

IMPACT STATEMENT

Legislation title: Adopt new Post Deadly Force Procedures for Police Bureau and authorize legal proceedings to determine validity. (Ordinance)

Contact name: Tracy Reeve, City Attorney's Office

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Purpose of proposed legislation and background information:

The City of Portland's Settlement Agreement with the United States Department of Justice required the City to review and revise the Portland Police Bureau's (PPB) policies concerning use of force. This ordinance is being submitted concurrently with an ordinance to approve related amendments to the Settlement Agreement, which address among other things the investigative procedures following an officer's deadly use of force (PPB Directive 1010.10). With the Mayor as Police Commissioner, City Council is ultimately responsible for ensuring that PPB adopts and adheres to policies that meet constitutional requirements and respond to community values.

In November 2016, City Council ratified the renegotiated Portland Police Association labor agreement. This eliminated the long-contested "48-hour rule," a policy that created a 48-hour window before PPB could compel the interview of any officer involved in a deadly use of force incident. Council determined that this policy ran contrary to national best practices. It was City Council's intent to secure a prompt and timely administrative investigation to determine whether an officer's use of deadly force comports with policy and training. The Multnomah County District Attorney's interpretation of the law on this issue frustrates the ability of the City to compel interviews of officers involved in deadly use of force incidents within 48 hours, without risking that the DA will decline or be unable to prosecute due to the compelled interview. Recognizing that this is an unsettled area of case law, the City intends to seek an interpretation from the state court system to settle the legal question and validate the City's preferred policy of compelling interviews within 48 hours.

Financial and budgetary impacts:

The policy change is not expected to have a financial or budgetary impact. There will be minor litigation expenses and attorney time which will be provided by in-house lawyers in the City Attorney's Office, for whom there is no incremental expense and no budget adjustments needed.

Community impacts and community involvement:

This legislation directly touches upon issues of police accountability within the Portland community. The procedures surrounding administrative investigations are inherently matters of public interest. Historically, on both national and local levels, the prosecution of officer involved in deadly use of force incidents is rare (and convictions even rarer). Thus, while the importance of criminal investigations cannot be understated or overlooked, the importance of administrative

investigations is that much more pronounced as the public has found that administrative investigations are often the only meaningful opportunity to hold officers accountable for wrongful uses of deadly force.

While many segments of the Portland community support the constitutional rights of officers, there has been much consternation about the effects of implementing a policy that adheres to the District Attorney's interpretation of *State v. Soriano* (1984) by precluding interviews compelled within 48 hours. Short of halting implementation of the version of 1010.10 that does not allow for compelled interviews prior to the completion of the criminal investigation, the City is turning to the judicial system for legal resolution of this issue and will be working to find procedural solutions during the interim.

Budgetary Impact Worksheet

Does this action change appropriations?

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount



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M E M O R A N D U M

To: Rod Underhill
From: Ryan Lufkin
cc: Don Rees
Date: 3/27/17
Subject: Analysis of Immunity in Compelled Statements of Public Employees

Executive Summary:

Officer involved use of force events where death or serious physical injury occur are tragic events that deeply impact individuals, family members and the community. In Multnomah County when a law enforcement officer is involved in the use of force and either death or serious physical injury occur an immediate criminal investigation of the involved police officer(s) conduct begins.

Across the country, the public sees events surrounding an officers use of force that erode the public's faith in the criminal justice system's ability to conduct a fair and independent investigation. The public questions, now more than ever, the independence of those investigating the conduct of the officers and those conducting the prosecution review of the event. Officer involved use of deadly force investigations are complex and involve the intersection of a number of important concepts including the need for a complete and thorough investigation, a fair and impartial assessment of the law and facts, the public's undeniable interest in ensuring responsible transparency in police work, employment implications to the involved officer(s) and the constitutional rights of the involved officer(s). It is important to understand the law and the process of how investigations into these extremely important situations occur and what appropriate options are available for policy makers concerning the investigation of the use of force.

Whenever an officer involved use of force event occurs that results in death or serious physical injury and the scene has been secured, police will notify the District Attorney's Office. Where a death has occurred, Oregon statutes provide that "[t]he district medical examiner and the district attorney for the county where death occurs...shall be responsible for the investigation of all deaths requiring investigation. ORS 146.095(1). Further, '[d]eath investigations shall be under the direction of the district medical examiner and the district attorney for the county where the death occurs. ORS 146.100(1).

In addition to the notification to the District Attorney's Office the involved officer(s) will have legal counsel and union representative respond to the scene. Homicide unit detectives will be assigned and will begin an investigation of the shooting. Further, the involved agency's internal affairs unit will open an investigation into the agency's practices, policies and orders (non-criminal administrative investigation) to determine, for example, whether the involved officer(s) complied with internal policies and/or orders.

Within hours, the following personnel are frequently present at the scene:

- * Involved officer(s)
- * Witnesses
- * Homicide Unit Detectives
- * District Attorney representative(s)
- * Medical Examiner Personnel
- * Medical Personnel
- * Command staff of the involved Police Agency
- * Union representatives for the involved officer(s)
- * Lawyers for the involved officer(s)
- * Internal Affairs Unit Detectives (Administrative Investigation)
- * Mayor's Office Personnel
- * Media
- * Community members

Separation of the Criminal Investigation from the Administrative Investigation

Recently, and with more frequency, it has been suggested, or indeed has been implemented, that the involved officer(s) should be compelled, induced, ordered or otherwise forced to provide an immediate, or close in time to the event, statement about what occurred surrounding the officer(s) use of force. This "statement" includes not only verbal answers from the involved officer(s) but also other forms of furnishing evidence. This analysis intends to address these concepts and explain the intersection of Oregon law and the legal ramifications of following suggestions or practices of compelling, inducing, ordering or otherwise forcing an involved officer to make a statement.

An involved officer, like any other Oregonian, has inalienable rights under the Oregon and United States Constitution. Oregon law is extremely clear that a public servant, including a police officer, does not forfeit their Constitutional protections when they perform the duties of a law enforcement officer. Central to this discussion is understanding that under Oregon and federal law, as it relates to a criminal investigation, a police officer has a right not to incriminate themselves and not to be forced to provide evidence that may be used against them. Violation of this "right to remain silent" by forcing the police officer to speak with the threat that if they do not they will suffer an adverse consequence to their employment (through the Administrative Investigation), has been the subject of much litigation.

Courts (detailed legal analysis below) have analyzed the criminal investigation consequences for violating an officer's right to remain silent and compelling either a statement or the furnishing of evidence include one, or more, of the following:

1) Use immunity

The officer's statements or furnishing of evidence cannot be used against them

2) Use and derivative use immunity

The officer's statements or furnishing of evidence and any evidence discovered tied to those statements or evidence cannot be used against them

3) Transactional immunity

The officer cannot be criminally prosecuted for the use of force

Use immunity alone has been eliminated as an appropriate sanction by the Court for the violation of an individual's right to remain silent. Thus, the minimum realistic sanction the State will incur as a result of violating an officer's right to remain silent is to lose all evidence gathered after the statement, or other furnishing of evidence, was compelled unless the State could prove that the evidence was derived wholly independently from the statement. Finally, the most significant sanction that the Court could impose is that the officer could not be prosecuted for any criminal offense, including a homicide, related to the compelled statement.

This analysis will examine the practical implications of the minimum realistic sanction – use and derivative use immunity.

Most proposals for compelling officers to make a statement or otherwise furnish evidence focus on the understandable desire to have responsible transparency regarding the event and to disseminate information to family members of the deceased and the general public as soon as practicable. That is, the involved officer(s) should be ordered and/or compelled to provide a statement or otherwise furnish evidence about what happened surrounding the officer's use of force to help satisfy that need to know. This statement, in turn, could be provided to the family of the deceased, the public and the media to aid in ensuring responsible police transparency. Proponents also believe that the officer's memory will be most thorough and complete shortly after the event.

Providing this information to the family of the deceased, the community and the media would make any argument that the criminal investigation did not rely on those compelled statements or other forms of furnishing evidence in formulating its criminal investigation absolutely impossible. The only way to prove that every piece of evidence that followed a compelled statement was not tainted by the contents of the compelled statement is to ensure that the investigation team had no contact with, or knowledge of, any of the content of the compelled statements. Obviously if those statements are made public, that would not be the case. Thus, as it relates to the criminal investigation, we can anticipate that all evidence would be suppressed by the Court since all evidence would be collected well after this initial compelled statement is demanded of the officer. With all evidence suppressed by the Court, the practical consequence is that even the use and derivative use immunity sanction would result in a complete inability to successfully prosecute a criminal case. Further, even if the compelled statements are not released to the deceased family members or to the public but, instead, were “walled off,” Oregon case law has determined that that effort is “impossible” to achieve and will be discussed further below.

If the initial statement is compelled and not provided to the public then its utility in providing responsible transparency to police work is greatly diminished. Further, the criminal investigative team must now be segregated from the internal administrative investigation team and no information that the internal administrative investigation team collects must reach any personnel that will have contact with the criminal investigation team. For example, the involved agency’s Police Chief should not know the nature or content of the compelled statements since the Police Chief would have contact with the criminal investigation team. It is important to note that this is already the current practice of police shooting investigations in Multnomah County.

Second, this analysis addresses the more significant consequence that could occur as a result of a violation of the officer’s right to remain silent – transactional immunity

Transactional immunity is the complete immunity from prosecution for criminal offenses related to the compelled statements. Since 1984, the Oregon Supreme Court has endorsed the view that Article I, Section 12 of the Oregon Constitution requires transactional immunity as a substitute for an individual’s right to remain silent. In the absence of providing transactional immunity, the court may impose sanctions as a consequence of violating an individual’s right to remain silent. This was reinforced as recently as 2010.

Thus, the fundamental problem with the desire to force an officer to provide a statement is both a practical and a legal one. Legally, violating an officer's right to remain silent will result in a criminal investigation sanction that, at a minimum, will suppress all evidence that the State cannot prove was obtained wholly independently of the tainted statements. At maximum, the criminal investigation sanction will provide the officer complete immunity from prosecution. Practically, the criminal investigation team cannot erect a wall between the criminal investigation and the internal administrative investigation if, for example, the very first thing that occurs is a compelled statement that is made available for public consumption or otherwise becomes known to criminal investigators. In conclusion, it would be wholly inadvisable to implement a policy or practice that would make the prosecution of a potential homicide committed by a police officer impossible. The nature and degree of just how impossible it would be (eg. use and derivative use immunity vs. transactional immunity) seems to be missing the forest through the trees – either would create an intolerable result in an event where a homicide by a police officer goes unprosecuted.

Finally, this entire scenario is predicated on the idea that an officer, who just committed a possible homicide, would choose to speak under threat of their employment. However, the threat to the officer's employment is entirely nonexistent for the specific conduct of refusing to provide a statement. The Oregon Supreme Court has made it abundantly clear that sanctions imposed for refusing to speak, absent a sufficient grant of immunity, are intolerable and will be reversed. Thus, there is no real risk to the officer when presented with the ultimatum to speak or be sanctioned – it should be anticipated that the sanction will not be sustained. A simple outcome chart may help explain these concepts:

Attempting to compel a statement

Event	Result of threat	Info gained?	Info to public?	Punish officer?	Punishment Sustained?	Immunity?	Case still prosecutable ¹ ?
* Officer refuses to speak on scene	Officer still chooses not to speak	No	No	Yes	No	N/A – no statements obtained	Yes
* Officer refuses to speak on scene	Officer chooses to speak	Yes	No	No	N/A	Yes	Yes – provided all info stays only with IA team
* Officer refuses to speak on scene	Officer chooses to speak	Yes	Yes	No	N/A	Yes	No
* Officer chooses to speak on scene	N/A – No threat needed	Yes	Yes	N/A	N/A	No	Yes

¹ Prosecutable: Distilling the information from this memo it should be clear that either use and derivative use immunity or transactional immunity would practically result in the near impossibility of prosecuting the officer

Summary of Oregon and Relevant Federal Caselaw

After a review of case law concerning transactional immunity in Oregon and after consultation with the Oregon Attorney General's Office, it is clear that the problem first identified by the US Supreme Court in Garrity v New Jersey, 385 US 493 (1967) remains a significant impediment to threatening discipline of a public employee to compel speech as part of an investigation. In Garrity, the United State Supreme Court held, "There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price... We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in a subsequent criminal proceeding of statements obtained under threat of removal from office, and that it extends to all, whether they are the policeman or other members of our body politic." *Id.*

The Oregon Court of Appeals grappled with this question in State v Soriano, 68 Or App 642 (1984) whose opinion was later adopted in whole by the Oregon Supreme Court in State v Soriano, 298 Or 392 (1984). In Soriano, the Court explained that there are three types of immunity that flow from compelled testimony: (1) Use immunity, (2) Use and Derivate use immunity and (3) Transactional immunity. These immunize, in order: (1) only the statements compelled, (2) the statements compelled and evidence discovered as a product of the compelled statements and finally (3) protection from prosecution whatsoever regarding the subject of the compelled statements. The Court in Soriano determined that where the State compelled testimony through the use of contempt of court proceedings, "We hold that Article I, Section 12, of the Oregon Constitution requires transactional immunity as a substitute for the right not to testify against oneself." *Id.* The Court further explained its concern with use immunity was not only concerning the actual production of compelled statements at a later trial but, also, the non-evidentiary use of such statements that a prosecutor or law enforcement officer may make of such statements in investigation or prosecution of the case. Simply knowing the coerced statements may make a prosecutor more or less inclined to charge a particular offense or offer a particular plea bargain. The Court further opined that the State could not realistically erect a wall between the officers who solicit a compelled statement and the prosecution team. "It is unrealistic to give a dog a bone and to expect him not to chew on it... We hold that Article I, Section 12, of the Oregon Constitution forbids giving the dog the bone. Only transactional immunity is constitutional in Oregon."

In State v Graf, 316 Or 544 (1993) the Court examined whether a State agency could complete a termination of an employee where the termination procedures afforded the employee an opportunity to speak and present evidence at a termination hearing. The employee, who was subject to a criminal investigation, claimed that he could not be forced to choose between attempting to maintain his employment by fully participating in the termination hearing and his right to remain silent. The Supreme Court disagreed and found such a circumstance not compelling, “Contrary to the assertion of defendant’s lawyer in his letter to the department...neither the department’s letter nor the rule put any burden on the defendant ‘to refute the charges or face dismissal’. Saying that a rule is coercive does not make the rule coercive; saying ‘I feel coerced’ when the rule is not coercive does not create coercion...The Court of Appeals erred in concluding the defendant ‘was forced to relinquish his constitutional right to remain silent in order to gain his right to a full due process hearing.’ Because we conclude that OAR 105-80-003(3) exerted no compulsion on defendant to testify at the pre-termination hearing, we do not reach the transactional immunity question.” *Id.*

Even though the Oregon Supreme Court explicitly did not reach the transactional immunity question in Graf, the Court of Appeals in Beugli nonetheless found that Graf created room in Oregon law for use immunity despite the language in Soriano. In State v Beugli, 126 Or App 290 (1994) the Court said, “The right to transactional immunity arises only when the legislature has granted it as a substitute right against self-incrimination guaranteed by Article I, Section 12 of the Oregon Constitution. State v Soriano, *supra* n1, 68 Or App at 662. In the absence of a legislative decision to grant immunity, the remedy for unconstitutionally compelled testimony is suppression of that testimony and any evidence derived from it. State v Graf, 114 Or App 275 (1992). Thus with Graf so interpreted, the Court of Appeals held that the collective bargaining agreement for a police officer did not expressly grant the officer transactional immunity from prosecution in a circumstance involving admittedly coerced statements and therefore the State was not precluded from prosecution by virtue of transactional immunity but, rather, simply precluded from use of the compelled testimony and derivative evidence pursuant to use immunity.

In State v Vondehm, 348 Or 462 (2010) the Supreme Court issued its most thoughtful analysis on these immunity questions since Graf. The Court in Vondehm repeated its admonishment in Soriano that “the Oregon Constitution prohibits the State from requiring a witness to relinquish their Article I, Section 12, right against self-incrimination unless it provides the witness with an alternative that affords the same basic protection as the constitution...The Court held that the State could not compel the statements of a witness without granting transactional immunity because, without protecting the witness from all evidentiary and nonevidentiary use of compelled statements, the State would not afford the witness the same protection the Constitution confers – the right to remain silent.” Vondehm also clearly stated that there was no Constitutional difference between compelling testimony in court or compelling a statement in an investigation. “Thus, the court has long interpreted Article I, Section 12, to impose no distinction between compelled statements and physical evidence derived from such statements or between the use of compelled statements to obtain evidence and as testimony in trial.”

