

	TOWNSHIP OF SOUTH ORANGE POLICE DEPT. Policy & Procedures <u>Early Warning System</u> Authority: Chief Ernesto Morillo	
Total Pages: 5	Policy: 1:03A	PATROL/ADMINISTRATION FUNCTION
Effective: May 3, 2023		
Revised:		

I. Pursuant to the authority granted to the Attorney General (AG) under the New Jersey Constitution and the Criminal Justice Act of 1970, NJSA 52:17B (97-117), which provides for the general supervision of criminal justice by the Attorney General as the chief law enforcement officer of the State, and in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, the South Orange Police Department (SOPD) hereby adopts the Attorney General’s Internal Affairs Policy & Procedures (IAPP) and Early Warning System guidance as it’s Departmental Internal Affairs Policy.

II. Incorporated within the IAPP is Section 3.4, “Early Warning and Risk Management,” which also references AG Directive 2018-3 v2.0. The guidance of these directives are incorporated within this policy.

III. The most recent or current recommendations of the AG’s EWS shall be adopted as SOPD’s EWS, which may be located on the AG’s website: <https://www.njoag.gov/resources/ag-guidelines/> and <https://www.nj.gov/lps/dcj/agguide/directives/ag-directive-2018-3.pdf>

IV. All references to any and all duties, responsibilities, requirements, obligations, and any mandatory or discretionary action performed by a “law enforcement agency,” “police agency,” “police department” or any other general descriptor of a municipal law enforcement agency, in the EWS shall be understood to refer to the South Orange Police Department as well as all of its law enforcement officers, agents, officials, employees (sworn or unsworn), and any others, with an affirmative duty to comply with the guidance and direction of the New Jersey Attorney General and all appropriately authorized designees within that chain of command.

V. The provisions of this policy shall be severable. If any phrase, clause, sentence, section, or provision of this policy is declared by an appropriate authority of competent jurisdiction to be invalid, the validity of the remainder of the policy shall not be affected.

1.0 Introduction

Although the internal affairs process is frequently triggered by the filing of a civilian complaint, law enforcement agencies must also proactively work to detect troubling patterns in police conduct before that conduct escalates into more serious internal affairs issues.

To enhance its integrity, provide an optimal level of service to the community and reduce its exposure to civil liability, every law enforcement agency should establish procedures for dealing with problem employees. Law enforcement agencies have a duty to monitor their employees' behavior, and establish mechanisms that provide the internal affairs function and the law enforcement executive with the ability to track the complaint records of individual officers and identify those officers with a disproportionate number of complaints against them. Law enforcement agencies must utilize the information developed by these mechanisms to prevent individual officers 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.

Per AG Directive 2018-3 v2.0, also known as the "Early Warning Systems Directive," law enforcement agencies are required to implement a specific mechanism to track employee behavior, commonly known as an "early warning system." An early warning system should be designed to identify any pattern or practice by any member of the agency that warrants intervention or remediation before it develops into a more serious problem.

Any mechanism or procedure a law enforcement agency establishes to monitor and track the behavior and performance of individual police officers must have as two of its linchpins quality supervision and an objective and impartial internal affairs process. Supervisors who have sufficient time and resources to properly perform their duties should be able to timely identify officers with performance and misconduct issues. Supervisors can react to problems they identify through direction, counseling and effective performance evaluations. Proper training of agency supervisors is critical to the discipline and performance of law enforcement officers. Emphasis should be placed on anticipating problems among officers before they result in improper performance or misconduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers and provide professional support in a consistent and fair manner.

Many different measures of officer performance can be regularly examined for any of these troubling patterns or practices. Law enforcement executives shall determine what performance measures are appropriate for the communities they serve, but at a minimum an agency must track certain indicators.

This information should be maintained to facilitate analysis as to individual members, supervisors, squads, districts and assignments, and the agency as a whole. Depending on the size of the agency and the complexity of this data, computerized software that utilizes mathematical algorithms may be best suited to assist in revealing the presence of particular patterns of incidents. However, not all law enforcement agencies have the computer capabilities

for such an in-depth screening process. At a minimum, every law enforcement agency should establish a protocol for tracking employee behavior and reviewing all internal affairs complaints made against its officers, regardless of outcome, for evidence of a pattern or practice of inappropriate or unconstitutional conduct.

2.0 Policy

2.1 Performance Indicators

The following performance indicators shall be included in all Early Warning 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:

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

If the review and/or examination reveals that an officer has violated department rules and regulations, standard operating procedures, or violated Civil Service Title 4A statutes, the supervisor in consultation with the internal affairs unit should proceed with an internal investigation and possible disciplinary action.

2.2 Initiation of Early Warning Process

Three separate instances of performance indicators within any twelve-month period will trigger the Early Warning 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.

2.3 Administration and Tracking

A member of the Internal Affairs Unit shall administer the EWS. Supervisory officers in the subject officer's chain of command also should be directly involved in any EWS review process. This 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 Early Warning System review process. The Internal Affairs Unit may utilize a computer based product to assist with their processing, investigating, tracking, and/or examination of internal complaints and or issues relating to the department's members and or employees.

At least every six months, personnel assigned to manage the EWS shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

2.4 Remedial/Corrective Action

2.4.1 Once an officer has displayed the requisite number of performance indicators necessary to trigger the EWS review process, assigned supervisory personnel shall initiate remedial action to address the officer's behavior.

When an EWS 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. 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 EWS review process may not be used against the subject officer in any disciplinary or other proceeding.

2.4.2 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

2.5 Notification to Subsequent Law Enforcement Employer

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

2.6 Notification to County Prosecutor

Upon initiation of the EWS 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 EWS 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 EWS review, including any remedial measures taken on behalf of the subject officer.

2.9 Annual Report to Attorney General

By January 31st of each year, the South Orange Police Department shall submit such reports as required by the County Prosecutor indicating that the agency is in compliance with Section 3.4 of the IAPP and AG Directive 2018-3 v2.0 or any superseding directives.

2.8 Public Accessibility and Confidentiality

All Early Warning System policies adopted by The South Orange Police Department shall be made available to the public upon request and shall be posted on the agency's website.

This policy is focused on corrective actions to remediate officer behavior and to provide assistance to the officer. This policy does 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 Early Warning System.