



## CITY OF PORTLAND, OREGON



### Bureau of Police

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Integrity • Compassion • Accountability • Respect • Excellence • Service

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

At the direction of the Police Commissioner and in accordance with City Council Ordinance No. 188569 (as amended), adopted by the Council on August 24, 2017, the Bureau is scheduled to enact the Council-approved Directive 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures. The updated directive has been signed by the Chief and will go into effect on September 27, 2017. A copy of the revised directive is attached.

**\*Please Note: This Directive will become effective September 27, 2017. Comments received are attached to the Force Suite (updated) PDF which can be found on the Executive Summary Archives link on the Directives website.**

## **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
- DIR 315.30, Satisfactory Performance
- DIR 330.00, Internal Affairs, Complaint Intake and Processing
- DIR 333.00, Criminal Investigations of Police Bureau Employees
- DIR 416.00, Post Officer Involved Deadly Force/Temporary Altered Duty
- DIR 630.45, Emergency Medical Custody Transports
- DIR 630.50, Emergency Medical Aid
- DIR 640.10, Crime Scene Procedures
- DIR 900.00, General Reporting Guidelines
- DIR 1010.00, Use of Force

### **Definitions:**

- **Communication Restriction Order:** An order issued during an investigation that prohibits indirect or direct communications among 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 Warning:** An advisement given to a member who is the subject of an internal administrative investigation or review. A *Garrity* warning apprises the member that they are required to answer questions asked by Professional Standards Division investigators and are subject to discipline, up to and including termination, for failing or refusing to answer the questions.
- **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 a conducted electronical 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 against, 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.
- **Public Safety Statement:** A response by a member to questions asked by an on-scene supervisor to elicit information necessary to protect life and/or ensure public safety.
- **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 investigation of the involved member(s) 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 and the benefits of the current collective bargaining agreement 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. Pursuant to ORS §146.095 (1), the District Attorney (DA) shall be responsible for the criminal investigation of all deaths following member use of deadly force. The Bureau shall be responsible for the administrative review of these incidents to determine compliance with Bureau policies, training, and procedures. Over the course of the administrative review, the Bureau shall ensure that compelled information gathered or any information derived from the *Garrity*-protected interviews is not shared with the DA, Homicide investigators, or any other person performing the criminal investigation of the involved member.
2. Duties and Responsibilities Following the Use of Deadly Force (within Portland City Limits).
  - 2.1. On-Scene Responsibilities Immediately Following the Use of Deadly Force Incident.
    - 2.1.1. Involved member(s).
      - 2.1.1.1. 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.
      - 2.1.1.2. If directed by the on-scene supervisor, the involved member(s) shall provide a Public Safety Statement. The on-scene supervisor will be limited to asking the

following questions:

- a) Did you (involved member) fire a single shot or multiple shots?
  - b) Did the suspect fire any shots?
  - c) What is the direction of the shot(s) fired by officers and suspects?
  - d) What is the location of injured persons?
  - e) What are the descriptions of at-large suspects and their direction of travel?
  - f) How much time has elapsed since the suspects were last seen?
  - g) What is the description of any suspect weapons?
- 2.1.1.3. After providing a Public Safety Statement to the on-scene supervisor, the involved member(s) may consult on scene with their union representative and attorney(s).
- 2.1.1.4. The involved member(s) may elect to provide a voluntary statement and on-scene walk-through to the investigating Homicide Detective. An involved member(s) has the right to decline a request by Homicide Detectives to provide a voluntary detailed account of the incident and on-scene walk-through.
- 2.1.1.5. 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.
- 2.1.2. Witness Member(s).
- 2.1.2.1. 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.
- 2.1.2.2. As required by the on-scene supervisor, witness member(s) shall give an on-scene Public Safety Statement, which shall consist of the information listed in Section 2.1.1.2.
- 2.1.2.3. After providing any required Public Safety Statement to the on-scene supervisor, witness member(s) may consult on scene with their union representative.
- 2.1.2.4. Witness member(s) shall also 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.
- 2.1.2.5. 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.
- 2.1.3. On-Scene Supervisor.
- 2.1.3.1. 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:
- 2.1.3.1.1. Locate and separate all witness and involved members. If the number of individuals to be physically separated is so great as to be impractical, a supervisor or detective shall be posted to ensure that no communication regarding the incident takes place.
  - 2.1.3.1.2. Prior to the Communication Restriction Order (CRO) issuance by the Detective Division, admonish involved and witness members not to discuss the incident.
  - 2.1.3.1.3. The supervisor shall obtain from witness members and other sources the public safety information in Section 2.1.1.2.
  - 2.1.3.1.4. If the on-scene supervisor is unable to obtain the necessary public safety

