West Wildwood Police Department

General Order #032

Date Adopted: December 7, 2020 **Number of Pages:** 11

Date Revised: January 11, 2021

Subject: Early Warning System

I. Purpose: To establish a policy for the West Wildwood Police Department's personnel early warning system.

II. Policy: It is the policy of this Department to implement and utilize 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 (See Appendix A).

III. Definitions: None

IV. 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 the early warning system is not identical to the disciplinary process. Although it is possible 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's performance (actions or behaviors), can be regularly examined for patterns or practices that may indicate potential problems. These performance measures shall include, but not limited to, the following documented indicators:

1. Internal affairs complaints against an employee, whether initiated by another employee or by a member of the public;
2. Civil actions filed against the officer;
3. Criminal investigations of or criminal complaints against an employee;

4. Any use of force by the officer 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 employees is an alleged subject;
6. An arrest of the employee, including on a driving under the influence charge;
7. Sexual harassment claims against an employee;
8. Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
9. A positive drug test by an officer;
10. Case or arrest 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 by the employee;
15. Vehicle pursuits.

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.

V. Administration of Early Warning System:

A. The early warning system is primarily the responsibility of the sergeant and the internal affairs officers, but field training officers 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 sergeant shall conduct a manual or computerized audit of records to determine the emergence of a pattern, practices or trend of inappropriate behavior or misconduct. In addition, the regular informational audits by the Sergeant a new complaint is received it will trigger a review of an individual employee's history.

1. Using this information and their experience, the Sergeant may be able to identify employees who may need remedial/corrective intervention prior to an audit of the early warning system.

C. If an audit indicates an emergence of a pattern, practices or trend of inappropriate behavior or misconduct, the Chief of Police shall be consulted and/or his/her field training officer is applicable.

D. The Sergeant and the employee's field training officer and/or Chief of Police shall review the information provided along with any other relevant information from department records for the purpose of initiating a course of intervention designed to correct/interrupt the emerging pattern, practice or trend.

1. If the audit should indicate an incorrect identification or a 'false positive,' that conclusion should be document.
2. If the audit reveals an employee has violated departmental rules and regulations or written directives, the Sergeant in consultation with the Chief of Police should proceed with an internal investigation and possible disciplinary action.
3. If the audit reveals the employee has engaged in conduct which indicates a lack of understanding or inability to comply with accepted procedures, the Sergeant shall consult with the Chief of Police to determine the appropriate course of remedial/corrective action.

E. At least every six (6) months, the Sergeant shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

VI. Supervisors and Field Training Officers:

A. An employee's field training officer or Sergeant is usually the first member of the department 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 such findings to the Sergeant and/or Chief of Police. The success of this program relies heavily on the first line supervisor's participation and involvement.

B. If the Sergeant and/or field training officer has initiated remedial/corrective intervention, the Chief of Police shall be formally notified of such efforts. This information shall be documented and filed with the Chief of Police's internal affairs index.

1. No entry should be made in the employee's personnel file, unless the action results in disciplinary/corrective action.

VII. Administrators:

A. In addition to regular data audits conducted by the Sergeant, employee's individual history shall be periodically audited. Using this information, the Sergeant maybe able to identify employees who may need remedial/corrective intervention before such is indicated by the early warning system data audit.

B. Upon initiation of the early warning system the Sergeant will notify the subject officer in writing. The officer will also be notified in writing following completion of the early warning review process.

C. When under early warning system monitoring, the Sergeant and the officer's field training officer if applicable shall meet with the employee to discuss the situation in depth to:

1. Identify problems or potential programs;
2. Determine short and long-term goals for improvement;
3. Come to a consensus commitment on a plan for long-term improvement;
4. Advise of the monitoring process and the repercussions of future sustained transgressions.

D. Generally, personnel should expect to remain under monitoring and supervision for at least three (3) months when an early warning flag is triggered or until a supervisor concludes the employee's behavior has been remediated (whichever is longer).

E. Supervisor/Employee Meeting

1. All supervisor/employee meeting shall be thoroughly documented and forwarded to the Chief of Police. The effected employee and supervisor shall meet on a regular basis, minimal monthly, to discuss progress towards the agreed upon goals and objectives.
2. All regular monthly progress/status reports shall be submitted to the Chief of Police.
3. The Sergeant will update the Chief of Police on all matters involving the early warning system.