In Oatney v Premo, 75 Or App 185 (2015) the Court discusses in more detail whether Article I, Section 12 itself confers transactional immunity and a defendant's right to challenge punitive consequences for invoking their right to remain silent. "We have subsequently explained, however, that Article I, Section 12, protects only the right not to be compelled to testify against oneself; it does not, in itself, confer transactional immunity whenever that testimony is given... We explained [in Graf] that where 'there is no statute authorizing [a] grant of immunity to the defendant – the defendant's decision to testify, even under compulsion, does not automatically confer transactional immunity on him... Thus, Article I, Section 12, does not, in itself, *provide* transactional immunity. Instead, Article I, Section 12 protects a defendant from *any adverse consequence* of refusing to testify in the absence of transactional immunity."

Analysis

It should be clear from the above recitation that there is significant tension between the apparent wholesale rejection of use/derivative use immunity in Soriano, a Court of Appeals decision that was adopted as the opinion of the Oregon Supreme Court in 1984, and the implementation of use and derivative use immunity as a sanction in subsequent cases. The most cogent reconciliation of these opinions occurs in Oatney v Premo which is not a Supreme Court opinion but explains that the Constitution requires transactional immunity to legally compel speech from an individual. The Oatney court then explains that the sanction for illegally and unconstitutionally compelling speech is use and derivative use immunity and protection from any adverse consequence of refusing to testify in the absence of transactional immunity. Thus, even under this explanation a public employer would be prohibited from lawfully compelling speech from a police officer and if the public employer attempted to sanction the officer for refusing to speak – those sanctions would be overturned. Further, if the officer spoke under compulsion the evidence derived from that speech would be suppressed.

However, there are several other possible explanations that explain the tension between Soriano and other cases. For example, the Court of Appeals opinions affirming use and derivative use immunity could be held wrongly decided in light of Soriano and Vondehm. Under this construction, the Oregon Supreme Court has reserved the sanction of transactional immunity for at least some forms of compelled statements. In assessing this possibility it is notable that the flagrant and wholesale adoption of a systemic policy that purposefully violates an individual's right to remain silent would be significant factor in assessing the appropriate sanction. After thoughtful review, I cannot conclude that there is a clear answer to this tension based on current caselaw. Further, given the Court's extremely strong language in Soriano against even passive knowledge of coerced statements reaching the prosecutor's ear, I do not believe a prosecutor should accept the risk of transactional immunity on the hope that a coerced statement would "only" result in use and derivative use immunity.

Finally, a cursory review of Federal law since Garrity shows over 1200 citations in the ensuing 47 years including 151 cases that distinguished the rule of Garrity into different factual circumstances. However, the narrow question of whether use/derivate use immunity is sufficient over transactional immunity appears settled. In Kastigar v US, 406 US 441 (1972) the United States Supreme Court held, “The statute’s explicit proscription of the use in any criminal case of ‘testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information)’ is consonant with Fifth Amendment standards. We hold that such immunity from use and derivative use is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of privilege. While a grant of immunity must afford protection commensurate with that afforded by the privilege, it need not be broader. Transactional immunity, which accords full immunity from prosecution for the offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege.” *Id.*

Conclusions

The state of the law in Oregon regarding the extent of the remedy available to a public employee who has been compelled to speak despite an invocation of their right to remain silent is unsettled. However, what is completely clear is that that such compulsion, absent a sufficient grant of immunity, is unlawful and violates Article I, Section 12 of the Oregon Constitution. Soriano explains that the only form of immunity that may lawfully be substituted for a person’s right to remain silent is a promise of full transactional immunity. The breadth of consequences for not providing full transactional immunity is what remains unclear. Certainly, the consequence is use and derivative use immunity. However, it is also possible transactional immunity may be required in certain circumstances. No prosecutor should risk immunity of any sort on a significant case given that the bedrock of cases on this topic were written over twenty years ago and, even then, were obviously in tension. I would advise law enforcement to assume the rule expressed by the Supreme Court in Soriano and reaffirmed in Vondehn is still good law until and unless it is overturned by the Oregon Supreme Court. Thus, I would advise law enforcement that compelling a public employee to speak despite an invocation of his right to remain silent by threat of discipline, and without the lawful substitute of transactional immunity being promised, will result in a certain risk of suppression of all such statements and derivative evidence, a certain risk that sanctions imposed on an officer who refused to speak would fail and a high risk that such institutionalized compulsion would result in an sanction of transactional immunity.

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

**DEPARTMENT OF JUSTICE
APPELLATE DIVISION**

March 27, 2017

Rodney Underhill, District Attorney
Multnomah County Courthouse
1021 S.W. Fourth Avenue, Room 600
Portland, Oregon 97204

Re: Current status of immunity law

Dear Mr. Underhill:

At the request of DDA Ryan Lufkin, we have reviewed his memorandum dated March 14, 2017, summarizing the current status of the law in Oregon on immunity and compelled speech, as it pertains to public employees. From our perspective, it is correct, albeit with the caveat that, as the memo notes, certain issues are not quite settled yet.

Please let me know if you have any questions.

Sincerely,

Timothy A. Sylwester
Assistant Attorney General

EXHIBIT B

1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures

Refer:

- Graham v. Connor, 490 U.S. 386 (1989)
- ORS § 146.095, Investigation
- ORS § 161.015, General Definitions
- Directive 315.30, Satisfactory Performance
- Directive 330.00, Internal Affairs, Complaint Intake and Processing
- Directive 333.00, Criminal Investigations of Police Bureau Employees
- Directive 416.00, Post Officer Involved Deadly Force/Temporary Altered Duty
- Directive 630.45, Emergency Medical Custody Transports
- Directive 630.50, Emergency Medical Aid
- Directive 640.10, Crime Scene Procedures
- Directive 900.00, General Reporting Guidelines
- Directive 1010.00, Use of Force

Definitions:

- Communication Restriction Order: An order issued during an investigation that prohibits indirect or direct communications between the involved member(s) and witness member(s) regarding the facts of the case. This restriction will be given in writing and will be lifted in writing.
- Constitutional Force Standard: Under *Graham v. Connor* and subsequent cases, the federal courts have established that government use of force must comply with the “reasonableness” requirement of the Fourth Amendment. Under this standard, members must choose from the objectively reasonable force options at a scene. See the definition of “objectively reasonable” below.
- Deadly Force, also known as Lethal Force: Any use of force likely to cause death or serious physical injury, including the use of a firearm, carotid neck hold, or strike to the head, neck or throat with a hard object.
- *Garrity* warnings: An advisement of rights administered by the Professional Standards Division investigators to members who are the subject of an internal investigation. Under the United States Supreme Court case of *Garrity v. New Jersey*, the advisement notifies subjects of their criminal and administrative liability for any statements they may make and their right to remain silent on any issues that might implicate them in a crime.
- In-Custody Death: Occurs when a subject dies while under physical control of a member, dies as a direct result of police action, or dies while in police custody. Physical control includes the use of an electronic control weapon system.

- **Involved Member:** For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, an involved member is a Bureau member who applies deadly force or directs another to use deadly physical force, or a member who has used physical force, or a member who assumes control care or custody of a subject who dies in police custody.
- **Negligent Discharge:** Any unintentional discharge of a firearm by a sworn member that is not due to equipment malfunction.
- **Objectively Reasonable:** The reasonableness of a use of force is based on the totality of circumstances known by an officer at the time of action or decision-making. It shall be judged from the perspective of a reasonable officer on the scene, without the clarity of 20/20 hindsight after the event has concluded. The measure of reasonableness gives consideration to the reality that officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving. In the application or evaluation of the use of force, the uses of the terms reasonable and reasonably in this policy refer to objective reasonableness.
- **Police Action:** Any circumstances, on or off duty, in which a sworn member exercises or attempts to exercise police authority.
- **Serious Physical Injury:** As defined in ORS §161.015(8), 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.
- **Witness Member:** For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, a witness member is a Bureau member who observes or has firsthand knowledge of the events surrounding an in-custody death or the use of deadly physical force by another member, and other than observing the incident, did not use deadly physical force. Additionally, a member who observes or has firsthand knowledge of the events surrounding a member's direction to another to use deadly force.

Policy:

1. This policy establishes the specific guidelines and reporting requirements for the reporting and investigation of incidents involving uses of deadly force, death as a result of member use of force, and in-custody deaths.
2. The Portland Police Bureau recognizes that a member's use of deadly force or the death of an individual while in police custody requires impartial and timely review. It is the policy of the Bureau that uses of deadly force, death as a result of member use of force, and in-custody deaths, whether on or off duty, be investigated with the utmost thoroughness, professionalism and impartiality so as to determine whether member actions comport with applicable law and Bureau policies and training.
3. The Bureau acknowledges that the investigations of these incidents are of critical importance to the involved member, the Bureau, and the community. The Bureau entrusts the Detective

Division with the responsibility to conduct the criminal investigation of the incident objectively and thoroughly. Concurrently, the Professional Standards Division (PSD) shall also conduct an administrative review of each such incident. The Detective Division may provide information and/or findings from the criminal investigation to PSD; however, all personnel involved in the administrative review shall keep information garnered from the PSD interview strictly confidential, not permitting disclosure of any such information or its fruits to the criminal investigation.

4. Bureau members will be afforded all rights guaranteed under the United States and State of Oregon Constitutions throughout the investigation.
5. To ensure public accountability, the Bureau is committed to establishing open communication and transparent practices with the public in an effort to cultivate and build community trust; however, information that could jeopardize the integrity of any investigation or any pending prosecution may be withheld from release until it is appropriate or a court of competent jurisdiction directs release.
6. The Bureau understands the impact that these traumatic incidents have on members and acknowledges the need to be sensitive when conducting the required investigation. The Bureau encourages its members to take proactive steps and contact available employee assistance resources following such an event if needed.
7. The Bureau also understands the impact that these traumatic incidents has on the families and communities of those persons upon whom deadly force is used and acknowledges the need to be sensitive when conducting the required investigation. All interviews and conversations with family or community members will be conducted in a manner that strives to be respectful while balancing the need to obtain critical information.

Procedure:

1. Duties and Responsibilities Following the Use of Deadly Force Causing Death (within Portland city limits).
 - 1.1. Involved Member(s)
 - 1.1.1. Responsibilities at the Scene:
 - 1.1.1.1. The involved member(s) shall notify an on-duty supervisor at the precinct of occurrence. The member(s) shall make the notification(s) as soon as practicable. The involved member(s) shall make it known to the on-scene supervisor that they are an involved member, as defined in this Directive.
 - 1.1.1.2. If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources (e.g., radio transmissions, Computer Aided Dispatch [CAD], etc.) the necessary information to ensure the safety of the public, the involved member(s) may be required to provide a statement to the on-scene supervisor that is limited to information strictly necessary to immediately protect life and ensure public safety. The on-scene supervisor will be limited to asking the following three questions.

- a) Direction and approximate number of any shots fired by officers and suspects;
 - b) Location of injured persons; and
 - c) Description of at-large suspects and their direction of travel, time elapsed since the suspects were last seen, and any suspect weapons.

All three questions need not be asked if enough information necessary to protect life is obtained with the answers to only one or two of the questions, or from other sources.
 - 1.1.1.3. After answering any of the three public safety questions outlined in 1.1.1.2., the involved member(s) may consult on scene with their union representative and attorney(s).
 - 1.1.1.4. Homicide Detectives may ask the involved member(s) to give a voluntary detailed account of the incident and on-scene walk-through. The member(s) has the right to decline the request if they reasonably believe their use of force actions may be subject to criminal prosecution.
 - 1.1.1.5. The involved member(s), unless injured, shall remain at the scene until released by the Detective Division Homicide Sergeant and PSD. The member(s) shall not be held at the scene any longer than necessary.
- 1.1.2. Responsibilities After the Event:
 - 1.1.2.1. The Professional Standards Division (PSD) Captain or designee shall schedule a meeting with the involved member(s) as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.
 - 1.1.2.1.1. At the meeting, the PSD Captain or designee shall ask questions of the involved member(s) designed to collect a detailed accounting of all information necessary to complete an IA investigation. The involved member(s) may either voluntarily provide a statement or decline to voluntarily provide a statement.
 - 1.1.2.1.2. If the involved member(s) decline to volunteer a statement, the PSD Captain or designee shall compel such a statement after provision of *Garrity* warnings. At the conclusion of *Garrity* warnings, the involved member(s) shall answer all IA questions.
- 1.2. Witness Member(s):
 - 1.2.1. Witness member(s) shall make it known to the on-scene supervisor that they are a witness to the incident, as defined in this Directive.
 - 1.2.2. When requested, witness member(s) shall give an on-scene statement to the on-scene supervisor, providing the necessary information to protect life and ensure the safety of the public. They may also be asked to provide information to ensure that victims, suspects, and witnesses are identified, evidence is located, and provide any information that may be required for the safe resolution of the incident, or any other information as may be required.
 - 1.2.3. Witness member(s) shall be subject to on-scene interviews to discuss the incident with detectives. They shall provide a full and candid account of the use of force event if asked.

- 1.2.4. All witness member(s), unless injured, shall remain at the scene until released by the Homicide Sergeant and PSD. Witnesses shall not be held at the scene any longer than necessary.
- 1.2.5. Witness member(s) shall 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. On-Scene Supervisor:

- 1.3.1. After complying with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures, the on-scene supervisor shall complete the following:
 - 1.3.1.1. Locate and separate all witness and involved members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place.
 - 1.3.1.2. Prior to CRO issuance by the Detective Division, admonish involved and witness members not to discuss the incident.
 - 1.3.1.3. The supervisor shall obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.
 - 1.3.1.4. If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources the necessary information to ensure the safety of the public, the arriving supervisor shall require the involved member(s) to answer the questions outlined in 1.1.1.2. in order to protect life if it appears that circumstances warrant an immediate statement.
 - 1.3.1.4.1. Supervisors should convey to the involved member(s) that the required information may be necessary to protect life or ensure the safety of the public.
 - 1.3.1.4.2. All questions seeking compelled information should be non-investigatory in nature and should be limited only to those needed to immediately protect life. For this reason, all three questions need not be asked if enough information necessary to protect life is obtained with the answers to only one or two of the questions.
 - 1.3.1.4.3. Supervisors shall document the involved member's response and must be able to provide an articulable reason for asking the questions.
 - 1.3.1.4.3.1. Supervisors shall provide the involved member's compelled answers to the any of the three questions to PSD in the form of a typed memorandum prior to going off shift.
 - 1.3.1.4.3.2. A supervisor compelling these answers from an involved member under these circumstances shall ensure that any information provided is not shared with criminal investigators.
 - 1.3.1.5. If ambulance transport is required, ensure that someone other than the involved or witness member(s) is assigned to accompany the injured member or community member to the hospital in the ambulance).
 - 1.3.1.6. Ensure that a single entry point into and out of the scene is established and advise the Bureau of Emergency Communications (BOEC) of its location.

