



# DESCHUTES COUNTY SHERIFF'S OFFICE

Policy Title: <b>Response to Civil Litigation</b>	Effective Date: June 28, 2016	Policy Number: <b>6.11</b>
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Attachments:	L. Shane Nelson, Sheriff	

## I. PURPOSE

The purpose of this policy is to provide members with guidelines for responding to law enforcement activities that represent a potentially high risk of civil liability in a manner that will decrease this risk level, and for responding to civil litigation that involves the agency or members who will be represented by the agency.

## II. POLICY

Litigation alleging misconduct by law enforcement officers has increased dramatically in recent years. These cases can involve complex issues based on evidence that has traditionally been considered confidential internal information. While such litigation can be extremely expensive and harmful to the reputation of the agency, it can also serve to clarify issues and ultimately provide better service.

To be adequately prepared for such litigation, it shall be the policy of the Deschutes County Sheriff's Office to maintain a strong and coordinated response and to reduce future litigation through increased training and education.

## III. DEFINITIONS

*Legal Counsel* means any licensed attorney hired by the Agency for the purpose of rendering legal advice or other legal services to the agency.

*Discovery* is the judicial process for compelling production of written records or other evidence for use in litigation.

*In-Camera Inspection* is a private judicial inspection of allegedly privileged information to determine whether the need to present such information as part of the essential proof of the case outweighs the interest in maintaining its confidentiality.

## IV. PROCEDURES

### A. High Risk Incidents

It has been determined that the following types of law enforcement activities generate the major amount of civil litigation; therefore, these events merit special procedures:

1. Use of deadly and non-deadly force that results in death or bodily injury.
2. Vehicular pursuit resulting in personal injury or property damage.
3. Searches and seizures; physical arrests.

4. Failure to take law enforcement action.
5. Rendering or denial of medical assistance.
6. False arrest.
7. In-Custody Deaths

All personnel shall regularly review agency policy on these topics.

## **B. Response to High Risk Incidents**

### **1. Deputy On-Scene Procedures**

Deputies shall adhere to the following procedures when at the scene of a high risk incident:

- a. Secure the scene and all evidence.
- b. Record the names and addresses of all witnesses on the scene and attempt to obtain a statement. Identify and obtain a statement from ambulance and emergency room personnel.
- c. Request that a supervisor and/or an investigator be dispatched to the scene.
- d. When a high speed chase has occurred, note all weather and traffic conditions, route of chase, use of emergency response equipment and other relevant information within the incident report.

### **2. Independent review**

A supervisor shall be requested to conduct an independent review of all relevant information prior to the booking process or a search when circumstances indicate a potential for a false arrest or improper search.

### **3. Investigator On-scene Procedures**

On-scene investigators shall process the scene according to Sheriff's Office procedures.

- a. Color photographs and/or a video recording shall be taken from several angles of the entire scene.
- b. When possible, photographs of all witnesses should be taken at the scene.

### **4. Arrest Documentation**

When an arrest has been made, the following information shall be documented by the booking deputy during the booking process:

- a. Whether medical treatment is necessary or was requested or received prior to arrival at the facility. The suspect's general physical health and the presence of any specific health problems requiring special treatment should be documented.
- b. Assessment of suspect's general mental health, including any indications of overt, aggressive behavior or potential suicidal tendencies indicating a need to summon a mental health specialist.
- c. A booking photograph of the suspect shall be taken. Any injuries shall be specially photographed and documented. Photographs of the suspect documenting a lack of injury shall also be taken when there has been a use of force in a high risk incident.
- d. Prior to the booking process, medical or psychological services shall be obtained for any suspect who has requested such services or is in apparent need of such assistance, prior to the booking process.

## **C. Post-Incident Procedures**

1. Before concluding their shift, all law enforcement personnel involved in a high risk incident shall submit to their supervisor an incident report fully documenting the incident. The exception to this procedure is deputy involved deadly force incidents (see specific information as it pertains to [Policy 7.09 Deputy Involved Deadly Force Investigations](#)).

2. As soon as practical, the supervisor shall review the report, request any necessary supplemental information and then forward it to the division commander via chain of command.
3. The division commander shall prepare and submit a confidential memo to the Sheriff and the Sheriff's Office legal counsel providing a full assessment of the incident. As soon as practical, the Sheriff or his designee shall meet with Sheriff's Office legal counsel, and the deputies involved in the incident to:
  - a. Advise the deputies that any internal investigation initiated does not necessarily suggest or imply misconduct on their part.
  - b. Advise the deputies that they are not required to discuss the incident with reporters or attorneys not associated with the Sheriff's Office, unless pursuant to court order.
4. If an in-custody death has occurred, a Law Enforcement Custodial Death Report Form CJ-11A shall be completed by a supervisor and approved by the Sheriff or his designee prior to submission.