- information from witness members, initial observations, and/or other sources, the arriving supervisor shall require the involved member(s) to provide a Public Safety Statement.
- 2.1.3.1.4.1. Supervisors shall document the involved member's response.
  - 2.1.3.1.5. 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.
  - 2.1.3.1.6. 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.
  - 2.1.3.1.7. Ensure that a Crime Scene Log is maintained at the entry point.
  - 2.1.3.1.8. Ensure that the following required notifications are made in order as listed (when feasible):
    - 2.1.3.1.8.1. Chain of Command,
    - 2.1.3.1.8.2. Detective Division Homicide Sergeant (up team),
    - 2.1.3.1.8.3. PSD,
    - 2.1.3.1.8.4. Auditor's Office of Independent Police Review (IPR),
    - 2.1.3.1.8.5. Public Information Officer (PIO),
    - 2.1.3.1.8.6. Employee Assistance Coordinator, and
    - 2.1.3.1.8.7. Appropriate bargaining unit representative.
  - 2.1.3.2. Ensure that involved and witness member weapons are retained in their holsters, pending weapon examination by responding detectives.
    - 2.1.3.2.1. When circumstances are such that a member is unable to holster or secure their weapon at the conclusion of the incident, the on-scene supervisor shall assign an uninvolved member to safeguard the weapon until a criminalist is able to photograph and collect the weapon at the direction of the Homicide Detective.
  - 2.1.3.3. 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.
  - 2.1.3.4. Assign a member, other than the involved or witness members, 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.
  - 2.1.3.5. Upon the Homicide Sergeant-and-PSD-authorized release of the involved and witness members from the scene, supervisors shall:
    - 2.1.3.5.1. Instruct members facilitating transport for involved members to proceed to detectives or the designated area, as determined by the Homicide Sergeant.
    - 2.1.3.5.2. 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.
    - 2.1.3.5.3. Any exceptions to the preceding actions shall only be authorized by the Homicide Sergeant.

- 2.1.4. Precinct or Division Commander.
  - 2.1.4.1. The precinct or division commander shall notify the appropriate Assistant Chief, who shall then notify the Chief of Police and the other Assistant Chiefs.
  - 2.1.4.2. The Assistant Chief of Services shall notify:
    - 2.1.4.2.1. The City Attorney, and
    - 2.1.4.2.2. The Training Division.
- 2.1.5. Chief of Police.
  - 2.1.5.1. The Chief of Police shall make the appropriate notification to the Commissioner-in-Charge.
- 2.1.6. Homicide Sergeant.
  - 2.1.6.1. The Homicide Sergeant shall make the following required notifications:
    - 2.1.6.1.1. Detective Division Command,
    - 2.1.6.1.2. On-call detectives,
    - 2.1.6.1.3. District Attorney's (DA) Office,
    - 2.1.6.1.4. Medical Examiner's Office, and
    - 2.1.6.1.5. Forensic Evidence Division (FED), ensuring criminalists are responding to the scene.
  - 2.1.6.2. Pursuant to ORS § 181A.790 (5), the Homicide Sergeant shall request assistance from the East County Major Crime Team.
  - 2.1.6.3. Respond to and assume responsibility for the scene after receiving a briefing from the supervisor in charge of the scene.
  - 2.1.6.4. Identify all involved and witness members and any members with pertinent investigative information.
  - 2.1.6.5. Make investigative and scene processing assignments.
  - 2.1.6.6. Ensure CROs are issued pursuant to Section 8 of this directive.
  - 2.1.6.7. 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.
  - 2.1.6.8. After consultation with PSD and the DA, release the involved and witness members from the scene.
- 2.1.7. Homicide Detective.
  - 2.1.7.1. The Detective shall:
    - 2.1.7.1.1. Request a voluntary statement and on-scene walk-through from the involved member.
      - 2.1.7.1.1.1. The involved member shall be allowed to discuss this request with an on-scene attorney or union representative.
      - 2.1.7.1.1.2. If the member agrees, the Homicide 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. The Detective shall include a full and candid account of any voluntary statements made by the involved member in their written report.
        - 2.1.7.1.1.2.1. If the involved member declines to provide a voluntary statement and on-scene walk-through, the Detective shall not compel a

statement or walk through.