- 1.3.1.7. Ensure that a Crime Scene Log is maintained at the entry point.
- 1.3.1.8. Ensure that the following required notifications are made in order as listed (when feasible):
 - 1.3.1.8.1. Chain of Command,
 - 1.3.1.8.2. Detective Division Homicide Sergeant (up team),
 - 1.3.1.8.3. PSD,
 - 1.3.1.8.4. Auditor's Office of Independent Police Review (IPR),
 - 1.3.1.8.5. Public Information Officer (PIO),
 - 1.3.1.8.6. Employee Assistance Coordinator, and
 - 1.3.1.8.7. Appropriate bargaining unit representative.
- 1.3.1.9. Ensure that involved and witness member weapons are retained in their holsters, pending weapon examination by responding detectives.
- 1.3.1.10. Instruct involved and witness members to remain at the location until instructed otherwise by the lead detective or until they are released from the location by the Homicide Sergeant and PSD.
- 1.3.1.11. Assign a member, other than an uninvolved or witness member, to drive each involved member to a location determined by the Homicide Sergeant, if required. Witness members may drive themselves. Whenever practical, each involved member and witness member should be transported in a separate vehicle.
- 1.3.1.12. Upon the homicide detail sergeant and PSD-authorized release of the involved and witness members from the scene, supervisors shall:
 - 1.3.1.12.1. Instruct members facilitating transport for involved members to proceed to detectives or the designated area, as determined by the Homicide Sergeant.
 - 1.3.1.12.2. Direct involved and witness members to refrain from changing out of the clothes worn at the time of the incident until they receive specific permission to do so from the Homicide Sergeant
 - 1.3.1.12.3. Any exceptions to the preceding actions shall only be authorized by the Homicide Sergeant.
 - 1.3.1.12.4. Assign a member, other than an involved or witness member to transport each involved member, when required.
- 1.4. Precinct or Division Commander Responsibilities:
 - 1.4.1. The precinct or division commander will notify the appropriate Assistant Chief, who will then notify the Chief of Police and the other Assistant Chiefs.
 - 1.4.2. The Assistant Chief of Services will notify:
 - 1.4.2.1. The City Attorney, and
 - 1.4.2.2. The Training Division.
- 1.5. Chief of Police:
 - 1.5.1. The Chief of Police will make the appropriate notification to the Commissioner-in-Charge.
- 1.6. Homicide Sergeant Responsibilities:
 - 1.6.1. Make the following required notifications:
 - 1.6.1.1. Detective Division Command,

- 1.6.1.2. On-call detectives,
- 1.6.1.3. District Attorney's Office,
- 1.6.1.4. Medical Examiner's Office, and
- 1.6.1.5. Forensic Evidence Division (FED), ensuring criminalists are responding to the scene.
- 1.6.2. Request assistance from the East County Major Crime Team.
- 1.6.3. Respond to and assume responsibility for the scene after receiving a briefing from the supervisor in charge of the scene.
- 1.6.4. Identify all involved and witness members and any members with pertinent investigative information.
- 1.6.5. Make investigative and scene processing assignments.
- 1.6.6. Regularly provide updates to the Detective Division Commander, the PIO, the PSD Captain, and the Chief of Police.
- 1.6.7. Ensure CROs are issued pursuant to Section 8 of this directive.
- 1.6.8. Ensure all involved weapons have been examined, documented, and retained if necessary; ensure member(s) are supplied with a replacement weapon by Training, if appropriate.
- 1.6.9. Ensure a thorough and complete investigation is conducted.
- 1.6.10. Ensure the appropriate checklists are used and case notebooks are prepared.
- 1.6.11. After consultation with PSD and DA, release the involved and witness members from the scene.
- 1.6.12. As soon as practicable, provide transcripts and/or recordings of all witness interviews to PSD.
- 1.7. Homicide Detective:
 - 1.7.1. The Homicide Detective shall conduct a complete and thorough investigation of all in-custody deaths and deadly force incidents. PSD and the Training Division shall use the investigation to determine if the use of deadly physical force was justified, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:
 - 1.7.1.1. Complete the General Offense Report;
 - 1.7.1.2. Ensure that scene sketches and diagrams are completed;
 - 1.7.1.3. Manage the processing of evidence;
 - 1.7.1.4. Conduct complete and thorough interviews of witness members and supervisors to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety;
 - 1.7.1.5. Direct the assigned criminalists to collect all evidence including involved members' uniforms and all outer clothing (including duty belt) and retain as evidence until instructed otherwise by the lead detective of the investigation. This instruction should be relayed to any uninvolved member that accompanied an injured involved member to the hospital.
 - 1.7.1.6. Conduct interviews of civilian witnesses. Any interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;

- 1.7.1.7. Collect and submit all firearms involved in the incident, including Special Emergency Reaction Team (SERT) weapons, to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;
- 1.7.1.8. Collect and submit any other weapons (e.g., conducted electrical weapon [CEW]) used (or attempted to be used) in the application of force to the Property Evidence Division (PED);
- 1.7.1.9. Request a voluntary statement and on-scene walk-through from the involved member.
 - 1.7.1.9.1. The involved member shall be allowed to discuss this request with an on-scene attorney or union representative.
 - 1.7.1.9.2. If the member agrees, the detective shall conduct complete and thorough interviews of involved members to ensure that all applicable information is obtained. The detective shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the voluntary interview and walk-through. Detectives shall include a full and candid account of the pertinent information from the use of force report form in their written report.
 - 1.7.1.9.2.1. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety.
 - 1.7.1.9.3. If the involved member declines to provide a voluntary statement and on-scene walk-through based on a good faith belief that they may be subject to criminal prosecution, the Detective will not compel a statement or walkthrough absent express direction from the District Attorney's Office to do so. Any such direction by the District Attorney's Office shall be documented.
- 1.7.2. If the member agrees to provide a voluntary on-scene walk-through and interview to the on-scene homicide detective, pursuant to Directive 1010.00, Use of Force.
 - 1.7.2.1.1.
 - 1.7.2.2. Conduct an investigative follow up;
 - 1.7.2.3. Ensure that reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;
 - 1.7.2.4. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
 - 1.7.2.5. Submit all cases involving the use of deadly force resulting in death and in-custody deaths to the DA for review;
 - 1.7.2.6. Coordinate and consult with the District Attorney's Office throughout the investigation; and
 - 1.7.2.7. Complete the investigative case book.
 - 1.7.2.8. Refer to Section 2.9. of this directive for information regarding reporting responsibilities. Exceptions to witness members providing on-scene

statements 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, and the detective must justify any such exceptions. Those exceptions must be approved by the Detective Division Commander.

1.8. Professional Standards Division (PSD):

1.8.1. Responsibilities at the Scene:

- 1.8.1.1. The PSD Captain, or designee, shall coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene.
- 1.8.1.2. The PSD Captain shall inquire with the involved member whether they elect to give an immediate voluntary statement, briefly postpone providing a voluntary statement, or provide only a compelled statement.
- 1.8.1.3. If the involved member elects to provide an voluntary statement to PSD on-scene, the PSD Captain or designee will take such statement and document it in a report.

1.8.2. Responsibilities After the Event:

- 1.8.2.1. If the involved member did not provide an on-scene voluntary statement or additional statements are needed, the PSD Captain or designee shall schedule a meeting with the involved member as soon as practicable after the use of force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting. At the meeting, the involved member(s) may either voluntarily provide statements or decline to voluntarily provide statements.
 - 1.8.2.1.1. If the involved member(s) decline to volunteer statements, the PSD Captain or designee shall compel such statements after provision of *Garrity* warnings. At the conclusion of *Garrity* warnings, the involved member(s) shall answer all IA questions.
 - 1.8.2.1.2. An involved member's refusal to provide a voluntary statement to either Homicide Detectives or PSD shall not alone be grounds for any disciplinary action based on failure to follow directives. An involved member's refusal to provide information after being compelled to do so upon the administration of *Garrity* warnings may be grounds for a disciplinary action based on failure to follow directives. The PSD Captain will consider all refusals to provide compelled information on a case-by-case basis and make the appropriate determination based on all factors as to whether the involved member's refusal warrants disciplinary action.
- 1.8.3. The PSD Captain shall ensure that any statements compelled from an involved member after the provision of *Garrity* warnings, any evidence derived from those statements, and any information whatsoever gathered as part of the PSD investigation of those statements are kept wholly confidential within PSD and not provided to any person involved in or in any way connected with the criminal

investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).

- 1.8.3.1. No member of PSD may disclose any compelled statements taken pursuant to this Directive, any evidence derived from those statements, and any information whatsoever gathered as part of the PSD investigation of those statements to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.

- 1.8.4. The PSD Investigator shall refer to Section 5 of this Directive for review responsibilities and Section 1.9. of this directive for information regarding reporting responsibilities.

1.9. Use of Deadly Force (Resulting in Death) Reporting Requirements:

- 1.9.1. For use of deadly force resulting in death, the more comprehensive administrative review conducted by PSD is intended to capture all information required in a use of force report. Therefore, in those cases, involved members are not required to complete a use of force report prior to the end of shift as would be otherwise required in a force event.
- 1.9.2. While a criminal investigation and/or prosecution is pending, the PSD investigator shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the administrative review interview. The investigator need not complete the narrative report form itself, but shall instead include a full and candid account of all pertinent information from the form in their own written report, in lieu of the involved member completing the use of force report.
- 1.9.3. The PSD Captain shall ensure that any information or reports related to this review are kept wholly confidential within PSD and not provided to any person involved in or in any way connected with the criminal investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).
 - 1.9.3.1. No member of PSD may disclose any information or report from this review to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.
- 1.9.4. For Category I force incidents where the Detective Division completes a criminal investigation and PSD completes an administrative review, the completion of a force After Action report is not required because the administrative review serves this function.
- 1.9.5. All witness members shall complete a use of force report, as outlined in Directive 1010.00, Use of Force.

2. Duties and Responsibilities Following the Use of Deadly Force and in-custody deaths (outside of Portland city limits).

2.1. Involved Member Responsibilities:

- 2.1.1. Notify the jurisdiction of occurrence, and

- 2.1.2. Notify an on duty patrol supervisor if the involved member's supervisor is not present.
- 2.1.3. Members shall also follow the requirements listed in Section 1.1. of this directive.
- 2.2. Supervisor Responsibilities:
 - 2.2.1. Supervisors will make notification as required of the on-scene supervisor. Refer to Section 1.3.1.8. of this directive.
- 2.3. Detective Division Commander, or designee:
 - 2.3.1. Shall contact the investigating agency to provide an offer of assistance.
- 2.4. Professional Standards Division:
 - 2.4.1. The PSD Captain, or a designee, shall:
 - 2.4.1.1. Act as the Bureau's liaison;
 - 2.4.1.2. Respond to the scene, if feasible;
 - 2.4.1.3. Accompany the IPR Director, or designee, at the scene and assist in gathering information from Detectives, when applicable (i.e., when IPR elects to respond to the scene);
 - 2.4.1.4. After consulting with the county of incident's DA, may compel statements from witness members at any time;
 - 2.4.1.5. Coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene; and
 - 2.4.1.6. Refer to Section 5 of this Directive for review responsibilities and Section 1.9 of this directive for information regarding reporting responsibilities.
- 3. Deadly Force/In-Custody Death by an On-Duty Member from Another Jurisdiction (within Portland city limits).
 - 3.1. Bureau Procedures:
 - 3.1.1. The agency in charge of investigating deaths in Multnomah County is the DA. If the Bureau investigates, the Homicide Sergeant shall be the supervisor and detectives shall be responsible for the investigation, and shall follow the procedures in Section 2.7.
 - 3.2. The Bureau's On-Scene Supervisor shall:
 - 3.2.1. Comply with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures;
 - 3.2.2. Ensure that an on-duty supervisor of the member's agency is notified;
 - 3.2.3. Locate and separate all involved and witness members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place;
 - 3.2.4. Prior to CRO issuance, admonish involved and witness members not to discuss the incident; and
 - 3.2.5. Obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.

- 3.3. Witness members who are members of the Bureau shall follow the procedures set forth in Section 1.2. of this directive.
- 3.4. Unless there is some immediate need to seize weapons, the involved peace officer shall be allowed to keep their weapon(s) until their agency supervisor arrives. Upon arrival, the agency supervisor shall take custody of the firearm, and if necessary, surrender it to the investigator.
- 3.5. The Homicide Sergeant shall notify the appropriate Bureau Precinct Commander and Assistant Chief.
4. Duties and Responsibilities Following the Use of Deadly Force Not Causing Death.
 - 4.1. Involved Member(s):
 - 4.1.1. Shall follow the procedures set forth in Section 1.1. of this directive.
 - 4.2. Witness Member(s):
 - 4.2.1. Shall follow the procedures set forth in Section 1.2. of this directive.
 - 4.3. On-Scene Supervisor:
 - 4.3.1. Shall follow the procedures set forth in Section 1.3. of this directive.
 - 4.4. Detective Division:
 - 4.4.1. The Detective Division shall conduct a complete and thorough investigation of the deadly force incident. The investigation shall be used to determine justification for the use of deadly physical force, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:
 - 4.4.1.1. Ensure CROs are issued pursuant to Section 8 of this directive.
 - 4.4.1.2. Complete a General Offense Report;
 - 4.4.1.3. Ensure that scene sketches and diagrams are completed;
 - 4.4.1.4. Manage the processing of evidence;
 - 4.4.1.5. Conduct interviews of involved members, witness members and supervisors using the interview checklist to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded;
 - 4.4.1.6. Conduct interviews of civilian witnesses. The interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;
 - 4.4.1.7. Collect and submit all firearms involved in the incident, including SERT weapons, used in the incident to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;
 - 4.4.1.8. Collect and submit any other weapons (e.g., CEW) used (or attempted to be used) to PED;
 - 4.4.1.9. Ensure that their reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;

- 4.4.1.10. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
 - 4.4.1.11. Submit all cases involving intentional use of deadly force and negligent discharge resulting in injury to another, to the DA for review; and
 - 4.4.1.12. Complete the investigative case book.
- 4.5. Professional Standards Division:
 - 4.5.1. PSD shall conduct a concurrent administrative review of the incident in accordance with Bureau policy, including the steps identified in Section 5.
 - 4.5.2. PSD shall schedule a compelled interview, if no on-scene voluntary statements or insufficient statements were provided by the involved member, with the involved member as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.
 - 4.5.3. PSD shall conduct an interview with the involved member(s)
 - 4.5.4. The PSD Investigator shall refer to Section 1.9. of this directive for information regarding reporting responsibilities.
- 4.6. Use of Deadly Force (Not Resulting in Death) Reporting.
 - 4.6.1. After consultation with the DA regarding potential for prosecution, the PSD Captain shall have the discretion to direct the involved member to complete a use of force report.
 - 4.6.1.1. Pursuant to Directive 1010.00, Use of Force, members shall complete the use of force report immediately after being instructed to do so.
 - 4.6.2. For Category I force incidents not resulting in death where the Detective Division completes a criminal investigation and PSD completes an administrative review, the completion of a force After Action report is not necessary.
 - 4.6.3. All members shall follow Directive 1010.00, Use of Force, and Directive 900.00, General Reporting Guidelines, regarding report-writing.
 - 4.6.4. Members shall adhere to all reporting and review requirements set forth in Directive 1010.00, Use of Force, for force resulting in hospital admission or force involving more than one simultaneous intentional CEW application.
 - 4.6.5. The involved member's supervisor shall complete the use of force After Action report for all force resulting in hospital admission and/or force involving more than one simultaneous intentional CEW application.
- 5. PSD Review.
 - 5.1. PSD shall conduct administrative reviews concurrently with criminal investigations, if any, concerning the same incident.
 - 5.2. PSD shall interview all witnesses to the use of force, and may compel statements from witness members at any time.
 - 5.3. PSD shall conduct a compelled interview with the involved member where appropriate in the administrative review.

- 5.3.1. For deadly force incidents that result in death, PSD shall schedule a compelled interview with the involved member as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.
 - 5.3.2. For deadly force incidents that do not result in death, PSD shall schedule a compelled interview with the involved member after consulting with the DA regarding the potential for prosecution.
- 5.4. PSD shall consider all available relevant evidence, including recordings by Homicide Detectives or others of witness and involved member interviews; physical evidence; and documentary evidence.
- 5.5. In accordance with PSD SOP #7, PSD shall conduct an administrative review of the incident, to include the events preceding the use of deadly force, the decision making surrounding the use of deadly force, the management/supervision of the incident, and the events following the use of deadly force to determine whether member actions were consistent with policy and if there are possible policy deficiencies.
- 5.6. PSD shall provide its investigation materials to the appropriate RU manager at the conclusion of all criminal proceedings against the involved member.
- 5.7. The lead PSD investigator shall present the results of the administrative review of the deadly force incident to the Police Review Board, as appropriate, at the conclusion of all criminal proceedings against the involved member.
- 5.8. The PSD Captain shall ensure that any materials and information whatsoever related to the IA investigation or collected by PSD members for the review are kept wholly confidential within PSD and not provided to any person involved in or in any way connected with the criminal investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).
 - 5.8.1.1. No member of PSD may disclose any materials or information related to the IA investigation or collected by PSD members for the review to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.
- 5.9. The PSD investigator shall refer to Section 1.9. of this directive for information regarding reporting responsibilities.
- 5.10. RU Manager Responsibilities:
 - 5.10.1. The RU manager shall utilize PSD's investigation materials to draft a findings memorandum to determine whether member actions were within policy. These findings shall be presented to the Police Review Board.