The form can be accessed through the Oregon Department of Justice website and shall be sent back to that agency when completed. A copy shall be forwarded to the division captain. The CJ-11A form is currently located at: <http://www.doj.state.or.us/oregonians/pdf/cj-11a.pdf>

#### **D. Responsibilities of the Office of the Sheriff**

1. The Sheriff or his designee shall coordinate all agency responses to pending or potential litigation in conjunction with legal counsel.
2. A litigation file shall be developed and maintained containing copies of all legal documents generated in each case and the responses to such documents. All litigation files shall be kept in a secure fashion by Sheriff's Office Legal Counsel.
3. An accounting process shall be established to ensure that:
  - a. All documents are routed to the appropriate unit for resolution.
  - b. All documents are processed and fulfilled by the due date.
  - c. A record is kept detailing the information released in each case and the purpose for its release.
4. The Sheriff or his designee shall undertake a regular, at least yearly, audit of agency litigation to determine whether a need for policy revision or training exists. The audit shall include settlements and all litigation filed or resolved during the period to be reviewed.
5. Updates on current case law and statutes relevant to law enforcement shall be disseminated to Sheriff's Office members.
6. Upon conclusion or settlement of any civil litigation, the Office of the Sheriff shall provide notification of the outcome of the case to those deputies, and their supervisors, who were directly involved with the incident forming the basis for the lawsuit.

#### **E. Responsibilities of Divisions**

All divisions shall comply with discovery requests and subpoenas for internal records as advised by legal counsel on or before the due date.

#### **F. Responsibilities of Sheriff's Office Members**

1. Any Sheriff's Office member named as a party in a civil action for acts or omissions allegedly arising out of the scope of his official duties shall immediately notify the Sheriff, via chain of command, and legal counsel.
  - a. The member shall inform legal counsel whether the member will engage a private attorney or whether representation through legal counsel is requested.
  - b. When the member has requested legal representation through legal counsel, the member shall cooperate fully with his legal representative.

- c. Legal counsel shall determine whether the member is eligible for Sheriff's Office representation or will be required to seek separate representation and shall notify the member of such determination.
2. All Sheriff's Office members shall maintain accurate and detailed reports at all times.
3. No Sheriff's Office member shall make public statements concerning litigation affecting the agency without the approval of the Sheriff.
4. Any Sheriff's Office member named as a party in any civil action shall notify the Sheriff as soon as practicable, via chain of command, of the civil action. Nothing in this section is intended to affect any legal rights of the member.

#### **G. Response to Subpoenas and Discovery Requests**

1. All discovery requests or subpoenas for agency records, reports or notes will be complied with as directed by legal counsel and in accordance with state or federal law.
2. The following information is generally only subject to release to a judge for in camera inspection to determine discoverability:
  - a. Personnel records.
  - b. Citizen complaints.
  - c. Internal investigatory files related to the incident that is currently the subject of criminal or civil litigation.
  - d. Requests for all past internal investigations into misconduct of the deputies currently the target of litigation.
  - e. Requests for all internal investigations into deputy misconduct or misconduct similar to that being litigated.
3. The following information may or may not be fully discoverable:
  - a. Records of official review boards.
  - b. Sheriff's Office policies and procedures.
  - c. Training records.
  - d. Internal memos that do not fall within the attorney work product privilege.
4. Privileged material generally not subject to discovery:
  - a. Names of confidential informants and citizens who wish to remain anonymous.
  - b. Records of ongoing internal investigations which would be jeopardized by disclosure.
  - c. Investigative files relating to ongoing criminal investigations.
  - d. Communications subject to any legal privilege.

#### **H. Response to Media**

1. The Sheriff or his designee shall be responsible for coordinating all Sheriff's Office statements to the public pertaining to any incident or litigation involving the agency.
2. No statements to the public regarding any incident or legal case involving the Sheriff's Office shall be given before the Sheriff has received all relevant facts.
3. A file shall be maintained detailing the media coverage of litigation and incidents involving the agency.

The Sheriff or his designee shall work with legal counsel to present fair and accurate media statements pertaining to testimony, legal issues or other concerns arising from litigation or any other incident involving the Sheriff's Office.