- 2.1.7.1.2. Direct any necessary witness members to provide an on-scene walk-through.
    - 2.1.7.1.2.1. The Detective shall have the discretion to audio record the witness member(s)'s statement during the walk-through.
  - 2.1.7.1.3. Ensure that scene sketches and diagrams are completed;
  - 2.1.7.1.4. Manage the processing of evidence;
  - 2.1.7.1.5. Collect all firearms involved in the incident, including Special Emergency Reaction Team (SERT) weapons;
  - 2.1.7.1.6. Collect 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); and
  - 2.1.7.1.7. 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.
  - 2.1.7.1.8. Admonish the uninvolved member(s) from collecting any evidence from the involved member(s) when accompanying them to the hospital.
- 2.1.8. PSD.
- 2.1.8.1. The PSD Captain or designee shall coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene.
  - 2.1.8.2. 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).
  - 2.1.8.3. PSD may compel a statement or walk through, after provision of a *Garrity* warning.
- 2.2. Follow-Up Responsibilities Following Departure from the Incident Scene.
- 2.2.1. Involved Member(s).
- 2.2.1.1. Involved member(s) may elect to provide a voluntary interview to the investigating Homicide Detective.
    - 2.2.1.1.1. An involved member's refusal to provide a voluntary statement to Homicide Detectives shall not be grounds for any disciplinary action based on failure to follow directives.
  - 2.2.1.2. Involved member(s) that elect not to provide a voluntary interview to the investigating Homicide Detective will be compelled to provide a statement to PSD consistent with the provisions of Section 2.2.5 below.
    - 2.2.1.2.1. When compelled, involved member(s) shall submit to an audio-recorded interview with PSD.
    - 2.2.1.2.2. Any answers provided by the member after being issued a *Garrity* warning cannot be used against the member in any criminal proceeding.
- 2.2.2. Witness Member(s).
- 2.2.2.1. 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.
  - 2.2.2.2. When compelled, witness member(s) shall provide a statement to PSD.
- 2.2.3. Homicide Sergeant.
- 2.2.3.1. The Homicide Sergeant shall:



- 2.2.3.1.1. Regularly provide updates to the Detective Division Commander, the PIO, the PSD Captain, and the Chief of Police;
  - 2.2.3.1.2. Ensure a thorough and complete investigation is conducted;
  - 2.2.3.1.3. Ensure the appropriate checklists are used and case notebooks are prepared; and
  - 2.2.3.1.4. As soon as practicable, provide transcripts and/or recordings of all witness interviews to PSD.
- 2.2.4. Homicide Detective.
- 2.2.4.1. 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:
    - 2.2.4.1.1. Complete the General Offense Report;
    - 2.2.4.1.2. 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;
    - 2.2.4.1.3. 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;
    - 2.2.4.1.4. 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;
    - 2.2.4.1.5. 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);
    - 2.2.4.1.6. Request a voluntary interview with the involved member.
      - 2.2.4.1.6.1. The involved member shall be allowed to discuss this request with an attorney or union representative.
      - 2.2.4.1.6.2. 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. Detectives shall include a full and candid account of the pertinent information normally collected in the use of force report form in their written report.
        - 2.2.4.1.6.2.1. All interviews wherein material facts of the case are discussed shall be audio-recorded in their entirety.
      - 2.2.4.1.6.3. If the involved member declines to provide a voluntary interview, the Detective will not compel a statement.
    - 2.2.4.1.7. Conduct an investigative follow up;
    - 2.2.4.1.8. 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;
      - 2.2.4.1.9. Complete a Summary Report and case notebooks to include all transcripts of all recorded statements;
      - 2.2.4.1.10. Submit all cases involving the use of deadly force and in-custody deaths to the DA for review;
      - 2.2.4.1.11. Coordinate and consult with the DA's Office throughout the investigation;
      - 2.2.4.1.12. Complete the investigative case book; and
      - 2.2.4.1.13. Refer to Section 3 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.
- 2.2.5. PSD.
  - 2.2.5.1. The PSD Captain or designee shall ensure that the involved member(s) provides a compelled statement as soon as practicable, but no later than within 48 hours of the event, unless the member is physically incapacitated and unable to provide a statement.
  - 2.2.5.2. Voluntary statements.
    - 2.2.5.2.1. If an involved member provides a voluntary statement to the Homicide Detective within 48 hours of the event, the PSD Captain shall determine when any further administrative interviews will be scheduled.
  - 2.2.5.3. Compelled statements.
    - 2.2.5.3.1. The PSD Captain or designee shall schedule an interview with the involved member as soon as practicable, but no later than within 48 hours of the event, unless the member is physically incapacitated and unable to provide a statement.
    - 2.2.5.3.2. The PSD Captain or designee shall compel statements after provision of a *Garrity* warning. At the conclusion of a *Garrity* warning, the involved member(s) shall answer all Internal Affairs questions.
    - 2.2.5.3.3. 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.
  - 2.2.5.4. No member of PSD may disclose any compelled statements taken pursuant to this Directive, any evidence derived from those statements, or any information whatsoever gathered as part of the PSD investigation 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.
    - 2.2.5.4.1. The PSD Captain is responsible for ensuring compliance with this requirement.
  - 2.2.5.5. The PSD Investigator shall refer to Sections 3 and 6 of this directive for information regarding reporting requirements and review responsibilities.