6. Training Review.
 - 6.1. Training Division Responsibilities:
 - 6.1.1. Upon completion of the criminal investigation and administrative review, the Training Division shall conduct a review of the incident and an analysis of the investigative findings to determine whether member actions were consistent with training and/or those actions reflect training deficiencies.
 - 6.1.2. The Training Division shall then provide its review to the involved member's RU manager.
 - 6.2. RU Manager Responsibilities:
 - 6.2.1. The RU manager shall discuss the Training Division's review with the involved member.
7. Communication Restriction Order (CRO).
 - 7.1. The Detective Division Commander, or their designee, shall issue CROs to all witness and involved officers immediately following the incident. The CRO process shall include:
 - 7.1.1. Issuing CROs to all witness and involved members;
 - 7.1.2. Providing copies of the CROs to a Detective Homicide Detail supervisor;
 - 7.1.3. Providing copies of the CROs to the PSD Captain; and
 - 7.1.4. Documenting that the CROs were issued and to whom.
 - 7.2. The CRO shall prohibit direct or indirect communications between any and all involved and witness officers regarding the facts of the event.
 - 7.3. Members under a CRO may communicate with any of the following regarding the case:
 - 7.3.1. Representatives from PSD,
 - 7.3.2. Representatives from the Independent Police Review Division (IPR),
 - 7.3.3. Representatives from the City Attorney's Office,
 - 7.3.4. Union representative,
 - 7.3.5. Attorney,
 - 7.3.6. Spouse,
 - 7.3.7. Clergy person,
 - 7.3.8. Doctor,
 - 7.3.9. Psychotherapist, and/or
 - 7.3.10. Any other person recognized by a court with jurisdiction in the State of Oregon as having a protected relationship entitling them to privileged communications.
 - 7.4. Union representatives shall not communicate to either involved members or witness members what has been told to them by any individual they are representing.
 - 7.5. The CRO shall continue, unless extended further, until the conclusion of the Grand Jury or, if no Grand Jury is convened, until a disposition is determined by the DA; and until the conclusion of the administrative review. The CRO shall remain in effect until revoked in writing by the PSD Captain.

- 7.6. On a case-by case-basis, the Chief of Police, or designee, may extend a CRO issued in a criminal investigation or an administrative review, for reasons including, but not limited to the case being under review by another federal, state, or local law enforcement agency.
- 7.7. Members not involved in a deadly force or in-custody death incident shall not communicate with a member who has been designated as an involved or witness member about factual aspects of the investigation, unless authorized to do so, and until the involved or witness member is no longer under a CRO.
- 7.8. Members may speak with Traumatic Incident Committee members. Members should avoid directly discussing factual aspects of the incident with Traumatic Incident Committee members. Traumatic Incident Committee members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s).
8. Release of Information.
 - 8.1. The Bureau shall provide timely and appropriate information when members use deadly force. However, the Bureau must weigh the public's right to know with what is in the best interest of the investigation. As a general rule, the Bureau shall release, as soon as possible, accurate information which shall not compromise an ongoing investigation or the potential prosecution of a suspect(s). Absent a specific and lawful request, the Bureau shall not release the prior criminal history or prior law enforcement booking photo of the individuals involved in a member's use of deadly force or in-custody death.
 - 8.2. The PIO, who reports directly to the Chief of Police, shall be called out to all use of deadly force incidents. As soon as possible, the PIO shall coordinate with the Detective Division Sergeant in charge of the investigation, the DA's on-scene representative, and a union representative of the involved member(s) to determine what information shall be released.
 - 8.3. During the course of the criminal investigation, the Detective Division will coordinate the release of information through the PIO. The Chief of Police is ultimately responsible for approving information available for release.
 - 8.4. The Bureau also has a responsibility to ensure that community members; in particular the families of community members directly affected by the use of deadly force, along with members of the Bureau, receive timely information.
 - 8.5. The Chief of Police will convene a briefing the next business day after the incident.
 - 8.6. To provide timely and accurate information, the Detective Division should direct the Crisis Response Team (CRT) to assign a liaison to assist in providing information to members of the community directly affected by a use of deadly force. CRT shall not

release information that has not been approved for release by the Homicide Sergeant in charge of the investigation and the DA. Internal communication shall be coordinated through the Chief of Police.

- 8.7. As soon as possible, the PIO shall release to the public the available information. Typically, the information shall include:
 - 8.7.1. Nature of the call,
 - 8.7.2. Time of the call and member arrival,
 - 8.7.3. Number of members directly involved in the use of deadly force,
 - 8.7.4. Years of service of members directly involved in the use of deadly force,
 - 8.7.5. General information about the community member(s) involved in the deadly force encounter; and
 - 8.7.6. Other information as determined by the Detective Division and the DA.
- 8.8. The identity of Bureau member(s) involved in the incident shall be released within twenty-four hours, absent a credible security threat. In incidents involving the death of a Bureau member, or member of the public, the identity will be released with approval of the Detective Division and the Medical Examiner's Office.
- 8.9. All public records requests for any material relating to investigations shall be routed to the Records Division for standard public records request routing.
- 8.10. Because the Bureau has an interest in continuing to provide the community with information in the days that follow the use of deadly force, the Detective Division will continue to coordinate the release of other relevant information with the PIO.

EXHIBIT **CB**

1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures

Refer:

- Graham v. Connor, 490 U.S. 386 (1989)
- ORS § 146.095, Investigation
- ORS § 161.015, General Definitions
- Directive 315.30, Satisfactory Performance
- Directive 330.00, Internal Affairs, Complaint Intake and Processing
- Directive 333.00, Criminal Investigations of Police Bureau Employees
- Directive 416.00, Post Officer Involved Deadly Force/Temporary Altered Duty
- Directive 630.45, Emergency Medical Custody Transports
- Directive 630.50, Emergency Medical Aid
- Directive 640.10, Crime Scene Procedures
- Directive 900.00, General Reporting Guidelines
- Directive 1010.00, Use of Force

Definitions:

- Communication Restriction Order: An order issued during an investigation that prohibits indirect or direct communications between the involved member(s) and witness member(s) regarding the facts of the case. This restriction will be given in writing and will be lifted in writing.
- Constitutional Force Standard: Under *Graham v. Connor* and subsequent cases, the federal courts have established that government use of force must comply with the “reasonableness” requirement of the Fourth Amendment. Under this standard, members must choose from the objectively reasonable force options at a scene. See the definition of “objectively reasonable” below.
- Deadly Force, also known as Lethal Force: Any use of force likely to cause death or serious physical injury, including the use of a firearm, carotid neck hold, or strike to the head, neck or throat with a hard object.
- *Garrity* warnings: An advisement of rights administered by the Professional Standards Division investigators to members who are the subject of an internal investigation. Under the United States Supreme Court case of *Garrity v. New Jersey*, the advisement notifies subjects of their criminal and administrative liability for any statements they may make and their right to remain silent on any issues that might implicate them in a crime.
- In-Custody Death: Occurs when a subject dies while under physical control of a member, dies as a direct result of police action, or dies while in police custody. Physical control includes the use of an electronic control weapon system.

- **Involved Member:** For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, an involved member is a Bureau member who applies deadly force or directs another to use deadly physical force, or a member who has used physical force, or a member who assumes control care or custody of a subject who dies in police custody.
- **Negligent Discharge:** Any unintentional discharge of a firearm by a sworn member that is not due to equipment malfunction.
- **Objectively Reasonable:** The reasonableness of a use of force is based on the totality of circumstances known by an officer at the time of action or decision-making. It shall be judged from the perspective of a reasonable officer on the scene, without the clarity of 20/20 hindsight after the event has concluded. The measure of reasonableness gives consideration to the reality that officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving. In the application or evaluation of the use of force, the uses of the terms reasonable and reasonably in this policy refer to objective reasonableness.
- **Police Action:** Any ~~circumstance~~circumstances, on or off duty, in which a sworn member exercises or attempts to exercise police authority.
- **Serious Physical Injury:** As defined in ORS §161.015(8), 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.
- **Witness Member:** For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, a witness member is a Bureau member who observes or has firsthand knowledge of the events surrounding an in-custody death or the use of deadly physical force by another member, and other than observing the incident, did not use deadly physical force. Additionally, a member who observes or has firsthand knowledge of the events surrounding a member's direction to another to use deadly force.

Policy:

1. This policy establishes the specific guidelines and reporting requirements for the reporting and investigation of incidents involving uses of deadly force, death as a result of member use of force, and in-custody deaths.
2. The Portland Police Bureau recognizes that a member's use of deadly force or the death of an individual while in police custody requires impartial and timely review. It is the policy of the Bureau that uses of deadly force, death as a result of member use of force, and in-custody deaths, whether on or off duty, be investigated with the utmost thoroughness, professionalism and impartiality so as to determine whether member actions comport with applicable law and Bureau policies and training.
3. The Bureau acknowledges that the investigations of these incidents are of critical importance to the involved member, the Bureau, and the community. The Bureau entrusts the Detective

Division with the responsibility to conduct the criminal investigation of the incident objectively and thoroughly. Concurrently, the Professional Standards Division (PSD) shall also conduct an administrative review of each such incident. The Detective Division may provide information and/or findings from the criminal investigation to PSD; however, all personnel involved in the administrative review shall keep information garnered from the PSD interview strictly confidential, not permitting disclosure of any such information or its fruits to the criminal investigation.

4. Bureau members will be afforded all rights guaranteed under the United States and State of Oregon Constitutions throughout the investigation.
5. To ~~insure~~ensure public accountability, the Bureau is committed to establishing open communication and transparent practices with the public in an effort to cultivate and build community trust; however, information that could jeopardize the integrity of any investigation or any pending prosecution may be withheld from release until it is appropriate or a court of competent jurisdiction directs release.
6. The Bureau understands the impact that these traumatic incidents have on members and acknowledges the need to be sensitive when conducting the required investigation. The Bureau encourages its members to take proactive steps and contact available employee assistance resources following such an event if needed.
7. The Bureau also understands the impact that these traumatic incidents has on the families and communities of those persons upon whom deadly force is used and acknowledges the need to be sensitive when conducting the required investigation. All interviews and conversations with family or community members will be conducted in a manner that strives to be respectful while balancing the need to obtain critical information.

Procedure:

~~1. Pursuant to ORS §146.095 (1), the District Attorney (DA) shall be responsible for the investigation of all deaths following member use of deadly force. In order to maintain the integrity of these death investigations and to avoid any potential conferring of transactional criminal immunity, the Bureau shall not compel statements from involved members without express approval of the DA, except in those exceptional circumstances where information is immediately necessary to protect life and/or ensure the safety of the public. In those circumstances, the Bureau shall ensure that compelled information gathered will not be shared for the purpose of the criminal investigation of the involved member.~~

2.1 Duties and Responsibilities Following the Use of Deadly Force Causing Death (within Portland city limits).

1.1. Involved Member(s):

2.1.1.1.1. Responsibilities at the Scene:

2.1.1.1.1.1. The involved member(s) shall notify an on-duty supervisor at the precinct of occurrence. The member(s) shall make the notification(s) as soon as practicable. The involved member(s) shall make it known to the

on-scene supervisor that they are an involved member, as defined in this Directive.

~~2.1.2.1.1.1.2.~~ If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources (e.g., radio transmissions, Computer Aided Dispatch [CAD], etc.) the necessary information to ensure the safety of the public, the involved member(s) may be required to provide a statement to the on-scene supervisor that is limited to information strictly necessary to immediately protect life and ensure public safety, ~~which could include:-~~. The on-scene supervisor will be limited to asking the following three questions.

- a) Direction and approximate number of any shots fired by officers and suspects;
- b) Location of injured persons; and
- c) Description of at-large suspects and their direction of travel, time elapsed since the suspects were last seen, and any suspect weapons.

~~After completing any~~ All three questions need not be asked if enough information necessary compelled statement, pertaining to protect life is obtained with the safety of members answers to only one or two of the questions, or from other sources.

~~2.1.3.1.1.1.3.~~ After answering any of the three public, safety questions outlined in 1.1.1.2., the involved member(s) may consult on scene with their union representative and attorney(s).

~~2.1.4.1.1.1.4.~~ Upon request by the Homicide Detective, Detectives may ask the involved member(s) ~~may to~~ give a voluntary detailed account of the incident and on-scene walk-through. The member(s) ~~reserves has~~ the right to decline the request if they reasonably believe their use of force actions may be subject to criminal prosecution.

~~2.1.5.1.1.1.5.~~ The involved member(s), unless injured, shall remain at the scene until released by the Detective Division Homicide Sergeant and PSD. The member(s) shall not be held at the scene any longer than necessary.

~~2.1.5.1.~~ Assign a member, other than an involved or witness member to transport each involved member to a location determined by the Homicide Sergeant, when required.

1.1.2. Responsibilities After the Event:

1.1.2.1. The Professional Standards Division (PSD) Captain or designee shall schedule a meeting with the involved member(s) as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.

1.1.2.1.1. At the meeting, the PSD Captain or designee shall ask questions of the involved member(s) designed to collect a detailed accounting of all information necessary to complete an IA investigation. The involved member(s) may either voluntarily provide a statement or decline to voluntarily provide a statement.

1.1.2.1.2. If the involved member(s) decline to volunteer a statement, the PSD Captain or designee shall compel such a statement after provision of Garrity warnings. At the conclusion of Garrity warnings, the involved member(s) shall answer all IA questions.

2.2.1.2. Witness Member(s):

2.2.1.1.2.1. Witness member(s) shall make it known to the on-scene supervisor that they are a witness to the incident, as defined in this Directive.

2.2.2.1.2.2. When requested, witness member(s) shall give an on-scene statement to the on-scene supervisor, providing the necessary information to protect life and ensure the safety of the public. They may also be asked to provide information to ensure that victims, suspects, and witnesses are identified, evidence is located, and provide any information that may be required for the safe resolution of the incident, or any other information as may be required.

2.2.3.1.2.3. Witness member(s) shall be subject to on-scene interviews to discuss the incident with detectives. They shall provide a full and candid account of the use of force event if asked.

2.2.4.1.2.4. All witness member(s), unless injured, shall remain at the scene until released by the Homicide Sergeant and PSD. Witnesses shall not be held at the scene any longer than necessary.

2.2.5.1.2.5. Witness member(s) shall 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.

2.3.1.3. On-Scene Supervisor:

2.3.1.1.3.1. After complying with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures, the on-scene supervisor shall complete the following:

2.3.1.1.1.3.1.1. Locate and separate all witness and involved members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place.

2.3.1.2.1.3.1.2. Prior to CRO issuance by the Detective Division, admonish involved and witness members not to discuss the incident.

2.3.1.3.1.3.1.3. The supervisor shall obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.

2.3.1.4.1.3.1.4. If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources the necessary information to ensure the safety of the public, the arriving supervisor shall require the involved member(s) to provide a statement answer the questions outlined in 1.1.1.2. in order to protect life if it appears that circumstances warrant an immediate statement. The questions shall be limited to information that is strictly necessary to immediately protect life and ensure public safety, which could include:

- ~~a) Direction and approximate number of any shots fired by officers and suspects;~~
- ~~b) Location of injured persons; and~~
- ~~c) Description of at large suspects and their direction of travel, time elapsed since the suspects were last seen, and any suspect weapons.~~

~~2.3.1.4.1.1.3.1.4.1.~~ Supervisors should convey to the involved member(s) that the ~~compelled~~required information may be necessary to protect life or ensure the safety of the public.

~~2.3.1.4.2.1.3.1.4.2.~~ All questions seeking compelled information should be non-investigatory in nature and should be limited only to those needed to immediately protect life. For this reason, all three questions need not be asked if enough information necessary to protect life is obtained with the answers to only one or two of the questions.

~~2.3.1.4.3.1.3.1.4.3.~~ Supervisors shall document the involved member's response and must be able to provide an articulable reason for ~~compelling~~asking the ~~statement~~questions.

~~2.3.1.4.3.1.1.3.1.4.3.1.~~ Supervisors shall provide the involved member's compelled ~~statement~~answers to the any of the three questions to PSD in the form of a typed memorandum prior to going off shift.

~~2.3.1.4.3.2.1.3.1.4.3.2.~~ A supervisor compelling ~~a statement~~these answers from an involved member under these circumstances shall ensure that any information provided is not shared with criminal investigators.

~~2.3.1.5.1.3.1.5.~~ If ambulance transport is required, ensure that someone other than the involved or witness member(s) is assigned to accompany the injured member or community member to the hospital in the ambulance).

~~2.3.1.6.1.3.1.6.~~ Ensure that a single entry point into and out of the scene is established and advise the Bureau of Emergency Communications (BOEC) of its location.

