1.6.8. Ensure Communication Warning Orders are issued, document to whom and provide copies to the Professional Standards Unit.

1.6.9. Ensure all involved weapons have been examined, documented, and retained if necessary; ensure member(s) is supplied with a replacement weapon by the Training Unit, if appropriate.

1.6.10. Ensure a thorough and complete investigation is conducted.

1.6.11. Ensure the appropriate checklists are used and case notebooks are prepared.

#### 1.7. Detectives Unit Responsibilities:

1.7.1. Conduct a complete and thorough investigation of the incident, which will be used to determine potential justification for the use of deadly force.

1.7.2. Conduct interviews of all involved and witness members and use the interview checklists, ensuring all applicable areas are covered. All interviews that touch on material facts of the case must be audio recorded in their entirety.

1.7.3. Interview civilian witnesses and attempt to audio record their statements.

1.7.4. Record detailed information about any weapons involved.

1.7.5. Determine and document the number, trajectory and point of impact of any shots fired.

1.7.6. Document any injury or damage to property.

1.7.7. Collect and submit all weapons involved in a deadly force incident to the Oregon State Crime Lab for appropriate testing, document their condition as found to include serial number, rounds in chamber, and number of rounds in each magazine.

1.7.8. Complete an appropriate Report and case notebooks to include all transcripts of all taped statements.

1.7.9. Submit all cases involving intentional use of deadly physical force, in-custody deaths and negligent discharge resulting in injury to the District Attorney's Office for review.

#### 1.8. Sheriff Responsibilities:

1.8.1. The Sheriff will notify the County Board of Commissioners of the event.

#### 2. Deadly Physical Force/In-Custody Death outside Multnomah County involving a Member:

##### 2.1. Involved Member Responsibilities:

2.1.1. Notify the jurisdiction of occurrence, and

2.1.2. Notify the involved member's supervisor.

2.2. Supervisor Responsibilities:

2.2.1. Make notifications in the following order:

- 2.2.1.1. Chain of Command,
- 2.2.1.2. Detectives Unit,
- 2.2.1.3. Public Information Officer,
- 2.2.1.4. Training Unit,
- 2.2.1.5. Appropriate bargaining unit representative,
- 2.2.1.6. Peer Support.

2.3. Detectives Unit Responsibilities:

- 2.3.1. Respond to the scene, if feasible, and
- 2.3.2. Serve as liaison to the jurisdiction(s) of occurrence.

3. Deadly Physical Force Against a Member in Multnomah County:

3.1. This will be treated in the same manner as deadly physical force used by an involved member, for notification purposes.

3.2. The Detectives Unit will be notified in all cases and will assume investigative responsibility.

4. Deadly Physical Force/In-Custody Death in Multnomah County by a law enforcement officer from another jurisdiction:

4.1. If the Sheriff's Office assumes investigative responsibility, the Detectives Sergeant will be the supervisor and Detectives Unit will be responsible for the investigation. Investigative consideration will be made for the involved member's agency policies and their current collective bargaining agreement, if applicable.

4.2. The on-scene supervisor will ensure that an on-duty supervisor of the member's agency is notified.

4.3. Unless there is some need to seize a weapon immediately, such as ongoing degradation of evidence by weather, the involved member(s) will be allowed to keep his or her weapon(s) until his or her agency supervisor arrives. Upon arrival, the agency supervisor will take custody of the firearm, and if necessary, surrender it to the investigator.

5. Professional Standards Administrative Review:

5.1. The Professional Standards Unit shall be responsible for the administrative review of all deadly physical force incidents involving MCSO members and in-custody death investigations involving a person in MCSO's custody.

5.2. The administrative review shall cover policy compliance, adherence to training protocols or any other learning opportunities as designated by the Sheriff.

6. Release of Information:

6.1. The Sheriff's Office has a responsibility to ensure that the community, in particular the families of community members directly affected by the use of deadly physical force, as well as members of the Sheriff's Office, receive information about a use of deadly physical force or an in-custody death in a timely manner.

- 6.2. The Sheriff's Office will provide appropriate information in a timely manner when members use deadly physical force or there is an in-custody death. As a general rule, the Sheriff's Office will release, as soon as possible and after consultation with the District Attorney's Office and the Medical Examiner, accurate information that does not compromise an ongoing investigation or potential prosecution.
- 6.3. The Public Information Officer (PIO), who reports directly to the Sheriff, will be called out to all use of deadly physical force and in-custody death scenes. As soon as possible, the PIO will coordinate with the responsible Detective Sergeant and the assigned representative of the District Attorney's Office to begin making recommendations to the Sheriff on information release.
- 6.4. During the course of the investigation, the Public Information Officer will continue to coordinate the release of information with the Detective Sergeant, or designee, subject to the Sheriff's approval. The Sheriff may delegate release decisions to the Public Information Officer.
- 6.5. The Sheriff will convene a staff briefing within twenty-four (24) hours of the incident.
- 6.6. Generally, subject to the needs of the investigation, the Sheriff's Office will release to the public the following information as soon as possible:
  - 6.6.1. Nature of the call,
  - 6.6.2. Time of the call and member arrival,
  - 6.6.3. Number of members directly involved in the use of deadly physical force,
  - 6.6.4. Years of service of members directly involved in the use of deadly physical force,
  - 6.6.5. General information about the community member(s) involved in the deadly physical force encounter, and;
  - 6.6.6. Other information as determined by the Sheriff, after consultation with the Detectives Unit and District Attorney's Office.
- 6.7. The identity of an involved member will not be released during the twenty-four (24) hours following an incident. In incidents involving the death of a member, or member of the public, the identity of the deceased will be released only with approval of the Medical Examiner's Office.
- 6.8. Requests for public records will be processed through the Public Information Officer.

**History:**

- Originating Policy/Procedure: 9/27/18
- Next Review Date: 9/27/20
- Review By: Sheriff's Office