

WARREN COUNTY PROSECUTOR'S OFFICE POLICY AND PROCEDURE MANUAL



GENERAL ORDER: EARLY WARNING SYSTEM	NUMBER: Volume 1 / Chapter 11	EFFECTIVE DATE: 11/12/2018
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ACCREDITATION STANDARD: NJAG, LED #2018-03, NJSA 52:17B-97, TO 117, NJSA 2C:39-6 & ACS 1.4.2, 1.3.1, 1.5.2	Authority: Prosecutor: <i>Richard T. Burke</i> Chief: <i>Kirk T. Trauger</i>	Rescinds: 10/14/16
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APPLICABILITY: All W.C.P.O. Staff	NUMBER OF PAGES: 6
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REVISIONS					
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PURPOSE: To enhance integrity, provide an optimal level of service to the community and reduce exposure to civil liability, the Warren County Prosecutor's Office herein establishes procedures for establishing an Early Warning System for its agency personnel. Recent court decisions, particularly those involving federal civil rights lawsuits that allege a deliberate indifference on an agency's part towards citizen complaints, have made it clear that law enforcement agencies have a duty to monitor their employees' behavior. Furthermore, these same court decisions expect law enforcement agencies to establish mechanisms that provide the internal affairs unit and the police executive with the ability to track the complaint records of individuals and identify those with a disproportionate number of complaints against them. The courts also expect law enforcement agencies to utilize the information developed by these mechanisms to prevent individuals from engaging in conduct or behavior that violates the constitutional liberties every member of the community enjoys. It also is expected that law enforcement agencies will utilize the information to prevent development of patterns, practices or trends of inappropriate behavior or conduct.

POLICY: It is the policy of the Warren County Prosecutor for the office to implement and utilize an Early Warning System for tracking and reviewing incidents of risk and providing timely intervention consistent with the New Jersey Attorney General's Directive 2018-03.

I. EARLY WARNING SYSTEM

- A. An Early Warning System is designed to detect patterns and trends **BEFORE** the conduct escalates into more serious problems. 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.

- B. Many different measures of employee performance (actions or behaviors) can be regularly examined for patterns or practices that may indicate potential problems.
1. Internal affairs complaints against a detective, whether initiated by another law enforcement officer or by a member of the public
 2. Civil actions filed against the detective
 3. Criminal investigations of or criminal complaints against the detective
 4. Any use of force by the detective that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable
 5. Domestic violence investigations in which the detective is an alleged subject
 6. An arrest of the detective, including on a driving under the influence charge
 7. Sexual harassment claims against the detective
 8. Vehicular collisions involving the detective that are formally determined to have been the fault of the detective
 9. Claims of Bias incident(s) by the detective
 10. A positive drug test by the detective
 11. Cases or arrests by the detective that are rejected or dismissed by a court
 12. Cases in which evidence obtained by an detective is suppressed by a court
 13. Insubordination by the detective
 14. Neglect of duty by the detective
 15. Unexcused absences by the detective
 16. Tardiness
 17. Claims of duty-related injury
 18. Number of requests for Administrative Duty
 19. Any other indicators, as determined by the Prosecutor
- C. Any member of the office who is aware of a member who has displayed any of the above actions or behaviors (I.A.2), is required to make notification to the employee's immediate supervisor.
- D. The supervisor is responsible for making immediate written notification to the Chief of Detectives for any of the incidents outlined above (I.A.2).
- E. The Chief of Detectives/designee, shall document appropriate information in the **Early Warning System Indicators** spreadsheet located in the Confidential server's EWS Folder.
- F. Three separate instances of performance indicators (as listed in Section I.A.2 above) within any twelve-month period will trigger the EW System review process. When one incident triggers multiple performance indicators, it shall be counted as only one indicator. The Chief of Detectives may in his/her discretion determine that a lower number of performance indicators within a twelve-month period will trigger the EW System review process.
- G. Supplemental performance indicators which may be considered for the EW System and are reasonably related to potentially escalating harmful behavior, may be found in Appendix A.

II. ADMINISTRATION OF EARLY WARNING SYSTEM

- A. The Early Warning System should primarily be the responsibility of the internal affairs unit. The Chief of Detectives has the responsibility of assigning personnel to manage this function. In addition, 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. Personnel assigned to manage the Early Warning System shall conduct a manual or computerized audit every six months to determine if an employee has the emergence of a pattern, practice, or trend of inappropriate behavior or misconduct. In addition to these regular data audits, the internal affairs unit shall audit an individual employee's history any time a new complaint is received.
 - 1. Using this information and their experience, the internal affairs unit may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the Early Warning System data audit
 - 2. If the audit indicates the emergence of a pattern, practice or trend of inappropriate behavior or misconduct, personnel assigned to manage the Early Warning System shall consult with the employee's immediate supervisor
- C. Personnel assigned to the Early Warning System and the employee's supervisor shall review the information provided by the Early Warning System 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
 - 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 shall 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 personnel assigned to manage the Early Warning System to determine the appropriate course of remedial/corrective intervention