~~2.3.1.7.1.3.1.7.~~ Ensure that a Crime Scene Log is maintained at the entry point.

~~2.3.1.8.1.3.1.8.~~ Ensure that the following required notifications are made in order as listed (when feasible):

~~2.3.1.8.1.1.3.1.8.1.~~ Chain of Command,

~~2.3.1.8.2.1.3.1.8.2.~~ Detective Division Homicide Sergeant (up team),

~~2.3.1.8.3.1.3.1.8.3.~~ PSD,

~~2.3.1.8.4.1.3.1.8.4.~~ Auditor's Office of Independent Police Review (IPR),

~~2.3.1.8.5.1.3.1.8.5.~~ Public Information Officer (PIO),

~~2.3.1.8.6.1.3.1.8.6.~~ Employee Assistance Coordinator, and

~~2.3.1.8.7.1.3.1.8.7.~~ Appropriate bargaining unit representative.

~~2.3.1.9.1.3.1.9.~~ Ensure that involved and witness member weapons are retained in their holsters, pending weapon examination by responding detectives.

~~2.3.1.10.1.3.1.10.~~ Instruct involved and witness members to remain at the location until instructed otherwise by the lead detective or until they are released from the location by the Homicide Sergeant and PSD.

~~2.3.1.11.1.3.1.11.~~ Assign a member, other than an uninvolved or witness member, to drive each involved member: to a location determined by the Homicide

Sergeant, if required. Witness members may drive themselves. Whenever practical, each involved member and witness member should be transported in a separate vehicle.

~~2.3.1.12.~~1.3.1.12. Upon the homicide detail sergeant and PSD-authorized release of the involved and witness members from the scene, supervisors shall:

~~2.3.1.12.1.~~1.3.1.12.1. Instruct members facilitating transport for involved members to proceed to detectives or the designated area, as determined by the Homicide Sergeant.

~~2.3.1.12.2.~~1.3.1.12.2. Direct involved and witness members to refrain from changing out of the clothes worn at the time of the incident until they receive specific permission to do so from the Homicide Sergeant

~~2.3.1.12.3.~~1.3.1.12.3. Any exceptions to the preceding actions shall only be authorized by the Homicide Sergeant.

1.3.1.12.4. Assign a member, other than an involved or witness member to transport each involved member, when required.

~~2.4.1.4.~~ Precinct or Division Commander Responsibilities:

~~2.4.1.1.4.1.~~ The precinct or division commander will notify the appropriate Assistant Chief, who will then notify the Chief of Police and the other Assistant Chiefs.

~~2.4.2.1.4.2.~~ The Assistant Chief of Services will notify:

~~2.4.2.1.4.2.1.~~ The City Attorney, and

~~2.4.2.2.1.4.2.2.~~ The Training Division.

~~2.5.1.5.~~ Chief of Police:

~~2.5.1.1.5.1.~~ The Chief of Police will make the appropriate notification to the Commissioner-in-Charge.

~~2.6.1.6.~~ Homicide Sergeant Responsibilities:

~~2.6.1.1.6.1.~~ Make the following required notifications:

~~2.6.1.1.6.1.1.~~ Detective Division Command,

~~2.6.1.2.1.6.1.2.~~ On-call detectives,

~~2.6.1.3.1.6.1.3.~~ District Attorney's Office,

~~2.6.1.4.1.6.1.4.~~ Medical Examiner's Office, and

~~2.6.1.5.1.6.1.5.~~ Forensic Evidence Division (FED), ensuring criminalists are responding to the scene.

~~2.6.2.1.6.2.~~ Request assistance from the East County Major Crime Team.

~~2.6.3.1.6.3.~~ Respond to and assume responsibility for the scene after receiving a briefing from the supervisor in charge of the scene.

~~2.6.4.1.6.4.~~ Identify all involved and witness members and any members with pertinent investigative information.

~~2.6.5.1.6.5.~~ Make investigative and scene processing assignments.

~~2.6.6.1.6.6.~~ Regularly provide updates to the Detective Division Commander, the PIO, the PSD Captain, and the Chief of Police.

~~2.6.7.1.6.7.~~ Ensure CROs are issued pursuant to Section 8 of this directive.

~~2.6.8.1.6.8.~~ Ensure all involved weapons have been examined, documented, and retained if necessary; ensure member(s) are supplied with a replacement weapon by Training, if appropriate.

~~2.6.9.1.6.9.~~ Ensure a thorough and complete investigation is conducted.

~~2.6.10.1.6.10.~~ Ensure the appropriate checklists are used and case notebooks are prepared.

~~2.6.11.1.6.11.~~ After consultation with PSD and DA, release the involved and witness members from the scene.

~~2.6.12.1.6.12.~~ As soon as practicable, provide transcripts and/or recordings of all witness interviews to PSD.

2.7.1.7. Homicide Detective:

2.7.1.1.7.1. The Homicide Detective shall conduct a complete and thorough investigation of all in-custody deaths and deadly force incidents. PSD and the Training Division shall use the investigation to determine if the use of deadly physical force was justified, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:

2.7.1.1.1.7.1.1. Complete the General Offense Report;

2.7.1.2.1.7.1.2. Ensure that scene sketches and diagrams are completed;

2.7.1.3.1.7.1.3. Manage the processing of evidence;

~~2.7.1.4.1.7.1.4.~~ ~~Request a voluntary statement and on-scene walk-through from the involved member;~~

2.7.1.5.1.7.1.4. Conduct complete and thorough interviews of witness members and supervisors to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety;

~~2.7.1.6.1.7.1.5.~~ ~~Upon approval from the DA, conduct complete and thorough interviews of involved members to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety;~~

2.7.1.7.1.7.1.5. Direct the assigned criminalists to collect all evidence including involved members' uniforms and all outer clothing (including duty belt) and retain as evidence until instructed otherwise by the lead detective of the investigation. This instruction should be relayed to any uninvolved member that accompanied an injured involved member to the hospital.

2.7.1.8.1.7.1.6. Conduct interviews of civilian witnesses. ~~The~~Any interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;

2.7.1.9.1.7.1.7. Collect and submit all firearms involved in the incident, including Special Emergency Reaction Team (SERT) weapons, to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;

2.7.1.10.1.7.1.8. Collect and submit any other weapons (e.g., conducted electrical weapon [CEW]) used (or attempted to be used) in the application of force to the Property Evidence Division (PED);

1.7.1.9. ~~Request a voluntary statement and on-scene walk-through from the involved member.~~

- 1.7.1.9.1. The involved member shall be allowed to discuss this request with an on-scene attorney or union representative.
- 1.7.1.9.2. If the member agrees, the detective shall conduct complete and thorough interviews of involved members to ensure that all applicable information is obtained. The detective shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the voluntary interview and walk-through. Detectives shall include a full and candid account of the pertinent information from the use of force report form in their written report.
- 1.7.1.9.2.1. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety.
- 1.7.1.9.3. If the involved member declines to provide a voluntary statement and on-scene walk-through based on a good faith belief that they may be subject to criminal prosecution, the Detective will not compel a statement or walkthrough absent express direction from the District Attorney's Office to do so. Any such direction by the District Attorney's Office shall be documented.
- 1.7.2. If the member agrees to provide a voluntary on-scene walk-through and interview to the on-scene homicide detective, pursuant to Directive 1010.00, Use of Force.
- 1.7.2.1.1.
- ~~2.7.1.11~~ 1.7.2.2. Conduct an investigative follow up;
- ~~2.7.1.12~~ 1.7.2.3. Ensure that ~~their~~ reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;
- ~~2.7.1.13~~ 1.7.2.4. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
- ~~2.7.1.14~~ 1.7.2.5. Submit all cases involving the use of deadly force resulting in death and in-custody deaths to the DA for review;
- ~~2.7.1.15~~ 1.7.2.6. Coordinate and consult with the District Attorney's Office throughout the investigation; and
- ~~2.7.1.16~~ 1.7.2.7. Complete the investigative case book.
- ~~2.7.1.17~~ 1.7.2.8. Refer to Section 2.9. of this directive for information regarding reporting responsibilities. Exceptions to witness members providing on-scene statements 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, and the detective must justify any such exceptions. Those exceptions must be approved by the Detective Division Commander.

~~2.8.1.8. Professional Standards Division (PSD) On-Scene Responsibilities:);~~
~~2.8.1. After consulting with the DA, PSD may compel statements from witness members at any time~~

~~2.8.2. The PSD Captain, or designee, shall accompany the IPR Director, or designee, at the scene and assist in gathering information from Detectives, when applicable (i.e., when IPR elects to respond to the scene).~~

1.8.1. Responsibilities at the Scene:

~~2.8.3.1.8.1.1.~~ The PSD Captain, or designee, shall coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene.

1.8.1.2. The PSD Captain shall inquire with the involved member whether they elect to give an immediate voluntary statement, briefly postpone providing a voluntary statement, or provide only a compelled statement.

1.8.1.3. If the involved member elects to provide an voluntary statement to PSD on-scene, the PSD Captain or designee will take such statement and document it in a report.

1.8.2. Responsibilities After the Event:

1.8.2.1. If the involved member did not provide an on-scene voluntary statement or additional statements are needed, the PSD Captain or designee shall schedule a meeting with the involved member as soon as practicable after the use of force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting. At the meeting, the involved member(s) may either voluntarily provide statements or decline to voluntarily provide statements.

1.8.2.1.1. If the involved member(s) decline to volunteer statements, the PSD Captain or designee shall compel such statements after provision of Garrity warnings. At the conclusion of Garrity warnings, the involved member(s) shall answer all IA questions.

1.8.2.1.2. An involved member's refusal to provide a voluntary statement to either Homicide Detectives or PSD shall not alone be grounds for any disciplinary action based on failure to follow directives. An involved member's refusal to provide information after being compelled to do so upon the administration of Garrity warnings may be grounds for a disciplinary action based on failure to follow directives. The PSD Captain will consider all refusals to provide compelled information on a case-by-case basis and make the appropriate determination based on all factors as to whether the involved member's refusal warrants disciplinary action.

1.8.3. The PSD Captain shall ensure that any statements compelled from an involved member after the provision of Garrity warnings, any evidence derived from those statements, and any information whatsoever gathered as part of the PSD investigation of those statements are kept wholly confidential within PSD and not provided to any person involved in or in any way connected with the criminal investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).

1.8.3.1. No member of PSD may disclose any compelled statements taken pursuant to this Directive, any evidence derived from those statements, and any

information whatsoever gathered as part of the PSD investigation of those statements to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.

2.8.4.1.8.4. The PSD Investigator shall refer to Section 65 of this Directive for review responsibilities and Section 21.9. of this directive for information regarding reporting responsibilities.

2.9.1.9. Use of Deadly Force (Resulting in Death) Reporting Requirements:

2.9.1.1.9.1. For use of deadly force resulting in death, the more comprehensive administrative review conducted by PSD is intended to capture all information required in a use of force report. Therefore, in those cases, involved members are not required to complete a use of force report ~~until after the criminal investigation concludes prior to the end of shift as would be otherwise required in a force event.~~

~~2.9.2. Members who use deadly force as described in Section 10 in Directive 1010.00, Use of Force, shall be asked by detectives to provide a voluntary on-scene walk-through and interview.~~

~~2.9.2.1. If the member agrees to provide a voluntary on-scene walk-through and interview, the detective shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the voluntary interview and walk-through. Detectives shall include the pertinent information (a full and candid account) in their written report, pursuant to Directive 1010.00, Use of Force.~~

~~2.9.2.2.1.9.2. Members who decline to provide a voluntary statement may be compelled to provide a detailed account of the incident. In these circumstances While a criminal investigation and/or prosecution is pending, the PSD investigator shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the administrative review interview. The investigator shall need not complete the narrative section of the report, and form itself, but shall instead include the pertinent information (a full and candid account) of all pertinent information from the form in their own written report, in lieu of the involved member completing the use of force report, pursuant to Directive 1010.00, Use of Force.~~

1.9.3. The PSD Captain shall ensure that any information or reports related to this review are kept wholly confidential within PSD and not provided to any person involved in or in any way connected with the criminal investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).

1.9.3.1. No member of PSD may disclose any information or report from this review to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.

2.9.3.1.9.4. For Category I force incidents where the Detective Division completes a criminal investigation and PSD completes an administrative review, the

completion of a force After Action report is not required because the administrative review serves this function.

1.9.5. All witness members shall complete a use of force report, as outlined in Directive 1010.00, Use of Force.

3.2. Duties and Responsibilities Following the Use of Deadly Force and in-custody deaths (outside of Portland city limits).

3.1.2.1. Involved Member Responsibilities:

3.1.1.2.1.1. Notify the jurisdiction of occurrence, and

3.1.2.2.1.2. Notify an on duty patrol supervisor if the involved member's supervisor is not present.

3.1.3.2.1.3. Members shall also follow the requirements listed in Section 21.1. of this directive.

3.2.2.2. Supervisor Responsibilities:

3.2.1.2.2.1. Supervisors will make notification as required of the on-scene supervisor. Refer to Section 21.3.1.8. of this directive.

3.3.2.3. Detective Division Commander, or designee:

3.3.1.2.3.1. Shall contact the investigating agency to provide an offer of assistance.

3.4.2.4. Professional Standards Division:

3.4.1.2.4.1. The PSD Captain, or a designee, shall:

3.4.1.1.2.4.1.1. Act as the Bureau's liaison;

3.4.1.2.2.4.1.2. Respond to the scene, if feasible;

3.4.1.3.2.4.1.3. Accompany the IPR Director, or designee, at the scene and assist in gathering information from Detectives, when applicable (i.e., when IPR elects to respond to the scene);

3.4.1.4.2.4.1.4. After consulting with the county of incident's DA, may compel statements from witness members at any time;

3.4.1.5.2.4.1.5. Coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene; and

3.4.1.6.2.4.1.6. Refer to Section 65 of this Directive for review responsibilities and Section 21.9 of this directive for information regarding reporting responsibilities.

4.3. Deadly Force/In-Custody Death by an On-Duty Member from Another Jurisdiction (within Portland city limits).

4.1.3.1. Bureau Procedures:

4.1.1.3.1.1. The agency in charge of investigating deaths in Multnomah County is the DA.

If the Bureau investigates, the Homicide Sergeant shall be the supervisor and detectives shall be responsible for the investigation, and shall follow the procedures in Section 2.7.

4.2.3.2. The Bureau's On-Scene Supervisor shall:

- ~~4.2.1.3.2.1.~~ Comply with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures;
- ~~4.2.2.3.2.2.~~ Ensure that an on-duty supervisor of the member's agency is notified;
- ~~4.2.3.3.2.3.~~ Locate and separate all involved and witness members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place;
- ~~4.2.4.3.2.4.~~ Prior to CRO issuance, admonish involved and witness members not to discuss the incident; and
- ~~4.2.5.3.2.5.~~ Obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.

~~4.3.3.3.~~ Witness members who are members of the Bureau shall follow the procedures set forth in Section ~~21.2.~~ of this directive.

~~4.4.3.4.~~ Unless there is some immediate need to seize weapons, the involved peace officer shall be allowed to keep their weapon(s) until their agency supervisor arrives. Upon arrival, the agency supervisor shall take custody of the firearm, and if necessary, surrender it to the investigator.

~~4.5.3.5.~~ The Homicide Sergeant shall notify the appropriate Bureau Precinct Commander and Assistant Chief.

~~5.4.~~ Duties and Responsibilities Following the Use of Deadly Force Not Causing Death.

~~5.1.4.1.~~ Involved Member(s):

~~5.1.1.4.1.1.~~ Shall follow the procedures set forth in Section ~~21.1.~~ of this directive.

~~5.2.4.2.~~ Witness Member(s):

~~5.2.1.4.2.1.~~ Shall follow the procedures set forth in Section ~~1.2.2.~~ of this directive.

~~5.3.4.3.~~ On-Scene Supervisor:

~~5.3.1.4.3.1.~~ Shall follow the procedures set forth in Section ~~21.3.~~ of this directive.

~~5.4.4.4.~~ Detective Division:

~~5.4.1.4.4.1.~~ The Detective Division shall conduct a complete and thorough investigation of the deadly force incident. The investigation shall be used to determine justification for the use of deadly physical force, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:

~~5.4.1.1.4.4.1.1.~~ Ensure CROs are issued pursuant to Section 8 of this directive.

