

# BERGEN COUNTY PROSECUTOR'S OFFICE



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

**POLICY:** It is the policy of this agency to implement and use an early warning system for tracking and reviewing incidents of risk and provide timely intervention. The system will identify, reward, and promote professionalism, civil rights, integrity, best practices, as well as identify, intervene, and remediate potentially problematic behavior allowing for timely intervention consistent with the risk management procedures promulgated by the New Jersey Attorney General's Law Enforcement Directive No. 2018-3.

*This policy is in addition to, but in no way, supersedes the Attorney General Directive No. 2018-3 regarding the early warning system.*

## 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 may include, but are not limited to, the following documented indicators:
1. Confidential Investigations Unit complaints against an employee, whether initiated by another employee or by a member of the public, regardless of outcome;
  2. Civil actions filed against an employee, regardless of outcome;
  3. Criminal investigations or criminal complaints against an employee;
  4. Any use of force by an employee that is formally determined or adjudicated (for example, by Confidential Investigations Unit or a grand jury) to have been excessive, unjustified, or unreasonable;
  5. Domestic violence investigations in which the employee 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 collision involving an employee that is formally determined to have been the fault of the employee;
  9. A positive drug test by an employee;
  10. Cases or arrests by an employee that are rejected or dismissed by a court;
  11. Case in which evidence obtained by an employee that is suppressed by a court;
  12. Insubordination by an employee;
  13. Neglect of duty by an employee; and
  14. Unexcused absences by the employee.
- 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, although three (3) are not required.

- 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.

## **II. ADMINISTRATION OF EARLY WARNING SYSTEM**

- A. The early warning system is primarily the responsibility of the Confidential Investigations 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 they result in improper performance or conduct.
- B. The Confidential Investigations Unit shall conduct a manual or computerized audit of its records to determine if an employee has the emergence of a pattern, practice or trend of inappropriate behavior or misconduct. In addition to the regular data audits by the Confidential Investigations Unit (internal affairs), the Confidential Investigations Unit Supervisor shall audit an individual employee's history any time a new complaint is received.
  - 1. Using this information and their experience, Confidential Investigations Unit detectives 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 Confidential Investigations Unit Supervisor shall consult with the employee's supervisor and/or Unit Commander.
- D. The Confidential Investigations Unit Supervisor and the employee's supervisor and/or Unit Commander shall review the information provided by the Confidential Investigations 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.
  - 2. If the audit reveals that an employee has violated agency rules and regulations or written directives, the supervisor in consultation with the Confidential Investigations 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 Confidential Investigations Unit to determine the appropriate course of remedial/corrective intervention.
- E. At least every six (6) months, Confidential Investigations Unit personnel shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

## **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
- BERGEN COUNTY PROSECUTOR'S OFFICE – Early Warning System - Page 3 of 6

for the supervisor to speak with the employee, document these incidents and report findings to their Unit Commander and if warranted, the Confidential Investigations Unit 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 Confidential Investigations Unit shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Confidential Investigations Unit for filing.
  - 1. No entry should be made in the employee's personnel file, unless the action results in disciplinary/corrective action.
- C. If the remedial/corrective intervention is 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 Confidential Investigations Unit, Unit Commanders shall periodically audit an individual employee's history. Using this information and their experience, Commanders 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 intensive 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. The documentation shall be forwarded to the Prosecutor or his/her 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. An additional six (6) months of documented monitoring is required following removal from the early warning system. Monthly monitoring reports from the direct supervisor are required.
- E. Any statement made by the subject employee in connection with the Early Warning System review process may not be used against the subject employee in any disciplinary or other proceeding.

## **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, when warranted, if available;
  7. 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 Prosecutor shall ensure that such actions are documented in writing. No entry should be made in the employee's personnel file, unless the action results in a sustained disciplinary finding. If the remedial/corrective intervention is a training program, attendance and successful completion of that program must be noted in the employee's training record.
- D. 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.

## **VI. NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER**

- A. If any employee 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 Bergen County Prosecutor's Office to notify the subsequent employing law enforcement agency of the employee's early warning system review process history and outcomes. Upon request, the Bergen County Prosecutor's Office shall share the detective'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. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY**

- A. The early warning system policy shall be made available to the public upon request and shall be posted on this agency's website.
- B. All reports have the same confidential status as Confidential Investigations Unit documents and are subject to the same disclosure and retention regulations and guidelines.