



## CITY OF PORTLAND, OREGON



### Bureau of Police

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## **Directive 416.00, Critical Incident – Temporary Altered Duty (formerly, “Post Officer-Involved Deadly Force/Temporary Altered Duty”) Executive Summary**

### Introduction

As a result of its 2011 investigation, the Department of Justice (DOJ) identified several directives that pertain to crisis intervention, force and force reporting, member accountability, and training. Due to its direct association with Directive 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, the DOJ indicated that Directive 416.00, Critical Incident – Temporary Altered Duty (formerly, “Post Officer-Involved Deadly Force/Temporary Altered Duty”) was in need of revision to better reflect the relevant provisions of the 2012 DOJ Settlement Agreement (“the Agreement”). The following summary describes the steps that the Bureau has taken to rework the directive.

### Review Timeline and Process

All DOJ-identified policies that have previously been approved by the DOJ are subject to additional review after enactment. The DOJ originally approved Directive 416.00, Post Officer-Involved Deadly Force/Temporary Altered Duty in May 2016, and the Bureau posted the directive for the first universal review and public comment period in May 2017.

### Public Comments

The Bureau received limited feedback on both the active directive, and the proposed revision. Most commenters asked for clarification in some areas of the policy, specifically with regard to definitions and an element in the return to work section of the directive.

### *Definitions*

The Bureau received a comment in which the author questioned the use of the term “critical incident,” without appropriately defining the term. The Bureau agreed with the recommendation to include a definition, and the Policy Development Team has defined the term in the updated version of the directive. Furthermore, the team retitled the policy to capture the fact that “critical incidents” may include traumatic events that are unrelated to the use of deadly force.

The Policy Development Team also replaced “trained licensed professional” with “licensed mental health professional” in the procedure section, as the Bureau’s use of the original term in the active version of the policy generated some confusion both among its members, and the public.

### *Return to Work*

A commenter expressed concern that the directive suggests that a member who has been involved in a deadly force incident *should* visit the scene of occurrence, an action that could be in conflict with the requirement to attend a session with a licensed mental health professional. The Policy Development Team kept the language intact, as the intent of that section is not to require the member to visit the

scene of occurrence; rather, it is to give the member the opportunity to do so, if requested by the member, when back on duty.

We thank every individual who took the time to provide feedback on this directive. All comments received during both review periods are attached at the end of this document. We have removed all personal information to protect the privacy of commenters.

#### The Bureau's Revised Policy

The updated policy includes a few minor changes that largely resulted from recommendations made by the public. Many of these changes address the need for clarification and consistency in the current active version of the policy.

The Bureau believes that the revised directive provides clearer guidance to its members; however, any suggestions to further improve this policy are welcome during its next review.

Directive 416.00, Critical Incident – Temporary Altered Duty, will go into effect on February 28, 2018.

Published on 2/1/18

## **416.00, Critical Incident - Temporary Altered Duty**

### **Refer:**

- DIR 210.21, Leaves from Service
- DIR 240.00, Employee Assistance Program
- DIR 410.00, Injuries/Occupational Illness/Disability/LOS
- DIR 1010.00, Use of Force
- DIR 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures

### **Definitions:**

- **Critical Incident:** An atypically traumatic event that may cause physical, emotional, and/or psychological injury or harm.
- **Critical Incident Stress Debriefing:** A process that is designed to prevent or limit the development of post-traumatic stress in people exposed to critical incidents. It is a professionally conducted debriefing that helps members cope with and recover from an incident's aftereffects. It enables participants to process their thoughts and feelings surrounding a critical incident in a controlled, safe environment.
- **Involved Member:** 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 against, or a member who assumes control, care or custody of, a subject who dies in police custody.
- **Witness Member:** 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. The Bureau recognizes that critical incidents, such as those involving the use of deadly force (or force resulting in serious injury), are extremely complex and can have significant impact on the involved members, the organization, and the community.
2. The Bureau is committed to supporting members who are involved in or witness a deadly force incident. Members directly involved in the use of deadly force (or force resulting in serious injury as determined by the Chief of Police) will be placed on administrative leave and/or provided a structured, temporary altered assignment to facilitate the member returning to their regular duty.
3. Members who witness or are directly involved in other critical incidents (e.g., use of deadly force incident) may be placed on administrative leave and/or temporary altered duty assignment following such an incident as determined by the Chief of Police.