~~5.4.1.2.4.4.1.2.~~ Complete a General Offense Report;

~~5.4.1.3.4.4.1.3.~~ Ensure that scene sketches and diagrams are completed;

~~5.4.1.4.4.4.1.4.~~ Manage the processing of evidence;

~~5.4.1.5.4.4.1.5.~~ Conduct interviews of involved members, witness members and supervisors using the interview checklist to ensure that all applicable areas

are covered. All interviews wherein material facts of the case are discussed shall be audio recorded;

~~5.4.1.6.4.4.1.6.~~ Conduct interviews of civilian witnesses. The interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;

~~5.4.1.7.4.4.1.7.~~ Collect and submit all firearms involved in the incident, including SERT weapons, used in the incident to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;

~~5.4.1.8.4.4.1.8.~~ Collect and submit any other weapons (e.g., CEW) used (or attempted to be used) to PED;

~~5.4.1.9.4.4.1.9.~~ Ensure that their reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;

~~5.4.1.10.4.4.1.10.~~ Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;

~~5.4.1.11.4.4.1.11.~~ Submit all cases involving intentional use of deadly force and negligent discharge resulting in injury to another, to the DA for review; and

~~5.4.1.12.4.4.1.12.~~ Complete the investigative case book.

~~5.5.4.5.~~ Professional Standards Division:

~~5.5.1.4.5.1.~~ PSD shall conduct a concurrent administrative review of the incident in accordance with Bureau policy, including the steps identified in Section ~~65~~.

~~4.5.2.~~ ~~After consultation with the DA,~~ PSD shall schedule a compelled interview, if no on-scene voluntary statements or insufficient statements were provided by the involved member, with the involved member as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.

~~5.5.2.4.5.3.~~ PSD shall conduct an interview with the involved member-~~(s)~~

~~5.5.3.4.5.4.~~ The PSD Investigator shall refer to Section ~~21~~.9. of this directive for information regarding reporting responsibilities.

~~5.6.4.6.~~ Use of Deadly Force (Not Resulting in Death) Reporting.

~~5.6.1.4.6.1.~~ After consultation with the DA regarding potential for prosecution, the PSD Captain shall have the discretion to direct the involved member to complete a use of force report.

~~5.6.1.1.4.6.1.1.~~ Pursuant to Directive 1010.00, Use of Force, members shall complete the use of force report immediately after being instructed to do so.

~~5.6.2.4.6.2.~~ For Category I force incidents not resulting in death where the Detective Division completes a criminal investigation and PSD completes an administrative review, the completion of a force After Action report is not necessary.

~~5.6.3.4.6.3.~~ All members shall follow Directive 1010.00, Use of Force, and Directive 900.00, General Reporting Guidelines, regarding report-writing.

~~5.6.4.4.6.4.~~ Members shall adhere to all reporting and review requirements set forth in Directive 1010.00, Use of Force, for force resulting in hospital admission or force involving more than one simultaneous intentional CEW application.

~~5.6.5.4.6.5.~~ The involved member's supervisor shall complete the use of force After Action report for all force resulting in hospital admission and/or force involving more than one simultaneous intentional CEW application.

~~6.5.~~ PSD Review.

~~6.1.5.1.~~ PSD shall conduct administrative reviews concurrently with criminal investigations, if any, concerning the same incident.

~~6.2.~~ PSD shall interview all witnesses to the use of force:

~~6.2.1.5.2.~~ After consulting with the DA, PSD, and may compel statements from witness members at any time.

~~6.3.5.3.~~ PSD shall conduct a compelled interview with the involved member where appropriate in the administrative review.

~~6.3.1.5.3.1.~~ For deadly force incidents that result in death, PSD shall schedule a compelled interview with the involved member upon receipt of written notification from the DA that all criminal proceedings have concluded as soon as practicable after the force event, which will be presumed to be within 48 hours of the event unless there is a compelling reason to delay the meeting.

~~6.3.2.5.3.2.~~ For deadly force incidents that do not result in death, PSD shall schedule a compelled interview with the involved member, after consulting with the DA regarding the potential for prosecution.

~~6.4.5.4.~~ PSD shall consider all available relevant evidence, including recordings by Homicide Detectives or others of witness and involved member interviews; physical evidence; and documentary evidence.

~~6.5.5.5.~~ In accordance with PSD SOP #7, PSD shall conduct an administrative review of the incident, to include the events preceding the use of deadly force, the decision making surrounding the use of deadly force, the management/supervision of the incident, and the events following the use of deadly force to determine whether member actions were consistent with policy and if there are possible policy deficiencies.

~~6.6.5.6.~~ PSD shall provide its investigation materials to the appropriate RU manager at the conclusion of all criminal proceedings against the involved member.

~~6.7.5.7.~~ The lead PSD investigator shall present the results of the administrative review of the deadly force incident to the Police Review Board, as appropriate, at the conclusion of all criminal proceedings against the involved member.

5.8. The PSD Captain shall ensure that any materials and information whatsoever related to the IA investigation or collected by PSD members for the review are kept wholly

confidential within PSD and not provided to any person involved in or in any way connected with the criminal investigation or prosecution, or to any source whatsoever outside of PSD, until the conclusion of any and all criminal proceedings against the involved member(s).

5.8.1.1. No member of PSD may disclose any materials or information related to the IA investigation or collected by PSD members for the review to anyone outside of PSD until the conclusion of any and all criminal proceedings against the involved member(s), and then only with approval of the PSD Captain.

6.8.5.9. The PSD investigator shall refer to Section 21.9. of this directive for information regarding reporting responsibilities.

6.9.5.10. RU Manager Responsibilities:

5.10.1. The RU manager shall utilize PSD's investigation materials to draft a findings memorandum to determine whether member actions were within policy. These findings shall be presented to the Police Review Board.

6.9.1.

7.6. Training Review.

7.1.6.1. Training Division Responsibilities:

7.1.1.6.1.1. Upon completion of the criminal investigation and administrative review, the Training Division shall conduct a review of the incident and an analysis of the investigative findings to determine whether member actions were consistent with training and/or those actions reflect training deficiencies.

7.1.2.6.1.2. The Training Division shall then provide its review to the involved member's RU manager.

7.2.6.2. RU Manager Responsibilities:

7.2.1.6.2.1. The RU manager shall discuss the Training Division's review with the involved member.

8.7. Communication Restriction Order (CRO).

8.1.7.1. The Detective Division Commander, or their designee, shall issue CROs to all witness and involved officers immediately following the incident. The CRO process shall include:

8.1.1.7.1.1. Issuing CROs to all witness and involved members;

8.1.2.7.1.2. Providing copies of the CROs to a Detective Homicide Detail supervisor;

8.1.3.7.1.3. Providing copies of the CROs to the PSD Captain; and

8.1.4.7.1.4. Documenting that the CROs were issued and to whom.

8.2.7.2. The CRO shall prohibit direct or indirect communications between any and all involved and witness officers regarding the facts of the event.

8.3.7.3. Members under a CRO may communicate with any of the following regarding the case:

- ~~8.3.1.7.3.1.~~ Representatives from PSD,
- ~~8.3.2.7.3.2.~~ Representatives from the Independent Police Review Division (IPR),
- ~~8.3.3.7.3.3.~~ Representatives from the City Attorney's Office,
- ~~8.3.4.7.3.4.~~ Union representative,
- ~~8.3.5.7.3.5.~~ Attorney,
- ~~8.3.6.7.3.6.~~ Spouse,
- ~~8.3.7.7.3.7.~~ Clergy person,
- ~~8.3.8.7.3.8.~~ Doctor,
- ~~8.3.9.7.3.9.~~ Psychotherapist, and/or
- ~~8.3.10.7.3.10.~~ Any other person recognized by a court with jurisdiction in the State of Oregon as having a protected relationship entitling them to privileged communications.

~~8.4.7.4.~~ Union representatives shall not communicate to either involved members or witness members what has been told to them by any individual they are representing.

~~8.5.7.5.~~ The CRO shall continue, unless extended further, until the conclusion of the Grand Jury or, if no Grand Jury is convened, until a disposition is determined by the DA; and until the conclusion of the administrative review. The CRO shall remain in effect until revoked in writing by the PSD Captain.

~~8.6.7.6.~~ On a case-by case-basis, the Chief of Police, or designee, may extend a CRO issued in a criminal investigation or an administrative review, for reasons including, but not limited to the case being under review by another federal, state, or local law enforcement agency.

~~8.7.7.7.~~ Members not involved in a deadly force or in-custody death incident shall not communicate with a member who has been designated as an involved or witness member about factual aspects of the investigation, unless authorized to do so, and until the involved or witness member is no longer under a CRO.

~~8.8.7.8.~~ Members may speak with Traumatic Incident Committee members. Members should avoid directly discussing factual aspects of the incident with Traumatic Incident Committee members. Traumatic Incident Committee members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s).

9.8. Release of Information.

~~9.1.8.1.~~ The Bureau shall provide timely and appropriate information when members use deadly force. However, the Bureau must weigh the public's right to know with what is in the best interest of the investigation. As a general rule, the Bureau shall release, as soon as possible, accurate information which shall not compromise an ongoing investigation or the potential prosecution of a suspect(s). Absent a specific and lawful request, the Bureau shall not release the prior criminal history or prior law enforcement booking photo of the individuals involved in a member's use of deadly force or in-custody death.

9.2.8.2. The PIO, who reports directly to the Chief of Police, shall be called out to all use of deadly force incidents. As soon as possible, the PIO shall coordinate with the Detective Division Sergeant in charge of the investigation, the DA's on-scene representative, and a union representative of the involved member(s) to determine what information shall be released.

9.3.8.3. During the course of the criminal investigation, the Detective Division will coordinate the release of information through the PIO. The Chief of Police is ultimately responsible for approving information available for release.

9.4.8.4. The Bureau also has a responsibility to ensure that community members; in particular the families of community members directly affected by the use of deadly force, along with members of the Bureau, receive timely information.

9.5.8.5. The Chief of Police will convene a briefing the next business day after the incident.

9.6.8.6. To provide timely and accurate information, the Detective Division should direct the Crisis Response Team (CRT) to assign a liaison to assist in providing information to members of the community directly affected by a use of deadly force. CRT shall not release information that has not been approved for release by the Homicide Sergeant in charge of the investigation and the DA. Internal communication shall be coordinated through the Chief of Police.

9.7.8.7. As soon as possible, the PIO shall release to the public the available information. Typically, the information shall include:

9.7.1.8.7.1. Nature of the call,

9.7.2.8.7.2. Time of the call and member arrival,

9.7.3.8.7.3. Number of members directly involved in the use of deadly force,

9.7.4.8.7.4. Years of service of members directly involved in the use of deadly force,

9.7.5.8.7.5. General information about the community member(s) involved in the deadly force encounter; and

9.7.6.8.7.6. Other information as determined by the Detective Division and the DA.

9.8.8.8. The identity of Bureau member(s) involved in the incident shall be released within twenty-four hours, absent a credible security threat. In incidents involving the death of a Bureau member, or member of the public, the identity will be released with approval of the Detective Division and the Medical Examiner's Office.

9.9.8.9. All public records requests for any material relating to investigations shall be routed to the Records Division for standard public records request routing.

9.10.8.10. Because the Bureau has an interest in continuing to provide the community with information in the days that follow the use of deadly force, the Detective Division will continue to coordinate the release of other relevant information with the PIO.

EXHIBIT C

1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures

Refer:

- Graham v. Connor, 490 U.S. 386 (1989)
- ORS § 146.095, Investigation
- ORS § 161.015, General Definitions
- Directive 315.30, Satisfactory Performance
- Directive 330.00, Internal Affairs, Complaint Intake and Processing
- Directive 333.00, Criminal Investigations of Police Bureau Employees
- Directive 416.00, Post Officer Involved Deadly Force/Temporary Altered Duty
- Directive 630.45, Emergency Medical Custody Transports
- Directive 630.50, Emergency Medical Aid
- Directive 640.10, Crime Scene Procedures
- Directive 900.00, General Reporting Guidelines
- Directive 1010.00, Use of Force

Definitions:

- Communication Restriction Order: An order issued during an investigation that prohibits indirect or direct communications between the involved member(s) and witness member(s) regarding the facts of the case. This restriction will be given in writing and will be lifted in writing.
- Constitutional Force Standard: Under *Graham v. Connor* and subsequent cases, the federal courts have established that government use of force must comply with the “reasonableness” requirement of the Fourth Amendment. Under this standard, members must choose from the objectively reasonable force options at a scene. See the definition of “objectively reasonable” below.
- Deadly Force, also known as Lethal Force: Any use of force likely to cause death or serious physical injury, including the use of a firearm, carotid neck hold, or strike to the head, neck or throat with a hard object.
- In-Custody Death: Occurs when a subject dies while under physical control of a member, dies as a direct result of police action, or dies while in police custody. Physical control includes the use of an electronic control weapon system.
- Involved Member: For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, an involved member is a Bureau member who applies deadly force or directs another to use deadly physical force, or a member who has used physical force, or a member who assumes control care or custody of a subject who dies in police custody.

- **Negligent Discharge:** Any unintentional discharge of a firearm by a sworn member that is not due to equipment malfunction.
- **Objectively Reasonable:** The reasonableness of a use of force is based on the totality of circumstances known by an officer at the time of action or decision-making. It shall be judged from the perspective of a reasonable officer on the scene, without the clarity of 20/20 hindsight after the event has concluded. The measure of reasonableness gives consideration to the reality that officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving. In the application or evaluation of the use of force, the uses of the terms reasonable and reasonably in this policy refer to objective reasonableness.
- **Police Action:** Any circumstance, on or off duty, in which a sworn member exercises or attempts to exercise police authority.
- **Serious Physical Injury:** As defined in ORS §161.015(8), 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.
- **Witness Member:** For the purposes of this directive, 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, a witness member is a Bureau member who observes or has firsthand knowledge of the events surrounding an in-custody death or the use of deadly physical force by another member, and other than observing the incident, did not use deadly physical force. Additionally, a member who observes or has firsthand knowledge of the events surrounding a member's direction to another to use deadly force.

Policy:

1. This policy establishes the specific guidelines and reporting requirements for the reporting and investigation of incidents involving uses of deadly force, death as a result of member use of force, and in-custody deaths.
2. The Portland Police Bureau recognizes that a member's use of deadly force or the death of an individual while in police custody requires impartial and timely review. It is the policy of the Bureau that uses of deadly force, death as a result of member use of force, and in-custody deaths, whether on or off duty, be investigated with the utmost thoroughness, professionalism and impartiality so as to determine whether member actions comport with applicable law and Bureau policies and training.
3. The Bureau acknowledges that the investigations of these incidents are of critical importance to the involved member, the Bureau, and the community. The Bureau entrusts the Detective Division with the responsibility to conduct the criminal investigation of the incident objectively and thoroughly. Concurrently, the Professional Standards Division (PSD) shall also conduct an administrative review of each such incident. The Detective Division may provide information and/or findings from the criminal investigation to PSD; however, all personnel involved in the administrative review shall keep information garnered from the

PSD interview strictly confidential, not permitting disclosure of any such information or its fruits to the criminal investigation.

4. Bureau members will be afforded all rights guaranteed under the United States and State of Oregon Constitutions throughout the investigation.
5. To insure public accountability, the Bureau is committed to establishing open communication and transparent practices with the public in an effort to cultivate and build community trust; however, information that could jeopardize the integrity of any investigation or any pending prosecution may be withheld from release until it is appropriate or a court of competent jurisdiction directs release.
6. The Bureau understands the impact that these traumatic incidents have on members and acknowledges the need to be sensitive when conducting the required investigation. The Bureau encourages its members to take proactive steps and contact available employee assistance resources following such an event if needed.
7. The Bureau also understands the impact that these traumatic incidents has on the families and communities of those persons upon whom deadly force is used and acknowledges the need to be sensitive when conducting the required investigation. All interviews and conversations with family or community members will be conducted in a manner that strives to be respectful while balancing the need to obtain critical information.

