

SUSSEX COUNTY PROSECUTOR'S OFFICE

STANDARD OPERATING PROCEDURES



SUBJECT: EARLY WARNING SYSTEM

EFFECTIVE DATE: 5/27/2022

NUMBER OF PAGES: 7

ACCREDITATION STANDARDS: 2.2.3

BY THE ORDER OF: Prosecutor

PURPOSE: The purpose of this written directive is to establish a personnel early warning system.

POLICY: It is the policy of this agency to implement an Early Warning System for tracking and reviewing incidents of risk and provide timely intervention consistent with the New Jersey Attorney General's Law Enforcement Directive No. 2018-3

PROCEDURE:

I. EARLY WARNING SYSTEM

- A. The Early Warning System is designed to detect patterns and trends before the conduct escalates into more serious problems. As such, employees must understand that the Early Warning System is not identical to the disciplinary process. Although it is possible that disciplinary action may be taken as the result of evidence that rules and regulations were violated, this is not the sole or even primary intent of the system. The primary intent of an Early Warning System is to address potential problems through the use of appropriate management and supervisory strategies before formal discipline is warranted.
- B. Many different measures of employee performance (actions or behaviors) can be regularly examined for patterns or practices that may indicate potential problems. These performance measures shall include, but are not limited to, the following documented indicators:
1. Internal complaints, whether initiated by another employee or by a member of the public and regardless of outcome;
 2. Civil actions filed against an officer, regardless of outcome;
 3. Criminal investigations or complaints made against an employee;
 4. Any use of force by an officer that is formally determined or adjudicated to have been excessive, unjustified, or unreasonable;
 5. Domestic violence investigations in which the employee is an alleged subject;
 6. An arrest of an employee, including on a driving under the influence charge;
 7. Sexual harassment claims against an employee;
 8. Vehicular collisions involving an officer that are formally determined to have been the fault of the officer;
 9. A positive drug test by an officer;
 10. Cases or arrests by the officer that are rejected or dismissed by a court;
 11. Cases in which evidence obtained by an officer is suppressed by a court;
 12. Insubordination by the officer;
 13. Neglect of duty by the officer;
 14. Unexcused absences or sick time abuse;
 15. Any other indicators, as determined by the agency's Chief Executive.
- C. Generally, three (3) instances of questionable conduct or performance indicators (as listed in section B, above) within a 12-month period would initiate the Early Warning

System process.

- D. If one incident triggers multiple performance indicators, that incident shall not be double or triple counted, but instead shall count as only one performance indicator.
- E. The Sussex County Prosecutor's Office Chief Executive may, in his or her discretion, determine that a lower number of performance indicators within a twelve-month period (i.e., one or two performance indicators) will trigger the Early Warning System review process.

II. ADMINISTRATION OF EARLY WARNING SYSTEM

- A. The Early Warning System is primarily the responsibility of the Internal Affairs Unit; but any supervisor may initiate the early warning process based upon his/her own observations. Emphasis should be placed on anticipating employee problems before it results in improper performance or conduct.
- B. The Internal Affairs Unit shall conduct a manual or computerized audit of its records to determine if an employee has the emergence of a pattern, practices, or trend of inappropriate behavior or misconduct. In addition to the regular data audits by the Internal Affairs Unit (internal affairs), the Internal Affairs Unit Supervisor shall audit an individual employee's history any time a new complaint is received.
 - 1. Using this information and their experience, Internal Affairs Unit investigators may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the early warning system data audit.
- C. If the audit indicates the emergence of a pattern, practices or trend of inappropriate behavior or misconduct, the Internal Affairs Unit investigator shall consult with the employee's supervisor and/or Unit Commander.
- D. The Internal Affairs Unit Supervisor and the employee's supervisor and/or Unit Commander shall review the information provided by the Internal Affairs Unit along with any other relevant information from agency records for the purpose of initiating a course of intervention designed to correct/interrupt the emerging pattern, practice or trend.
 - 1. If the audit indicates that the early warning system has returned an incorrect identification or "false positive," that conclusion should be documented and no further action is needed.
 - 2. If the audit reveals that an employee has violated agency rules and regulations or written directives, the supervisor in consultation with the Internal Affairs Unit should proceed with an internal investigation and possible disciplinary action.
 - 3. If the audit reveals that the employee has engaged in conduct, which indicates a lack of understanding or inability to comply with accepted procedures, the supervisor shall consult with the Internal Affairs Unit to determine the appropriate course of remedial/corrective intervention.

III. SUPERVISORS

- A. An employee's first line supervisor is usually the first member of the agency to encounter and document specific incidents that affect an employee. It is essential for the supervisor to speak with the employee, document these incidents and report findings to their Unit Commander and if warranted, the internal affairs supervisor. The success of this program relies heavily on the first line supervisor's participation and involvement.
- B. If a supervisor has initiated remedial/corrective intervention, the Internal Affairs Unit shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Internal Affairs Unit for filing.
- C. If the remedial/corrective intervention was training, documentation shall be filed in accordance with the agency's written directive governing training (remedial training).
- D. Supervisors shall forward all documentation as required by agency written directives established to assist in a comprehensive audit. This data shall minimally include: use of force reports, vehicle pursuit reports, and attendance records.

