

HUNTERDON COUNTY PROSECUTOR'S OFFICE
Standard Operating Procedure



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| <u>SUBJECT:</u> EARLY WARNING SYSTEM | | <u>REVISION DATE:</u> | <u>PAGE #:</u> |
| <u>EFFECTIVE DATE:</u> December 17, 2021 | <u>ACCREDITATION STANDARDS:</u> | | |
| <u>BY THE ORDER OF:</u> Reneé M. Robeson, Prosecutor Timothy J. Drew, Chief of Detectives | <u>REVIEWED BY:</u> AAP Joseph Paravecchia | | |
| <u>CROSS REFERENCE:</u> Attorney General Directive 2018-3 | <u>PREPARED BY:</u> Chief Timothy Drew | | |

I. Purpose:

The purpose of this Policy is to establish a personnel early warning (“EW”) system, which is consistent with Attorney General Law Enforcement Directive 2018-3 (“AG Directive 2018-3”), Early Warning Systems.

II. Policy:

Each law enforcement agency within Hunterdon County shall adopt an EW system and an early warning tracking system which are consistent with AG Directive 2018-3 and this Policy.

It is the policy of the Hunterdon County Prosecutor’s Office to implement and utilize IA Pro software as the EW system for tracking and reviewing incidents of risk and provide timely intervention, all consistent with AG Directive 2018-3.

III. Procedure:

A. Early Warning System

1. The EW system is designed to detect patterns and trends before the conduct escalates into more serious problems. As such, employees must understand that the EW system may be related to but is distinct from 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 the primary intent of the system. The primary intent of an EW system is to address potential problems through the use of appropriate management and supervisory strategies before formal discipline is warranted.

2. Many different measures of employee performance (actions or behavior) can be regularly examined for patterns or practices which indicate potentially escalating risk of harm to the public, the agency, and/or the officer. The performance measures include, but are not limited to, the following documented indicators:
 - a. Internal affairs complaints against the officer, whether initiated by another officer, a member of the public, anonymously;
 - b. Civil actions filed against the officer;
 - c. Criminal investigations of or criminal complaints against the officer;*
 - d. 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;
 - e. Domestic violence investigations in which the officer is an alleged subject;
 - f. An arrest of the officer, including on a driving under the influence charge;
 - g. Sexual harassment claims against the officer;
 - h. Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
 - i. A positive drug test by the officer;
 - j. Cases or arrests by the officer that are rejected or dismissed by a court;
 - k. Cases in which evidence obtained by an officer is suppressed by a court;
 - l. Insubordination by the officer;
 - m. Neglect of duty by the officer;
 - n. Unexcused absences by the officer; and
 - o. Any other indicators, as determined by the agency's chief executive.

*NOTE: 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.

3. It is imperative that the supervisor, or appropriate command level officer, make notification to the Internal Affairs Unit, who shall then make a timely entry in the IA Pro system upon learning that one of the above triggers has been met.
4. Three separate instances of performance indicators (as listed in Section 2, 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 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.

B. Administration of Early Warning System

1. The EW system is primarily the responsibility of the Internal Affairs Unit, but all supervisors should be cognizant of potential early warning indicators for their

subordinates. Emphasis should be placed on anticipating employee problems before it results in improper performance or conduct.

2. The Internal Affairs Unit shall be alerted by the IA Pro software if an employee has the emergence of a pattern, practices or trends of inappropriate behavior or misconduct. In addition, the Internal Affairs officer shall query the IA Pro software and review an individual employee's history any time a new complaint is received.
3. Using this information and their experience, the Internal Affairs officer may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the IA Pro Software.
4. In a case where a supervisor, who is not from the Internal Affairs Unit, makes an initial IA Pro entry and receives an EW alert for the involved officer(s), the supervisor shall print out and forward the alert to the Internal Affairs Unit.
5. If the IA Pro system indicated the emergence of a pattern, practices or trend of inappropriate behavior or misconduct, the Internal Affairs officer shall, when appropriate, consult with the employee's supervisor and/or division commander.
6. The Internal Affairs officer and, when appropriate, the employee's supervisor and/or Division or Unit Commander shall review the information provided by the Internal Affairs Unit 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.
7. If the IA Pro software has returned an incorrect identification or a "false positive," that conclusion must be documented.
8. If the IA Pro software reveals that an employee has violated department rules and regulations or general orders, the supervisor in consultation with the Internal Affairs officer should proceed with an internal investigation and possible disciplinary action.
9. If the IA Pro software reveals that the employee has engaged in conduct which indicates a lack of understanding or inability to comply with accepted procedures, the Internal Affairs Unit shall consult with the supervisor to determine the appropriate course of remedial/corrective intervention.
10. 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 efficiency of the tracking system.
11. All agencies which operate under the oversight of the Hunterdon County Prosecutor's Office shall, upon initiation of the EW System review process, make a confidential written notification to the Hunterdon County Prosecutor's Office's IA Unit of the identity of the subject officer, the nature of the triggering performance indicators, and the planned remedial program. The notification shall be made by the agency's chief executive or designee.