Procedure:

1. Pursuant to ORS §146.095 (1), the District Attorney (DA) shall be responsible for the investigation of all deaths following member use of deadly force. In order to maintain the integrity of these death investigations and to avoid any potential conferring of transactional criminal immunity, the Bureau shall not compel statements from involved members without express approval of the DA, except in those exceptional circumstances where information is immediately necessary to protect life and/or ensure the safety of the public. In those circumstances, the Bureau shall ensure that compelled information gathered will not be shared for the purpose of the criminal investigation of the involved member.
2. Duties and Responsibilities Following the Use of Deadly Force Causing Death (within Portland city limits).
 - 2.1. Involved Member(s):
 - 2.1.1. The involved member(s) shall notify an on-duty supervisor at the precinct of occurrence. The member(s) shall make the notification(s) as soon as practicable. The involved member(s) shall make it known to the on-scene supervisor that they are an involved member, as defined in this Directive.
 - 2.1.2. If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources (e.g., radio transmissions, Computer Aided Dispatch [CAD], etc.) the necessary information to ensure the safety of the public, the involved member(s) may be required to provide a statement that is limited to information strictly necessary to immediately protect life and ensure public safety, which could include:

- a) Direction and approximate number of any shots fired by officers and suspects;
 - b) Location of injured persons; and
 - c) Description of at-large suspects and their direction of travel, time elapsed since the suspects were last seen, and any suspect weapons.
- 2.1.3. After completing any necessary compelled statement, pertaining to the safety of members or the public, the involved member(s) may consult on scene with their union representative and attorney(s).
- 2.1.4. Upon request by the Homicide Detective, the involved member(s) may give a voluntary detailed account of the incident and on-scene walk-through. The member(s) reserves the right to decline the request.
- 2.1.5. The involved member(s), unless injured, shall remain at the scene until released by the Detective Division Homicide Sergeant and PSD. The member(s) shall not be held at the scene any longer than necessary.
 - 2.1.5.1. Assign a member, other than an involved or witness member to transport each involved member to a location determined by the Homicide Sergeant, when required.
- 2.2. Witness Member(s):
 - 2.2.1. Witness member(s) shall make it known to the on-scene supervisor that they are a witness to the incident, as defined in this Directive.
 - 2.2.2. When requested, witness member(s) shall give an on-scene statement to the on-scene supervisor, providing the necessary information to protect life and ensure the safety of the public. They may also be asked to provide information to ensure that victims, suspects, and witnesses are identified, evidence is located, and provide any information that may be required for the safe resolution of the incident, or any other information as may be required.
 - 2.2.3. Witness member(s) shall be subject to on-scene interviews to discuss the incident with detectives. They shall provide a full and candid account of the use of force event.
 - 2.2.4. All witness member(s), unless injured, shall remain at the scene until released by the Homicide Sergeant and PSD. Witnesses shall not be held at the scene any longer than necessary.
 - 2.2.5. Witness member(s) shall 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.
- 2.3. On-Scene Supervisor:
 - 2.3.1. After complying with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures, the on-scene supervisor shall complete the following:
 - 2.3.1.1. Locate and separate all witness and involved members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place.
 - 2.3.1.2. Prior to CRO issuance by the Detective Division, admonish involved and witness members not to discuss the incident.

- 2.3.1.3. The supervisor shall obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.
- 2.3.1.4. If the on-scene supervisor is unable to obtain from witness members, initial observations and/or other sources the necessary information to ensure the safety of the public, the arriving supervisor shall require the involved member to provide a statement in order to protect life if it appears that circumstances warrant an immediate statement. The questions shall be limited to information that is strictly necessary to immediately protect life and ensure public safety, which could include:
 - a) Direction and approximate number of any shots fired by officers and suspects;
 - b) Location of injured persons; and
 - c) Description of at-large suspects and their direction of travel, time elapsed since the suspects were last seen, and any suspect weapons.
- 2.3.1.4.1. Supervisors should convey to the involved member(s) that the compelled information may be necessary to protect life or ensure the safety of the public.
- 2.3.1.4.2. All questions seeking compelled information should be non-investigatory in nature and should be limited only to those needed to immediately protect life.
- 2.3.1.4.3. Supervisors shall document the involved member's response and must be able to provide an articulable reason for compelling the statement.
 - 2.3.1.4.3.1. Supervisors shall provide the involved member's compelled statement to PSD in the form of a typed memorandum prior to going off shift.
 - 2.3.1.4.3.2. A supervisor compelling a statement from an involved member under these circumstances shall ensure that any information provided is not shared with criminal investigators.
- 2.3.1.5. If ambulance transport is required, ensure that someone other than the involved or witness member(s) is assigned to accompany the injured member or community member to the hospital in the ambulance).
- 2.3.1.6. Ensure that a single entry point into and out of the scene is established and advise the Bureau of Emergency Communications (BOEC) of its location.
- 2.3.1.7. Ensure that a Crime Scene Log is maintained at the entry point.
- 2.3.1.8. Ensure that the following required notifications are made in order as listed (when feasible):
 - 2.3.1.8.1. Chain of Command,
 - 2.3.1.8.2. Detective Division Homicide Sergeant (up team),
 - 2.3.1.8.3. PSD,
 - 2.3.1.8.4. Auditor's Office of Independent Police Review (IPR),
 - 2.3.1.8.5. Public Information Officer (PIO),
 - 2.3.1.8.6. Employee Assistance Coordinator, and
 - 2.3.1.8.7. Appropriate bargaining unit representative.
- 2.3.1.9. Ensure that involved and witness member weapons are retained in their holsters, pending weapon examination by responding detectives.

- 2.3.1.10. Instruct involved and witness members to remain at the location until instructed otherwise by the lead detective or until they are released from the location by the Homicide Sergeant and PSD.
- 2.3.1.11. Assign a member, other than an uninvolved or witness member, to drive each involved member. Witness members may drive themselves. Whenever practical, each involved member and witness member should be transported in a separate vehicle.
- 2.3.1.12. Upon the homicide detail sergeant and PSD-authorized release of the involved and witness members from the scene, supervisors shall:
 - 2.3.1.12.1. Instruct members facilitating transport for involved members to proceed to detectives or the designated area, as determined by the Homicide Sergeant.
 - 2.3.1.12.2. Direct involved and witness members to refrain from changing out of the clothes worn at the time of the incident until they receive specific permission to do so from the Homicide Sergeant
 - 2.3.1.12.3. Any exceptions to the preceding actions shall only be authorized by the Homicide Sergeant.
- 2.4. Precinct or Division Commander Responsibilities:
 - 2.4.1. The precinct or division commander will notify the appropriate Assistant Chief, who will then notify the Chief of Police and the other Assistant Chiefs.
 - 2.4.2. The Assistant Chief of Services will notify:
 - 2.4.2.1. The City Attorney, and
 - 2.4.2.2. The Training Division.
- 2.5. Chief of Police:
 - 2.5.1. The Chief of Police will make the appropriate notification to the Commissioner-in-Charge.
- 2.6. Homicide Sergeant Responsibilities:
 - 2.6.1. Make the following required notifications:
 - 2.6.1.1. Detective Division Command,
 - 2.6.1.2. On-call detectives,
 - 2.6.1.3. District Attorney's Office,
 - 2.6.1.4. Medical Examiner's Office, and
 - 2.6.1.5. Forensic Evidence Division (FED), ensuring criminalists are responding to the scene.
 - 2.6.2. Request assistance from the East County Major Crime Team.
 - 2.6.3. Respond to and assume responsibility for the scene after receiving a briefing from the supervisor in charge of the scene.
 - 2.6.4. Identify all involved and witness members and any members with pertinent investigative information.
 - 2.6.5. Make investigative and scene processing assignments.
 - 2.6.6. Regularly provide updates to the Detective Division Commander, the PIO, the PSD Captain, and the Chief of Police.
 - 2.6.7. Ensure CROs are issued pursuant to Section 8 of this directive.

- 2.6.8. Ensure all involved weapons have been examined, documented, and retained if necessary; ensure member(s) are supplied with a replacement weapon by Training, if appropriate.
- 2.6.9. Ensure a thorough and complete investigation is conducted.
- 2.6.10. Ensure the appropriate checklists are used and case notebooks are prepared.
- 2.6.11. After consultation with PSD and DA, release the involved and witness members from the scene.
- 2.6.12. As soon as practicable, provide transcripts and/or recordings of all witness interviews to PSD.

2.7. Homicide Detective:

- 2.7.1. The Homicide Detective shall conduct a complete and thorough investigation of all in-custody deaths and deadly force incidents. PSD and the Training Division shall use the investigation to determine if the use of deadly physical force was justified, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:
 - 2.7.1.1. Complete the General Offense Report;
 - 2.7.1.2. Ensure that scene sketches and diagrams are completed;
 - 2.7.1.3. Manage the processing of evidence;
 - 2.7.1.4. Request a voluntary statement and on-scene walk-through from the involved member;
 - 2.7.1.5. Conduct complete and thorough interviews of witness members and supervisors to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety;
 - 2.7.1.6. Upon approval from the DA, conduct complete and thorough interviews of involved members to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded in their entirety;
 - 2.7.1.7. Direct the assigned criminalists to collect all evidence including involved members' uniforms and all outer clothing (including duty belt) and retain as evidence until instructed otherwise by the lead detective of the investigation. This instruction should be relayed to any uninvolved member that accompanied an injured involved member to the hospital.
 - 2.7.1.8. Conduct interviews of civilian witnesses. The interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;
 - 2.7.1.9. Collect and submit all firearms involved in the incident, including Special Emergency Reaction Team (SERT) weapons, to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;
 - 2.7.1.10. Collect and submit any other weapons (e.g., conducted electrical weapon [CEW]) used (or attempted to be used) in the application of force to the Property Evidence Division (PED);
 - 2.7.1.11. Conduct an investigative follow up;

- 2.7.1.12. Ensure that their reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;
 - 2.7.1.13. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
 - 2.7.1.14. Submit all cases involving the use of deadly force resulting in death and in-custody deaths to the DA for review;
 - 2.7.1.15. Coordinate and consult with the District Attorney's Office throughout the investigation; and
 - 2.7.1.16. Complete the investigative case book.
 - 2.7.1.17. Refer to Section 2.9. of this directive for information regarding reporting responsibilities. Exceptions to witness members providing on-scene statements 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, and the detective must justify any such exceptions. Those exceptions must be approved by the Detective Division Commander.
- 2.8. Professional Standards Division (PSD) On-Scene Responsibilities:
- 2.8.1. After consulting with the DA, PSD may compel statements from witness members at any time
 - 2.8.2. The PSD Captain, or designee, shall accompany the IPR Director, or designee, at the scene and assist in gathering information from Detectives, when applicable (i.e., when IPR elects to respond to the scene).
 - 2.8.3. The PSD Captain, or designee, shall coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene.
 - 2.8.4. The PSD Investigator shall refer to Section 6 of this Directive for review responsibilities and Section 2.9. of this directive for information regarding reporting responsibilities.
- 2.9. Use of Deadly Force (Resulting in Death) Reporting:
- 2.9.1. For use of deadly force resulting in death, the more comprehensive administrative review is intended to capture all information required in a use of force report. Therefore, in those cases, involved members are not required to complete a use of force report until after the criminal investigation concludes.
 - 2.9.2. Members who use deadly force as described in Section 10 in Directive 1010.00, Use of Force, shall be asked by detectives to provide a voluntary on-scene walk-through and interview.
 - 2.9.2.1. If the member agrees to provide a voluntary on-scene walk-through and interview, the detective shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the voluntary interview and walk-through. Detectives shall include the pertinent information (a full and candid account) in their written report, pursuant to Directive 1010.00, Use of Force.

- 2.9.2.2. Members who decline to provide a voluntary statement may be compelled to provide a detailed account of the incident. In these circumstances, the PSD investigator shall ensure that all information that would otherwise be necessary to thoroughly complete a use of force report is captured over the course of the administrative review interview. The investigator shall not complete the narrative section of the report, and shall instead include the pertinent information (a full and candid account) in their written report, in lieu of the involved member completing the use of force report, pursuant to Directive 1010.00, Use of Force.
 - 2.9.3. For Category I force incidents where the Detective Division completes a criminal investigation and PSD completes an administrative review, the completion of a force After Action report is not required because the administrative review serves this function.
- 3. Duties and Responsibilities Following the Use of Deadly Force and in-custody deaths (outside of Portland city limits).
 - 3.1. Involved Member Responsibilities:
 - 3.1.1. Notify the jurisdiction of occurrence, and
 - 3.1.2. Notify an on duty patrol supervisor if the involved member's supervisor is not present.
 - 3.1.3. Members shall also follow the requirements listed in Section 2.1. of this directive.
 - 3.2. Supervisor Responsibilities:
 - 3.2.1. Supervisors will make notification as required of the on-scene supervisor. Refer to Section 2.3.1.8. of this directive.
 - 3.3. Detective Division Commander, or designee:
 - 3.3.1. Shall contact the investigating agency to provide an offer of assistance.
 - 3.4. Professional Standards Division:
 - 3.4.1. The PSD Captain, or a designee, shall:
 - 3.4.1.1. Act as the Bureau's liaison;
 - 3.4.1.2. Respond to the scene, if feasible;
 - 3.4.1.3. Accompany the IPR Director, or designee, at the scene and assist in gathering information from Detectives, when applicable (i.e., when IPR elects to respond to the scene);
 - 3.4.1.4. After consulting with the county of incident's DA, may compel statements from witness members at any time;
 - 3.4.1.5. Coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene; and
 - 3.4.1.6. Refer to Section 6 of this Directive for review responsibilities and Section 2.9 of this directive for information regarding reporting responsibilities.
- 4. Deadly Force/In-Custody Death by an On-Duty Member from Another Jurisdiction (within Portland city limits).
 - 4.1. Bureau Procedures:

- 4.1.1. The agency in charge of investigating deaths in Multnomah County is the DA. If the Bureau investigates, the Homicide Sergeant shall be the supervisor and detectives shall be responsible for the investigation, and shall follow the procedures in Section 2.7.
 - 4.2. The Bureau's On-Scene Supervisor shall:
 - 4.2.1. Comply with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures;
 - 4.2.2. Ensure that an on-duty supervisor of the member's agency is notified;
 - 4.2.3. Locate and separate all involved and witness members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place;
 - 4.2.4. Prior to CRO issuance, admonish involved and witness members not to discuss the incident; and
 - 4.2.5. Obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from witness members and other sources.
 - 4.3. Witness members who are members of the Bureau shall follow the procedures set forth in Section 2.2. of this directive.
 - 4.4. Unless there is some immediate need to seize weapons, the involved peace officer shall be allowed to keep their weapon(s) until their agency supervisor arrives. Upon arrival, the agency supervisor shall take custody of the firearm, and if necessary, surrender it to the investigator.
 - 4.5. The Homicide Sergeant shall notify the appropriate Bureau Precinct Commander and Assistant Chief.
5. Duties and Responsibilities Following the Use of Deadly Force Not Causing Death.
 - 5.1. Involved Member(s):
 - 5.1.1. Shall follow the procedures set forth in Section 2.1. of this directive.
 - 5.2. Witness Member(s):
 - 5.2.1. Shall follow the procedures set forth in Section 2.2. of this directive.
 - 5.3. On-Scene Supervisor:
 - 5.3.1. Shall follow the procedures set forth in Section 2.3. of this directive.
 - 5.4. Detective Division:
 - 5.4.1. The Detective Division shall conduct a complete and thorough investigation of the deadly force incident. The investigation shall be used to determine justification for the use of deadly physical force, as well as to identify any training or policy concerns regarding the actions of the member(s). The Detective shall:
 - 5.4.1.1. Ensure CROs are issued pursuant to Section 8 of this directive.

- 5.4.1.2. Complete a General Offense Report;
 - 5.4.1.3. Ensure that scene sketches and diagrams are completed;
 - 5.4.1.4. Manage the processing of evidence;
 - 5.4.1.5. Conduct interviews of involved members, witness members and supervisors using the interview checklist to ensure that all applicable areas are covered. All interviews wherein material facts of the case are discussed shall be audio recorded;
 - 5.4.1.6. Conduct interviews of civilian witnesses. The interview shall be audio recorded in its entirety, unless the witness declines. The refusal shall be documented in writing;
 - 5.4.1.7. Collect and submit all firearms involved in the incident, including SERT weapons, used in the incident to the Oregon State Crime Lab for appropriate testing, and document the condition of the firearm(s) (as found), to include serial number, rounds in chamber and number of rounds in each magazine;
 - 5.4.1.8. Collect and submit any other weapons (e.g., CEW) used (or attempted to be used) to PED;
 - 5.4.1.9. Ensure that their reports include detailed information related to any weapons involved, accounting for all shots fired, their point of impact, if ascertainable, and any injury or damage to property;
 - 5.4.1.10. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
 - 5.4.1.11. Submit all cases involving intentional use of deadly force and negligent discharge resulting in injury to another, to the DA for review; and
 - 5.4.1.12. Complete the investigative case book.
- 5.5. Professional Standards Division:
- 5.5.1. PSD shall conduct a concurrent administrative review of the incident in accordance with Bureau policy, including the steps identified in Section 6.
 - 5.5.2. After consultation with the DA, PSD shall schedule a compelled interview with the involved member.
 - 5.5.3. The PSD Investigator shall refer to Section 2.9. of this directive for information regarding reporting responsibilities.
- 5.6. Use of Deadly Force (Not Resulting in Death) Reporting.
- 5.6.1. After consultation with the DA, the PSD Captain shall have the discretion to direct the involved member to complete a use of force report.
 - 5.6.1.1. Pursuant to Directive 1010.00, Use of Force, members shall complete the use of force report immediately after being instructed to do so.
 - 5.6.2. For Category I force incidents where the Detective Division completes a criminal investigation and PSD completes an administrative review, the completion of a force After Action report is not necessary.
 - 5.6.3. All members shall follow Directive 1010.00, Use of Force, and Directive 900.00, General Reporting Guidelines, regarding report-writing.
 - 5.6.4. Members shall adhere to all reporting and review requirements set forth in Directive 1010.00, Use of Force, for force resulting in hospital admission or force involving more than one simultaneous intentional CEW application.