**Procedure:**

1. Altered Duty for Involved Members:
  - 1.1. The Employee Assistance Program Coordinator will ensure that all involved members are assigned a Traumatic Incident Committee team member as soon as practical following the use of deadly force.
  - 1.2. Involved members will be placed on administrative leave immediately following an event. This work status will stay in place until the involved member attends a session with a licensed mental health professional. If this session occurs prior to one week after the end of the Grand Jury deliberations, the involved member will not return to work until one week after Grand Jury deliberations. This procedure recognizes the difficulty in processing such an event by a member until after the completion of the Grand Jury deliberations.
  - 1.3. Members who need more time off work will be afforded the opportunity to use vacation or sick leave, if applicable.
  - 1.4. If a member feels unable to return to work, they may file a claim under the Fire and Police Disability and Retirement System.
  - 1.5. The Employee Assistance Program Coordinator will schedule the Critical Incident Stress Debriefing as soon as practical following the conclusion of the Grand Jury deliberations. This procedure recognizes the value in conducting this debriefing as soon as is procedurally possible.
  - 1.6. The Employee Assistance Program Coordinator will assist in pairing the involved member with a licensed mental health professional and ensure the involved member is both scheduled for and attends a session prior to returning to work, and at three (3), six (6), and twelve (12), months following the incident.
  - 1.7. The involved member's Lieutenant will be responsible for keeping the member informed of the details of their temporary assignment. This procedure recognizes the value in the member receiving official communication in a timely, accurate, and regular manner.
  - 1.8. Involved members will return to work at the conclusion of the administrative leave and after the Critical Incident Stress Debriefing.
  - 1.9. The involved member's return to work will be structured in a manner designed to continue to facilitate the member smoothly returning to their full duty assignment.
2. Return to Work for Involved Members:
  - 2.1. The first week of the structured return to duty assignment will include being paired with another member for a minimum of the first week. This procedure recognizes the benefit

of being back with the involved member's usual peers as well as being able to step back into the demands of the job in a progressive manner.

- 2.2. The first day will be administrative in nature and will include such things as obtaining back the involved member's weapon and equipment, visiting the range if desired, and visiting the scene of occurrence if desired.
  - 2.3. If the involved member is in an operational assignment, the rest of the week will involve working in a two (2) person "beat" car and taking non-priority calls. The intent is for the involved member to not have district responsibilities for the first week and to take calls in a self-initiated and controlled manner.
  - 2.4. If the involved member is in a non-operational assignment, a similar stair step approach assignment will be structured.
  - 2.5. At the end of the first week, the involved member, the Employee Assistance Program Coordinator, and the member's supervisor will make a determination if the member is ready for a complete return to unrestricted duty or decide if there would be additional benefit by continuing to be paired with a partner.
3. Witness Member:
    - 3.1. Members that witness (as defined within this Directive), the use of deadly force may be placed on administrative leave and/or placed in a temporary altered duty assignment following such an incident. This may also be referred to the Employee Assistance Program and assigned a Traumatic Incident Committee or Peer Support Team member.
    - 3.2. These decisions, as well as the return to work process, will be determined on a case by case basis by the Assistant Chief of the witness member in consultation with the Employee Assistance Program Coordinator, the witness member, and their assigned Traumatic Incident Committee or Peer Support Team member.
    - 3.3. This procedure recognizes that witnessing such an event, though not being directly involved in the use of deadly force, can still have a significant impact on members.
4. Exceptional Circumstances:
    - 4.1. In exceptional circumstances, the Chief of Police, reserves the ability to have a member remain on administrative leave beyond the provisions outlined in within this directive.
    - 4.2. The Chief of Police, also reserves the ability to assign a member to a non-call taking assignment.
    - 4.3. Factors that will be considered in making such determinations include, but are not limited to:
      - 4.3.1. Member concerns,
      - 4.3.2. Threats to members and family members,

- 4.3.3. Media coverage,
- 4.3.4. Community concerns,
- 4.3.5. Grand Jury returning a true bill for a criminal indictment, and/or
- 4.3.6. There is an objective basis for the Chief of Police, to believe that the member may be terminated for employment.