III. SUPERVISORS

- A. An employee's supervisor is usually the first member to encounter and document specific incidents that affect an employee's performance. It is essential for the supervisor to speak with the employee, document these incidents and report findings to the appropriate person and if warranted, the Internal Affairs Unit. 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, personnel assigned to the Early Warning System shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Internal Affairs Unit for filing. No entry should be made in the employee's formal personnel file, unless the action results in disciplinary/corrective action.
- C. If the remedial/corrective intervention was training, the training shall be documented.

- D. Supervisors shall forward all documentation to the Internal Affairs Unit to assist in a comprehensive audit. This data shall minimally include: use of force reports, vehicle pursuit reports, and attendance records.

V. REMEDIAL/CORRECTIVE INTERVENTION

- A. Supervisory or command personnel may initiate remedial/corrective intervention to correct behavior. 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. Employee assistance program referral, when warranted and if available
 - 7. Peer counseling
- B. When the review process is initiated, personnel assigned to oversee the system should:
 - 1. Formally notify the subject detective in writing (If the notification to the detective could jeopardize an ongoing criminal investigation the Prosecutor may permit delayed notification to the detective or delayed initiation of the Early Warning System review process)
 - 2. Conference with the subject detective and appropriate supervisory personnel;
 - 3. Develop and administer a remedial program including the appropriate remedial/corrective action listed in V.A.
 - 4. Continue to monitor the subject officer for at least 3 months or until the supervisor concludes that the officer's behavior has been remediated
 - 5. Document and report findings to appropriate supervisory personnel (for inclusion in evaluations) and, if warranted, the Internal Affairs Unit
- C. Statements made by the subject officer during the EW System process, may not be used against the officer in any disciplinary or other proceeding.
- D. Internal disciplinary action, remedial/corrective intervention, and fitness for duty examinations are not mutually exclusive and should be jointly pursued if and when appropriate.
- E. When remedial/corrective intervention has been undertaken, the Chief of Detectives shall ensure that such actions are documented in writing. No entry should be made in the employee's formal personnel file, unless the action results in a sustained internal affairs investigation. 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.
- F. All reports shall be forwarded to the Chief of Detectives 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.

VI. Notification to Subsequent Law Enforcement Employer

- A. If any detective who is or has been subject to an Early Warning System review process applies to or accepts employment at a different law enforcement agency 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 detective's Early Warning System review process history and outcomes.

- B. Upon request, the prior or current employing agency shall share the detective's early outcome system review process files with the subsequent employing agency.

VI. Notification to County Prosecutor

- A. Upon initiation of the Early Warning System review process, the Chief of Detectives or designee shall make a notification to the Prosecutor of the identity of the subject detective, the nature of the triggering performance indicators, and the planned remedial program.
- B. Upon completion of the Early Warning System review process, the Chief of Detectives shall make notification to the Prosecutor of the outcome of the Early Warning System review, including any remedial measures taken on behalf of the subject detective.

VII. Public Accessibility and Confidentiality

- A. All Early Warning System policies adopted shall be made available to the public upon request and shall be posted on the agency's website.
- B. All written reports created or submitted pursuant to this General Order that identify specific officers are confidential and not subject to public disclosure.

VIII. Annual Report

By January 31st of each year, the Chief of Detectives or his/her designee shall complete an annual report regarding incidents involving the Early Warning System and will forward this report to the Office of the Attorney General, Division of Criminal Justice's Prosecutor's Supervision and Training Bureau, on an annual basis. This summary shall include a statement indicating those agencies that are in compliance with this Directive and those that are not.

APPENDIX A

Supplemental Performance Indicators

1. Warrantless searches
2. Demeanor complaints
3. Use of force reports
4. Arrestee injuries
5. Claims of job injuries
6. Resisting arrest charges
7. Discretionary arrests (disorderly conduct)
8. Prosecutor declinations
9. Preventable minor MVAs
10. Traffic and pedestrian stop data
11. MV pursuits
12. Off-duty contact with other law enforcement agencies
13. Habitual tardiness
14. Cooping (sleeping while on duty)
15. Excessive drowsiness
16. Lack of eye contact
17. Unusual behavior
18. Financial indebtedness
19. Off-duty injuries
20. Change in hygiene
21. Isolation from or conflict with coworkers
22. Adverse rumors among personnel
23. Productivity decline
24. Radio contact problems
25. Change in appearance (slovenly, excessive acne, "bulking up")
26. Prior discipline