- 5.6.5. The involved member's supervisor shall complete the use of force After Action report for all force resulting in hospital admission and/or force involving more than one simultaneous intentional CEW application.
6. PSD Review.
 - 6.1. PSD shall conduct administrative reviews concurrently with criminal investigations, if any, concerning the same incident.
 - 6.2. PSD shall interview all witnesses to the use of force.
 - 6.2.1. After consulting with the DA, PSD may compel statements from witness members at any time.
 - 6.3. PSD shall conduct a compelled interview with the involved member where appropriate in the administrative review.
 - 6.3.1. For deadly force incidents that result in death, PSD shall schedule a compelled interview with the involved member upon receipt of written notification from the DA that all criminal proceedings have concluded.
 - 6.3.2. For deadly force incidents that do not result in death, PSD shall schedule a compelled interview with the involved member, after consulting with the DA.
 - 6.4. PSD shall consider all available relevant evidence, including recordings by Homicide Detectives or others of witness and involved member interviews; physical evidence; and documentary evidence.
 - 6.5. In accordance with PSD SOP #7, PSD shall conduct an administrative review of the incident, to include the events preceding the use of deadly force, the decision making surrounding the use of deadly force, the management/supervision of the incident, and the events following the use of deadly force to determine whether member actions were consistent with policy and if there are possible policy deficiencies.
 - 6.6. PSD shall provide its investigation materials to the appropriate RU manager.
 - 6.7. The lead PSD investigator shall present the results of the administrative review of the deadly force incident to the Police Review Board, as appropriate.
 - 6.8. The PSD investigator shall refer to Section 2.9. of this directive for information regarding reporting responsibilities.
 - 6.9. RU Manager Responsibilities:
 - 6.9.1. The RU manager shall utilize PSD's investigation materials to draft a findings memorandum to determine whether member actions were within policy. These findings shall be presented to the Police Review Board.
7. Training Review.
 - 7.1. Training Division Responsibilities:

- 7.1.1. Upon completion of the criminal investigation and administrative review, the Training Division shall conduct a review of the incident and an analysis of the investigative findings to determine whether member actions were consistent with training and/or those actions reflect training deficiencies.
- 7.1.2. The Training Division shall then provide its review to the involved member's RU manager.
- 7.2. RU Manager Responsibilities:
 - 7.2.1. The RU manager shall discuss the Training Division's review with the involved member.
- 8. Communication Restriction Order (CRO).
 - 8.1. The Detective Division Commander, or their designee, shall issue CROs to all witness and involved officers immediately following the incident. The CRO process shall include:
 - 8.1.1. Issuing CROs to all witness and involved members;
 - 8.1.2. Providing copies of the CROs to a Detective Homicide Detail supervisor;
 - 8.1.3. Providing copies of the CROs to the PSD Captain; and
 - 8.1.4. Documenting that the CROs were issued and to whom.
 - 8.2. The CRO shall prohibit direct or indirect communications between any and all involved and witness officers regarding the facts of the event.
 - 8.3. Members under a CRO may communicate with any of the following regarding the case:
 - 8.3.1. Representatives from PSD,
 - 8.3.2. Representatives from the Independent Police Review Division (IPR),
 - 8.3.3. Representatives from the City Attorney's Office,
 - 8.3.4. Union representative,
 - 8.3.5. Attorney,
 - 8.3.6. Spouse,
 - 8.3.7. Clergy person,
 - 8.3.8. Doctor,
 - 8.3.9. Psychotherapist, and/or
 - 8.3.10. Any other person recognized by a court with jurisdiction in the State of Oregon as having a protected relationship entitling them to privileged communications.
 - 8.4. Union representatives shall not communicate to either involved members or witness members what has been told to them by any individual they are representing.
 - 8.5. The CRO shall continue, unless extended further, until the conclusion of the Grand Jury or, if no Grand Jury is convened, until a disposition is determined by the DA; and until the conclusion of the administrative review. The CRO shall remain in effect until revoked in writing by the PSD Captain.

- 8.6. On a case-by case-basis, the Chief of Police, or designee, may extend a CRO issued in a criminal investigation or an administrative review, for reasons including, but not limited to the case being under review by another federal, state, or local law enforcement agency.
- 8.7. Members not involved in a deadly force or in-custody death incident shall not communicate with a member who has been designated as an involved or witness member about factual aspects of the investigation, unless authorized to do so, and until the involved or witness member is no longer under a CRO.
- 8.8. Members may speak with Traumatic Incident Committee members. Members should avoid directly discussing factual aspects of the incident with Traumatic Incident Committee members. Traumatic Incident Committee members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s).
9. Release of Information.
 - 9.1. The Bureau shall provide timely and appropriate information when members use deadly force. However, the Bureau must weigh the public's right to know with what is in the best interest of the investigation. As a general rule, the Bureau shall release, as soon as possible, accurate information which shall not compromise an ongoing investigation or the potential prosecution of a suspect(s). Absent a specific and lawful request, the Bureau shall not release the prior criminal history or prior law enforcement booking photo of the individuals involved in a member's use of deadly force or in-custody death.
 - 9.2. The PIO, who reports directly to the Chief of Police, shall be called out to all use of deadly force incidents. As soon as possible, the PIO shall coordinate with the Detective Division Sergeant in charge of the investigation, the DA's on-scene representative, and a union representative of the involved member(s) to determine what information shall be released.
 - 9.3. During the course of the criminal investigation, the Detective Division will coordinate the release of information through the PIO. The Chief of Police is ultimately responsible for approving information available for release.
 - 9.4. The Bureau also has a responsibility to ensure that community members; in particular the families of community members directly affected by the use of deadly force, along with members of the Bureau, receive timely information.
 - 9.5. The Chief of Police will convene a briefing the next business day after the incident.
 - 9.6. To provide timely and accurate information, the Detective Division should direct the Crisis Response Team (CRT) to assign a liaison to assist in providing information to members of the community directly affected by a use of deadly force. CRT shall not release information that has not been approved for release by the Homicide Sergeant in

charge of the investigation and the DA. Internal communication shall be coordinated through the Chief of Police.

- 9.7. As soon as possible, the PIO shall release to the public the available information. Typically, the information shall include:
 - 9.7.1. Nature of the call,
 - 9.7.2. Time of the call and member arrival,
 - 9.7.3. Number of members directly involved in the use of deadly force,
 - 9.7.4. Years of service of members directly involved in the use of deadly force,
 - 9.7.5. General information about the community member(s) involved in the deadly force encounter; and
 - 9.7.6. Other information as determined by the Detective Division and the DA.
- 9.8. The identity of Bureau member(s) involved in the incident shall be released within twenty-four hours, absent a credible security threat. In incidents involving the death of a Bureau member, or member of the public, the identity will be released with approval of the Detective Division and the Medical Examiner's Office.
- 9.9. All public records requests for any material relating to investigations shall be routed to the Records Division for standard public records request routing.
- 9.10. Because the Bureau has an interest in continuing to provide the community with information in the days that follow the use of deadly force, the Detective Division will continue to coordinate the release of other relevant information with the PIO.

ORDINANCE No.

188546

Adopt new Post Deadly Force Procedures for Police Bureau and authorize legal proceedings to determine validity. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Trust between law enforcement agencies and the people they protect and serve is essential in a democratic society.
2. Procedural justice must be the guiding principle for the policies that govern the interactions between Portland Police Bureau (PPB) and those it serves, and the work of PPB officers.
3. Effective and transparent accountability systems are necessary to build public trust in PPB and achieve legitimacy.
4. The City Council is entrusted with the ultimate responsibility for ensuring that PPB carries out its responsibilities in accordance with policies that reflect community values and fulfil constitutional requirements.
5. The City, the community and PPB officers share an interest in ensuring that any police use of force is constitutional; is no greater than necessary to accomplish a lawful objective; is properly documented and reported; and is properly investigated, reviewed, evaluated and if necessary remedied.
6. The need for thorough and prompt investigations of use of force is particularly acute in cases involving the use of deadly force and the death of an individual while in police custody.
7. All uses of deadly force and in-custody deaths must be investigated promptly and with the utmost thoroughness and impartiality to determine whether officers' actions comport with the law and with PPB policies and training.
8. Following a use of deadly force by an officer, two separate investigations are conducted. A criminal investigation is conducted to determine if the use of force violates any criminal law. An administrative investigation is also conducted to determine if the use of force comports with City and PPB policies and training.
9. Under Oregon law, criminal death investigations shall be conducted under the direction of the District Attorney for the county where the death occurs. ORS 146.095(1) and ORS 146.100(1). Such investigations can

ultimately result in criminal prosecution if criminal wrongdoing is found to have occurred.

10. It is the policy of the City that all employees must comply with all criminal laws in carrying out their employment responsibilities. Should any employee, including any police officer, commit a crime, the City believes that employee should be subject to criminal prosecution to the full extent of the law. The City has a responsibility to be mindful of taking any action or implementing any policy which might interfere with the Multnomah County District Attorney's ability to hold a City employee, including a police officer, responsible for criminal behavior.
11. The City's administrative investigation is conducted by the Internal Affairs Division of the Professional Standards Division of the Portland Police Bureau. The purpose of the administrative investigation is to determine if the City's employee (the involved officer) followed City policies and training in connection with the use of deadly force. The administrative investigation can ultimately result in discipline up to and including the termination of employment if the officer is found to have violated City and PPB policies and/or training.
12. Pursuant to City work rules and the collective bargaining agreement between the City and the Portland Police Association, an officer can be compelled to answer questions in an administrative investigation and, depending upon the circumstances, an officer's refusal to do so can itself form the basis for discipline up to and including termination.
13. Police officers, like all people in the United States, have constitutional rights including the right against self-incrimination. The United States Supreme Court has held that it violates the right against self-incrimination for an officer to be compelled to answer questions in an administrative investigation under the threat of potential termination of employment, and have those compelled statements used against them in a criminal prosecution. *Garrity v. State of New Jersey*, 385 US 493 (1967).
14. The Oregon Court of Appeals analyzed the Oregon constitutional right against self-incrimination in *State v. Soriano*, 68 Or App 642 (1982), in a decision later affirmed by the Oregon Supreme Court. *Soriano* did not deal with the situation of a police officer facing both an administrative and criminal investigation, but did hold that an individual could not be compelled to give grand jury testimony without receiving complete immunity from prosecution for any crimes connected to the testimony.
15. The Multnomah County District Attorney has interpreted *Soriano* to mean that the City violates an officer's criminal right against self-incrimination under Article I, Section 12, of the Oregon Constitution by compelling the officer to give a statement in an administrative investigation prior to the

conclusion of any criminal proceedings, even if that statement is kept fully separate from the criminal investigation. The District Attorney believes that doing so affords the officer full immunity from prosecution and that the District Attorney's Office will therefore be unable to prosecute even if the use of force is believed to be criminal based on the investigation.

16. The Multnomah County District Attorney has made that position known in part through the memorandum attached as Exhibit A, as well as in verbal communications to the City.
17. The City acknowledges that the law is not entirely clear. The City believes, however, that this interpretation of the law frustrates the compelling public interest in a prompt and timely administrative investigation to determine whether an officer who has used deadly force resulting in death violated any City or PPB policies or training. The City believes that such an investigation can be conducted in a manner that preserves and protects the constitutional rights of the involved officer.
18. Specifically, the City can keep administrative employment investigations by the Professional Standards Division wholly separate from the criminal investigation overseen by the Multnomah County District Attorney, and thereby comply with all applicable state and federal standards and officers' constitutional rights.
19. The City believes that the Post Deadly Force Procedures attached as Exhibit B comply with all state and federal statutory and constitutional standards, and would further the City's compelling interests in ensuring that, in the event an officer uses deadly force in a manner that constitutes both a violation of policy and a crime, that officer could be both criminally prosecuted and disciplined or terminated as appropriate. (To facilitate review, Exhibit B contains both a clean copy of this preferred version of Directive 1010.10 as well as a redline version comparing it to Exhibit C, which is the version in effect until court approval is obtained for Ex. B).
20. Because of the uncertainty of the law and its interpretation by the Multnomah County District Attorney, the City has been unable to adopt and implement the procedures attached as Exhibit B, without running the risk that doing so would preclude the District Attorney from prosecuting the officer even if the officer's conduct was believed after investigation to be criminal. The District Attorney interprets the law to be that if the City compels an officer to give a statement in an administrative proceeding, the courts would almost certainly find that this grants transactional immunity – that is full immunity from prosecution – and that the District Attorney would therefore be unable to successfully prosecute.
21. Although history suggests that criminal prosecutions of officers in Multnomah County are rare, it would be irresponsible of the City to

implement a policy that could immunize an officer from criminal prosecution in a situation where prosecution would be warranted. The City has been compelled to adopt the procedures attached as Exhibit C, to ensure that were an officer to unlawfully use deadly force that officer could be criminally prosecuted by the Multnomah County District Attorney.

22. The procedures attached as Exhibit C, however, do not fully serve the City's compelling interest in ensuring that the Professional Standards Division can conduct a full and timely investigation of officers' use of deadly force to determine whether it was within or without City and PPB policy and training. These procedures require the City, in a case involving a use of deadly force resulting in death, to wait until the conclusion of the criminal investigation to compel a statement from the involved officer, which could be a period of weeks or possibly even months.
23. The City, PPB and its officers, the community and the Multnomah County District Attorney will all benefit from a court determination as to the legal validity of the City policy attached as Exhibit B, which it would not be prudent to implement until the courts examine *Soriano* in an employment context and determine that its implementation will not violate officers' constitutional rights nor as a matter of law immunize them from criminal prosecution.

NOW, THEREFORE, the Council directs:

- a. The Post Deadly Force Procedures attached as Exhibit B are adopted and shall become effective upon entry of a final judgment and conclusion of subsequent appeals, if any, in the action described in paragraph b below.
- b. The City Attorney's Office is authorized and directed to file legal proceedings and to join any appropriate parties to obtain a judicial determination of the validity of the Post Deadly Force Procedures attached as Exhibit B and to pursue them to their conclusion in any higher court.

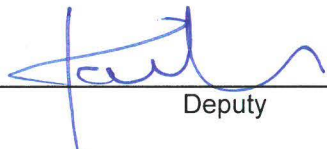
Passed by the Council:

Commissioner: Mayor Wheeler
Prepared by: Tracy Reeve
Date Prepared: 7/21/17

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

✓ Adopt new Post Deadly Force Procedures for Police Bureau and authorize legal proceedings to determine validity. (Ordinance)

INTRODUCED BY Commissioner/Auditor: Mayor Wheeler	CLERK USE: DATE FILED <u>JUL 25 2017</u>
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance and Administration - Wheeler <i>MD</i>	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	By:  Deputy
Position 3/Affairs - Saltzman	
Position 4/Safety - Eudaly	
BUREAU APPROVAL	ACTION TAKEN:
Bureau: City Attorney's Office Bureau Head: Tracy Reeve	AUG 03 2017 PASSED TO SECOND READING AUG 09 2017 1:00 PM TIME CERTAIN
Prepared by: T. Reeve Date Prepared: 7/21/17 <i>TRR</i>	
Impact Statement	
Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: <i>SPH</i> required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date 8/3/17	

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: 3:10
Total amount of time needed: 1.5 hours (1 of 3 items) (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Eudaly	4. Eudaly		
Wheeler	Wheeler		