F. Any statement made by the subject officer in connection with the early warning system review process may not be used against the officer in any disciplinary or other proceedings.

VIII. Remedial/Corrective Intervention:

A. Supervisory or field training officers may initiate remedial/corrective intervention to correct behavior. Remedial/corrective intervention may include, but is not limited to:

1. Training or remedial training;
2. Counseling;
3. Intensive supervision;
4. Fitness for duty examination;
5. Employee Assistance Program (EAP) referral;
6. Peer counseling.

B. Internal disciplinary action, remedial/corrective intervention and fitness for duty examinations are not mutually exclusive and should be jointly pursued if and when appropriate.

C. When remedial/corrective intervention has been undertaken, the Chief of Police shall ensure such actions are documented in writing. No entry should be made in the employee's personnel file, unless action results in a sustained 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.

D. All reports shall be forwarded to the Chief of Police for final review. These reports have the same confidential status as Internal Affairs documents and are subject to the same disclosure and retention regulations and guidelines.

IX. Notification to the County Prosecutor:

A. Upon initiation of the early warning system review process, the Chief of Police or his/her designee will make a confidential written notification to the Cape May County Prosecutor's Office Professional Standards Unit. This notification will include the name of the subject officer, the nature of the triggering performance indicators and the planned remedial program. Upon completion of the early warning system review process the Chief of Police or his/her designee will make a confidential written notification to the outcome of the early warning system review, including any remedial measures taken on behalf of the subject officer.

X. 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, it is the responsibility of the agency who generated the early warning review process to provide the new law enforcement employer with the officer's early warning system review process history to include all documentation.

XI. Public Accessibility and Confidentiality:

A. The Early Warning System policy shall be posted on the Borough of West Wildwood website and be available to the public by request. However, all written reports created or submitted pursuant to the policy that identified specific officers are confidential and not subject to public disclosure.

XII. References: Standard Operating Procedures "Early Warning System General Order #59, Effective January 11, 2019;" from Stone Harbor

Police Department, New Jersey Attorney General's Law Enforcement Directive No. 2018-3

Appendix A

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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TRENTON, NJ 08625-0080

PHILIP D MURPHY
Governor

SHEILA Y OLIVER
Lt. Governor

GURBIR S GREWAL
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-3

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: March 20, 2018

SUBJECT: **Statewide Mandatory Early Warning Systems**

I. Background

An Early Warning System ("EW System") is an important management tool designed to detect patterns and trends in police conduct before that conduct escalates. An effective EW System can assist a law enforcement agency in identifying and remediating problematic officer conduct that poses a potential risk to the public, to the agency, and to the officer. EW Systems, therefore, serve to not only increase public safety and public confidence in law enforcement, but also to assist officers through early intervention. Indeed, many law enforcement agencies throughout the State have recognized the utility of such systems and some County Prosecutors already require agencies within their jurisdictions to use them. For all of these reasons, this Directive now mandates that all law enforcement agencies in New Jersey adopt and implement EW Systems consistent with the requirements set forth below.

Accordingly, pursuant to the authority granted to me under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I, Gurbir S. Grewal, hereby DIRECT all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the following policies, procedures, standards, and practices.

II. Implementation

A. Applicability

This Directive shall apply to all state, county, and municipal law enforcement agencies and sworn officers who are responsible for enforcing the criminal laws in New Jersey, come under the jurisdiction of the Police Training Act, and are authorized to carry a firearm under N.J.S.A. 2C:39-6.

B. Establishment of EW System Policy

All state, county, and municipal law enforcement agencies shall adopt and/or revise their existing EW System policies, consistent with this Directive, either by rule, regulation, or standard operating procedure ("SOP"), as required by state law.

C. Selection of Performance Indicators

An EW System may monitor many different categories of officer conduct which indicate potentially escalating risk of harm to the public, the agency, and/or the officer. The following performance indicators shall be included in all EW Systems, but also can be supplemented based upon the unique characteristics of the department and the community it serves. The chief executive of the department shall determine any such supplemental performance indicators. To the extent possible, supplemental performance indicators should be objectively measurable and reasonably related to potentially escalating harmful behavior by the officer.

1. Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
2. Civil actions filed against the officer;
3. Criminal investigations of or criminal complaints against the officer;[1]
4. Any use of force by the officer 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 officer is an alleged subject;
6. An arrest of the officer, including on a driving under the influence charge;
7. Sexual harassment claims against the officer;
8. Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
9. A positive drug test by the 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;

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[1] If EW System notification to the officer could jeopardize an ongoing criminal investigation, the County Prosecutor may in his or her discretion permit delayed notification to the officer or delayed initiation of the EW System review process.

14. Unexcused absences by the officer; and
15. Any other indicators, as determined by the agency's chief executive.

D. Initiation of Early Warning Process

At a minimum, an agency's EW System policy shall provide that three separate instances of performance indicators (as listed in Section C, above) within any twelve-month period will trigger the EW System review process. 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. The agency's 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 EW System review process.

E. Administration and Tracking

The agency's chief executive shall assign personnel to conduct the EW System function. Typically, the EW System should be administered by the agency's internal affairs unit. Supervisory officers in the subject officer's chain of command also should be directly involved in any EW System review process.

Every department shall adopt a tracking system to enable the department to identify officers who display the requisite number of performance indicators necessary to trigger the EW System review process. Many departments in New Jersey have adopted automated systems that are capable of flagging emerging behavioral patterns. At least every six months, personnel assigned to manage the EW System shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

F. Remedial/Corrective Action

Once an officer has displayed the requisite number of performance indicators necessary to trigger the EW System review process (as set forth in Section II.C, above) assigned supervisory personnel shall initiate remedial action to address the officer's behavior.

When an EW System review process is initiated, personnel assigned to oversee the EW System should (1) formally notify the subject officer, in writing; (2) conference with the subject officer and appropriate supervisory personnel; (3) develop and administer a remedial program including the appropriate remedial/corrective actions listed below; (4) continue to monitor the subject officer for at least three months, or until the supervisor concludes that the officer's behavior has been remediated (whichever is longer); (5) document and report findings to the appropriate supervisory personnel and, if warranted, the internal affairs unit. Any statement made by the subject officer in connection with the EW System review process may not be used against the subject officer in any disciplinary or other proceeding.

Remedial/corrective action may include but is not limited to the following:

1. Training or re-training;

2. Counseling;
3. Intensive supervision;
4. Fitness-for-duty examination;
5. Employee Assistance Program (EAP) referral; and
6. Any other appropriate remedial or corrective action.[2]

G. Notification to Subsequent Law Enforcement Employer

If any officer who is or has been subject to an EW System review process applies to or accepts employment at a different law enforcement agency than the one where he or she underwent the EW 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 EW System review process history and outcomes. Upon request, the prior or current employing agency shall share the officer's EW System review process files with the subsequent employing agency.

H. Notification to County Prosecutor

Upon initiation of the EW System review process, the agency's chief executive or a designee shall make a confidential written notification to the County Prosecutor or his/her designee of the identity of the subject officer, the nature of the triggering performance indicators, and the planned remedial program. Upon completion of the EW System review process, the agency's chief executive shall make a confidential written notification to the County Prosecutor or his/her designee of the outcome of the EW System review, including any remedial measures taken on behalf of the subject officer.

I. Annual Report to Attorney General

By January 31st of each year, each County Prosecutor 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.

III. Public Accessibility and Confidentiality

All EW System policies adopted by law enforcement agencies shall be made available to the public upon request and shall be posted on the agency's website. Annual reports from the

[2] This Directive, and EW Systems generally, are focused on corrective actions to remediate officer behavior and to provide assistance to the officer. This Directive, and EW Systems generally, 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 function, and may be imposed in accordance with existing internal affairs guidelines and applicable law, separate from and independent of the EW System.

County Prosecutors to the Attorney General (as required by Section II.I, above) also shall be made available to the public upon request and shall be posted on the agency's website.

All written reports created or submitted pursuant to this Directive that identify specific officers are confidential and not subject to public disclosure.

IV. Effective Date

This Directive shall take effect immediately upon issuance. All EW System policies shall be adopted and/or revised in accordance with this Directive within 60 days.

Gurbir S. Grewal
Attorney General

ATTEST:

Elie Honig
Director, Division of Criminal Justice
Issued on: March 20, 2018