**History:**

- Originating Directive Date: 04/29/13
- Last Revision Signed: 01/30/18
  - Effective Date: 02/28/18
- Next Review Date: 02/28/19

Directive 416.00 – Website comments 5/16/17 through 6/14/17 and 7/27/17-8/10/17

Date	Individual	Comment
2 <sup>nd</sup> UR		
8/7/17		<p>416.00 POST OFFICER INVOLVED DEADLY FORCE / TEMPORARY ALTERED DUTY</p> <p>We previously commented on this Directive in June 2015 and June 2017.</p> <p>Perhaps in response to our comments:</p> <p>----the definition of "involved member" now uses the same language as 1010.10, regarding use of deadly force. (We had suggested it should match 1010.00 Use of Force but this definition is probably more appropriate here.)</p> <p>----Section 1.2 now specifically says the session officers may attend before the end of a Grand Jury will be with a "licensed mental health professional" (we noted the last version said "trained licensed professional").</p> <p>However, these other issues were not fixed:</p> <p>--Policy Section 3 still uses the term "critical incidents," a term that is not defined. We noted earlier this could cause the Bureau a lot of problems, since this definition allows officers to be placed on administrative leave at the Chief's discretion. The old version of the Directive was a bit more specific, citing "use of deadly force (or force resulting in serious injury)."</p> <p>--We wondered if there was a contradiction in trying to get officers into counseling and avoid Post Traumatic Stress, yet suggesting one thing they can do on their first day back on the job is visit the scene of a deadly force encounter (Section 2.2).</p> <p>--We asked that the impact of deadly force cases on the community and the suspect's families, friends, coworkers, and others be part of the officer's counseling (Policy Section 1, Procedure Section 4.3.4).</p>
8/2/17		The changes indicated in the document improve the policy in clear an concise ways.
7/28/17		The idea that "involved officers" and "witness officers" cannot speak to the Bureau immediately

after an incident is anathema to the community. The community has an allergic reaction to police shootings and that remains a fact beyond remedy right now. The community has made this abundantly clear with its perpetual recommendation to get rid of the 48-hour rule.

Best practices require officers to continue their public safety duty by debriefing with the Bureau, at the scene, surrendering their weapons to forensics and providing a walk-through of the scene. This behavior should prompt civil immunity.

The Fifth Amendment Right to remain silent, to refuse to make self-incriminating statements, can be honored only so long as the involved officers and witness officers speak ONLY with their attorney(s) about the incident. Their attorneys should guide them through the criminal process. Involved ant witness officers should speak with no one else once that right is asserted. The DA should make a criminal case without the help or participation of involved or witness officers..

My thinking is that, if an officer is not willing or able to speak to the Bureau's administrative investigators, then that officer should speak to no one else except as provided by the Investigators of the City and of the District Attorney.

I can see a total quarantine and segregation of the officer(s) until such time as investigators clear them of both civil and criminal penalties.

The PARC reports actually forbid access by fellow officers of any kind, including members of the Employee Assistance Program, until after investigations are complete..

What that means is that .trauma informed care for the involved and witness officers should be medically supervised, and immediately provided, and should not consist of bureau sponsored and unsupervised conversations and discussions by members of PPB and PPA.

My understanding of the Employee Assistance Program is that officers who have previously be involved in deadly force incidents have been free to speak with involved officers and witness officers even as the members assert immunity from civil liability and protection from criminal prosecution under the Fifth Amendment to the US Constitution. The culture of how to assert the defense "Under the totality of the circumstances and from my point of view, I feared for my life and that of my fellow officers so I used deadly force to halt the threat to self and others in the community" has been culturally transmitted already, so there is no further need of coaching on