12. All agencies which operate under the oversight of the Hunterdon County Prosecutor's Office shall, upon completion of the EW System review process, 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. The notification shall be made by the agency's chief executive or designee.

C. Remedial/Corrective Action

1. When it has been determined that an officer has displayed the requisite number of performance indicators necessary to trigger the EW System review process (as set forth in Section III.B., above) assigned supervisory personnel shall initiate remedial action to address the officer's behavior.
2. When an EW System review process is initiated,* personnel assigned to oversee the EW System should:
 - a. Formally notify the subject officer in writing;
 - b. Conference with the subject officer and appropriate supervisory personnel;
 - c. Identify problems or potential problems;
 - d. Determine short and long-term goals of improvement;
 - e. Come to a consensus commitment on a plan for long-term improved performance;
 - f. Advise of the monitoring process and the repercussions of future sustained transgressions;
 - g. Develop and administer a remedial program, including the appropriate remedial/corrective actions listed below;
 - h. 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);
 - i. Document and report findings to the appropriate supervisory personnel and, if warranted, the Internal Affairs Unit.

*NOTE: 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.

3. Remedial/corrective action may include but is not limited to the following:
 - a. Training or re-training;
 - b. Counseling;
 - c. Intensive supervision;
 - d. Fitness-for-duty examination;
 - e. Employee Assistance Program (EAP) referral; and
 - f. Any other appropriate remedial or corrective action.

4. Internal disciplinary action, remedial/corrective intervention, and fitness for duty examinations ensure that such actions are not mutually exclusive and should be jointly pursued if and when appropriate.
5. When remedial/corrective action intervention has been undertaken, the Chief of Detectives, or designee, 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 IA 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.
6. 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.
7. This policy and EW Systems generally, are focused on corrective actions to remediate officer behavior and to provide assistance to the officer. This Policy, 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 guidelines and applicable law, separate from and independent of the EW System.

D. Supervisors

1. An employee's first line supervisor 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, if warranted, the Internal Affairs Unit. The success of this program relies heavily on the first line supervisor's participation and involvement.
2. It is imperative that the supervisor, or appropriate command level officer, make notification to the Internal Affairs Unit, who shall then make a timely entry in the IA Pro system upon learning that one of the above triggers in section III.A.2 above has been met.
3. Division commanders shall periodically review an individual employee's history. Using this information and their experience, the division commander may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the IA Pro software.

E. Notification to Subsequent Law Enforcement Employer

1. 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 it is the responsibility of the Internal Affairs officer to notify the subsequent employing law enforcement agency of the officer's EW System review process history and outcomes.

2. Upon request, this agency shall share the officer's EW System review process files with the subsequent employing agency.

F. Annual Reporting

1. By January 15th of each year, each law enforcement agency under the supervision of the Hunterdon County Prosecutor's Officer shall submit a written report to the HCPO IA unit indicating their compliance with AG Directive 2018-03.
2. By January 31st of each year, the Hunterdon County Prosecutor's Office IA 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.

G. Public Accessibility and Confidentiality

1. This EW System Policy shall be made available to the public upon request and shall be posted on the agency's website.
2. All written reports created or submitted pursuant to this Policy that identify specific officers are confidential and not subject to public disclosure.

All procedures heretofore employed by the Hunterdon County Prosecutor's Office that conflict with this Policy are hereby rescinded. Supervisors shall be held accountable for the enforcement and application of this Policy. All members of the Hunterdon County Prosecutor's Office are required to follow this Policy as applicable. Violations of this Policy subject members of this agency to disciplinary action. If there is a discrepancy or conflict between this Policy and Attorney General Law Enforcement Directive No. 2018-3, the Directive shall prevail.

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