3. Use of Deadly Force Reporting Requirements.
  - 3.1. For use of deadly force, 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.
  - 3.2. 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 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.
  - 3.3. 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.
4. Duties and Responsibilities Following the Use of Deadly Force and In-Custody Deaths (Outside of Portland City Limits).
  - 4.1. Involved Member Responsibilities.
    - 4.1.1. Notify the jurisdiction of occurrence, and
    - 4.1.2. Notify an on-duty patrol supervisor if the involved member's supervisor is not present.
    - 4.1.3. Members shall also follow the requirements listed in Section 2.1.1 of this directive.
  - 4.2. Supervisor Responsibilities.
    - 4.2.1. Supervisors will make notification as required of the on-scene supervisor. Refer to Section 2.1.3.1.8 of this directive.
  - 4.3. Detective Division Commander or Designee Responsibilities.
    - 4.3.1. Contact the investigating agency to provide an offer of assistance.
  - 4.4. PSD Responsibilities.
    - 4.4.1. The PSD Captain, or a designee, shall:
      - 4.4.1.1. Act as the Bureau's liaison;
      - 4.4.1.2. Respond to the scene, if feasible;
      - 4.4.1.3. Compel statements from witness members at any time;
      - 4.4.1.4. Coordinate with the Homicide Sergeant to authorize the release of involved and witness members from the scene; and
      - 4.4.1.5. Refer to Sections 3 and 6 of this directive for information regarding reporting requirements and review responsibilities.
5. Deadly Force/In-Custody Death by an On-Duty Peace Officer from Another Jurisdiction (within Portland City Limits).
  - 5.1. Bureau Procedures:
    - 5.1.1. 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 2.2.4.

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

- 5.2.1. Comply with scene security and first aid provisions as found within Directive 640.10, Crime Scene Procedures;
- 5.2.2. Ensure that an on-duty supervisor of the peace officer's agency is notified;
- 5.2.3. Locate and separate all involved peace officers and any witness members and/or witness peace officers. 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;
- 5.2.4. Prior to CRO issuance, admonish involved peace officers and any witness members and/or peace officers not to discuss the incident; and
- 5.2.5. Obtain information that is necessary to protect life and ensure the safety of the public (e.g., outstanding suspects, witnesses, etc.) from any witness members and/or peace officers and other sources.
  - 5.2.5.1. If the on-scene supervisor is unable to obtain the necessary public safety information from witness members and/or witness peace officers, initial observations, and/or other sources, the on-scene supervisor may ask the involved peace officer to answer the Public Safety Statement questions in Section 2.1.1.2.
    - 5.2.5.1.1. If the involved peace officer refuses to provide a response, the supervisor shall not compel a statement from the peace officer and shall document the refusal in a report.

5.3. Witness members who are members of the Bureau shall follow the procedures set forth in Section 2.1.2 of this directive.

5.4. 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.

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

6. PSD Review.

6.1. PSD shall conduct administrative reviews concurrently with criminal investigations, if any, concerning the same incident. PSD shall reach recommended findings with respect to all areas of review and any allegation of misconduct pursuant to Directive 332.00, Administrative Investigations, and Directive 335.00, Discipline Process.

6.2. 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.

- 6.3. 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.
- 6.4. PSD shall provide its investigation materials to the appropriate RU manager at the conclusion of the administrative review and criminal proceedings against the involved member.
- 6.5. 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.
- 6.6. The PSD investigator shall refer to Section 3 of this directive for information regarding reporting requirements.
- 6.7. If there is an allegation of misconduct and PSD is the investigative body, PSD shall prepare a recommended finding in accordance with the procedures established in Directive 332.00, Administrative Investigations.
- 6.8. RU Manager Responsibilities.
  - 6.8.1. 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 PRB.
  - 6.8.2. If there is an allegation of misconduct, the RU manager shall review PSD's or IPR's recommended findings memorandum and submit with that recommended findings memorandum their own concurrence or controvert memorandum for presentation to the PRB.
- 6.9. The PSD investigator shall act in accordance with the prescribed timelines and procedures established in Directive 332.00, Administrative Investigations.

## 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.
  - 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 among 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. The investigating Homicide Detective
    - 8.3.4. Representatives from the City Attorney's Office,
    - 8.3.5. Union representative,
    - 8.3.6. Attorney,
    - 8.3.7. Spouse,
    - 8.3.8. Clergy person,
    - 8.3.9. Doctor,
    - 8.3.10. Psychotherapist, and/or
    - 8.3.11. 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). Traumatic Incident Committee members shall not elicit the factual aspects of the incident from involved or witness 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). However, under no circumstances shall any statements or information provided to PSD be subject to disclosure or release until the conclusion of all criminal proceedings. 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.

**History:**

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