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		<p>the specifics of the case before, during or after investigations..</p> <p>My point, basically, is that my research indicates that police are more willing to use deadly force than they are to face the responsibilities that follow. I want to make officers responsible BEFORE they use force, THEN hold them accountable AFTER they use force, so that we can begin to lower the social violence of the community and increase the social responsibility of the community. We need to work together on social values leading to peaceful communities.</p>
7/27/17		<p>Draft says:          Witness Member: 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 force.</p> <p>Feedback: "other than observing the incident, did not use deadly force" implies that merely observing the incident is equal to using deadly force in that incident</p> <p>Surely observing the involved member's use of deadly force is not viewed by the police department as being the same thing as the witness member's using deadly force him/herself. If it is so viewed, surely it should not be.</p>
1st UR		
6/13/17		<p>416.00 POST OFFICER INVOLVED DEADLY FORCE / TEMPORARY ALTERED DUTY</p> <p>Some changes have been made to this Directive since June 2015.</p> <p>--While the definition of "involved member" was not changed to reconcile its conflict with 1010 (Use of Force), the definition of a witness officer now uses the same language as 1010. As we noted in 2015, "involved member" in Use of Force includes one who "has physical control, administers [a Taser], or has possession of a subject."</p> <p>--Policy Section 3 replaces "use of deadly force (or force resulting in serious injury)" with "critical incidents," a term that is not defined. This could cause the Bureau a lot of problems, since this definition allows officers to be placed on administrative leave at the Chief's discretion.</p>

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		<p>--Procedure section 1.2 now clarifies that officers may attend a session with a "trained licensed professional" (presumably, mental health professional?) before the Grand Jury has finished deliberating, but not return to work regardless until one week after the Grand Jury is completed.</p> <p>--Section 4.3.2 now adds threats to an officer's family members as a reason the Chief might keep an officer on leave.</p> <p>As for the existing language, here is what we said previously:</p> <p>--We wonder about the wisdom of trying to get officers into counseling and avoid Post Traumatic Stress, yet suggesting one thing they can do on their first day back on the job is visit the scene of a deadly force encounter (Section 2.2).</p> <p>--We appreciate that officers might not be assigned back on the street due to "community concerns" (Section 4.3.4). That and noting the impact of deadly force cases on the community (in Policy Section 1) are important pieces of the Bureau beginning to acknowledge the pain inflicted on families, friends, coworkers, and others when a person's life is lost to police violence. Perhaps making this idea part of the officer's counseling sessions may be helpful.</p>
6/8/17		<p>REVIEW: 416.00 POST OFFICER INVOLVED DEADLY FORCE/TEMPORARY ALTERED DUTY</p> <p>GENERAL COMMENT</p> <p>416.00 is one part of a constellation of PPB directives that regulate officers who use deadly force or who are witnesses to officer use of deadly force. As such, PPB should be particularly sensitive to the community's concerns and provide as much concrete detail as possible, especially in section 416.4.3, which lists factors the PPB and the Chief consider when determining an involved officer returning to work.</p> <p>I. Recommendation: Temporary Altered Duty should include affirmative restrictions. E.g., Albuquerque Police Department has a section for Restricted Duty Temporary Assignments,</p>

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		<p>which include restrictions such as:          May be restricted from working any outside employment, as determined by the Chief of Police.          Shall not wear their uniform, but shall dress in appropriate attire based on their assigned unit Standard Operating Procedures.          Shall comply with policies regarding range qualification and training, and the carrying of firearms.          Shall not be assigned to hazardous duty positions.          Shall not display or present badge or gun on or off duty unless it is a deadly force situation which requires immediate action.</p> <p>II. Needs clarification: 416.00 is not related to 415.00 Return to Work. Therefore, officers involved in use of deadly force are governed by 416.00 “temporary altered duty” and return to work procedure, not 415.00 “modified duty” and return to work procedure.</p> <p>III. Comment/Recommendation: 4.3 Factors that will be considered in making such determinations [to have a member remain on administrative leave or assign a member to a non-call taking assignment].          4.3.4 Community concerns.          Comment: Glad to see that the PPB will consider community concerns.          Recommendation: Specific language regarding how the PPB will hear community concerns and/or examples of what constitutes “community concerns.” For example: Council testimony, IPR/IA complaints, protests, etc.          4.3.6. There is an objective basis for the Chief of Police, to believe that the member may be terminated for employment.          Recommendation: As was recommended by the NLG on last review about two years ago, this section should include language regarding the grounds for an “objective basis.”</p>
5/19/17		<p>1.2 This work status will stay in place until the involved member attends a session with a trained licensed professional. (trained licensed professional of what profession? This needs to be more clear)</p>
5/16/17		<p>Section 1.8 should also reflect the earlier section about as long as the critical incident debrief occurs after the Grand Jury.</p>