IV. UNIT COMMANDERS

- A. In addition to the regular data audits conducted by internal affairs, the Unit Commanders shall periodically audit an individual employee's history. Using this information and their experience, the commander may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the early warning system data audit.
- B. When under early warning system monitoring, the employee's Unit Commander and supervisor shall meet with the employee to discuss the situation in depth to:
 - 1. Identify problems or potential problems;
 - 2. Determine short and long-term goals for improvement;
 - 3. Come to a consensus commitment on a plan for long-term improved performance;
 - 4. Advise of the monitoring process and the repercussions of future sustained transgressions.
- C. Generally, personnel should expect to remain under monitoring and supervision for six (6) months when an early warning flag is triggered.
- D. Supervisor/Employee Meeting
 - 1. All supervisor/employee meetings shall be thoroughly documented, which will be forwarded to the Prosecutor or his designee. The affected employee and supervisor shall meet on a regular basis, minimally monthly, to discuss progress towards the agreed upon goals and objectives.
 - 2. All regular monthly progress/status reports shall be submitted to the Prosecutor or his/her designee through the chain of command.

3. Additional monitoring may be required following removal from the early warning system.

V. REMEDIAL/CORRECTIVE INTERVENTION

- A. When it has been determined that an officer has displayed the requisite number of performance indicators necessary to trigger the Early Warning System review process (as set forth in Section II., above) assigned supervisory personnel shall initiate remedial action to address the officer's behavior.
- B. When an Early Warning System review process is initiated, personnel assigned to oversee the Early Warning System should:
 1. Formally notify the subject officer in writing;
 2. Conference with the subject officer and appropriate supervisory personnel;
 3. Identify problems or potential problems;
 4. Determine short and long-term goals of improvement;
 5. Come to a consensus commitment on a plan for long-term improved performance;
 6. Advise of the monitoring process and the repercussions of future sustained transgressions;
 7. Develop and administer a remedial program, including the appropriate remedial/corrective actions listed below;
 8. Continue to monitor the subject officer for at least three (3) months, or until the supervisor concludes that the officer's behavior has been remediated (whichever is longer);
 9. Document and report findings to the appropriate supervisory personnel and, if warranted, the Internal Affairs Unit.
- C. Any statement made by the subject officer in connection with the Early Warning System review process may not be used against the subject officer in any disciplinary or other proceeding.
- D. Remedial/corrective intervention may include, but is not limited to:
 1. Training;
 2. Retraining;
 3. Counseling;
 4. Intensive supervision;
 5. Fitness for duty examination;
 6. Professional counseling, when warranted, if available;

7. Peer counseling.
- E. Internal disciplinary action, remedial/corrective intervention, and fitness-for-duty examinations are not mutually exclusive and should be jointly pursued if and when appropriate.
 - F. No entry should be made in the employee's personnel file, unless the action results in disciplinary/corrective action.
 - G. When remedial/corrective intervention has been undertaken, the Chief of Detectives or his/her designee shall ensure that such actions are documented in writing. If the remedial/corrective intervention is a training program, attendance and successful completion of that program should be noted in the employee's training record.
 - H. All reports shall be forwarded to the Chief of Detectives or his/her designee for review. These reports have the same confidential status as Internal Affairs documents and are subject to the same disclosure and retention regulations and guidelines.
 - I. This SOP and the Early Warning System, in general, are focused on corrective actions aimed at remediating officer behavior and providing assistance to the officer. This SOP and the Early Warning System do not address disciplinary actions that might be warranted against an officer. Such disciplinary actions, to include the decision to suspend, terminate, or, if applicable, charge an officer with criminal conduct, remain within the purview of the agency's internal affairs guidelines and applicable law, separate from and independent of the Early Warning System.

VI. NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER

- A. If any officer who is or has been subject to an Early Warning System review process applies to or accepts employment at a different law enforcement agency other than the one where he or she underwent the Early Warning System review process, it is the responsibility of the prior or current employing law enforcement agency to notify the subsequent employing law enforcement agency of the officer's Early Warning System review process history and outcomes.
- B. Upon request, this agency shall share the officer's Early Warning System review process files with the subsequent employing agency.

VII. NOTIFICATION TO ATTORNEY GENERAL

- A. Upon initiation of the Early Warning System review process, the Prosecutor or his/her designee shall make a confidential written notification to the New Jersey Attorney General or his/her designee of the identity of the subject employee, the nature of the triggering performance indicators, and the planned remedial program. Upon completion of the Early Warning System review process, the Prosecutor or designee shall make a confidential written notification to the New Jersey Attorney General or his/her designee of the outcome of the Early Warning System review, including any remedial measures taken on behalf of the subject employee.

VIII. ANNUAL REPORTING

- A. By January 15th of each year, each law enforcement agency under the supervision of the Sussex County Prosecutor's Office shall submit a written report to the SCPO

Internal Affairs unit indicating their compliance with AG Directive 2018-03.

- B. By January 31st of each year, the Sussex County Prosecutor's Office Internal Affairs Unit shall submit a report to the Attorney General, through the Division of Criminal Justice's Prosecutors' Supervision and Training Bureau. This summary shall include a statement indicating those agencies under the County Prosecutor's supervision that are in compliance with this Directive and those that are not.

X. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY

- A. The Early Warning System policy shall be made available to the public upon request and shall be posted on the agency website.
- B. All reports have the same confidential status as Internal Affairs Unit documents and are subject to the same disclosure and retention regulations and guidelines.
- C. All reports shall be forwarded to the Prosecutor for review. These reports have the same confidential status as Internal Affairs documents and are subject to the same disclosure and retention regulations and guidelines.