

NEW JERSEY DEPARTMENT OF THE TREASURY
OFFICE OF CRIMINAL INVESTIGATION - SIU
STANDARD OPERATING PROCEDURE



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SUBJECT: <i>Personnel Performance Management & Early Warning System</i>
DISTRIBUTION: <i>All Special Agents</i>
REFERENCE: <i>NJ ATTORNEY GENERALS DIRECTIVE 2018-3</i>

I. PURPOSE: to ensure compliance with the NJOAG Directive 2018-3

II. POLICY: The purpose of this written directive is to establish a personnel performance management and early warning system (PPMS). It is the policy of OCI to implement and utilize a software tracking program as a personnel performance management and early warning system for maintaining, retrieving, and analyzing information regarding the performance of OCI Special Agents. The system will identify, reward and promote professionalism, civil rights, integrity, best practices, as well as identify, intervene and remediated potentially problematic behavior allowing for timely intervention consistent with the risk management procedures and promulgated by the New Jersey State Attorney General in its Internal Affairs Policies and Procedures.

This written directive is in accordance with the New Jersey Attorney General's Law Enforcement Directive No. 2018.3.

III. DEFINITIONS:

SA – Special Agents are the sworn state law enforcement officers of the Department of Treasury.

SAC – Special Agent in Charge.

OCI – is the Office of Criminal Investigation & Internal Security.

PPMS – Personnel Performance Management System.

SOP – Standard Operating Procedures are part of the written directive system promulgated by the leadership of OCI for the implementation of binding external guidelines or directives, judicial decisions, departmental requirements which are used by OCI Special Agents in the execution of their duties.

IV. PROCEDURE:

A. EMPLOYEE PERFORMANCE

1. The individual Special Agents (SA) supervisor shall make appropriate contemporaneous entries in the PPMS system regarding sworn employees' performance under their command/supervision. These entries shall serve to enhance the documentation and quality of the performance evaluation reports (aka PARS as mandated by NJ Civil Service) and completed by the supervisor on his/her sworn subordinates.
2. Entries in PPMS shall be consistent with the established behavior criteria in accordance with the states performance evaluation system (PAR)

B. EARLY WARNING SYSTEM

1. The Early Warning System is designed to detect patterns and trends before the conduct escalates into more serious problems. As such, SA's must understand that the early warning system is not discipline. Although it is possible that disciplinary action may be taken as the result of evidence that OCI 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 poor performance through the use of appropriate management and supervisory strategies before discipline is warranted.
2. Many different measures of an SA's performance (actions or behaviors) can be regularly examined for patterns or practices that may indicate potential problems. These performance measures include, but are not limited to, the following documented indicators:
3. Internal complaints, whether initiated by another employee or by a member of the public and regardless of outcome;

(NOTE - This information is ONLY accessible to the SAC and OCI's Internal Affairs Officer)

1. Civil actions filed against an SA, regardless of outcome;

(NOTE - This information is ONLY accessible to the SAC and OCIs Internal Affairs Officer)

1. Criminal investigations or complaints made against an SA

(NOTE - This information is ONLY accessible to the SAC and OCIs Internal Affairs Officer)

1. Any use of force by an SA that is formally determined or adjudicated to have been excessive, unjustified or unreasonable;
2. Domestic violence investigations in which the SA is an alleged subject;
3. An arrest of an SA including on a driving under the influence charge;
4. Sexual harassment claims against an SA;
5. Vehicular collisions involving an SA that is formally determined to have been the fault of the SA;
6. A positive drug test by an SA;

7. Cases or arrests by the SA that are rejected or dismissed by a court because of potential neglect or wrongdoing by the SA;
8. Cases in which evidence obtained by an SA is suppressed by a court;
9. Insubordination by the SA;
10. Neglect of duty by the SA;
11. Unauthorized Vehicular pursuits;
12. Unexpected / absences or sick time abuse;
13. Any other indicators, as determined by OCI's SAC.

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. SUPERVISORS

A. An SA's first line supervisor is usually the first member of OCI to encounter and document specific incidents that affect an SA. It is essential for the supervisor to speak with the SA, document these incidents and report findings to the appropriate superordinate. 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 OCI Internal Affairs Officer shall be formally notified of such efforts through the Tracking Software. The incident narrative placed in the Tracking software may serve as adequate documentation.

C. The Tracking Software

1. Tracking Software allows Special Agent supervisors the ability to document routine performance in one centralized location during the course of an evaluation period. As incidents are entered, the Tracking Software will monitor the frequency of specific incidents to determine if early intervention is warranted.

2. Supervisors will not document routine performance in any other format. All performance documentation will be entered into the Tracking Software.

3. Supervisors will have access to make entries and view all SAs under their chain of command, with the exception to those areas identified above in section two of this directive.

4. Supervisors, who identify deficiencies with other personnel outside of their chain of command, will submit the nature of the performance deficiencies directly to the employee involved through the Tracking Software.

Supervisors within the chain of command will, by default, have access to this newly created documentation.

- a. This process does not relieve the documenting supervisors of the obligation to take immediate action to correct serious infractions that may result in liability, injury, and/or disrepute.

5. Supervisors, who identify and wish to document positive performance conduct on other personnel, outside of their chain of command, will submit the nature of the performance directly to the employee involved through the Tracking Software. Supervisors within the chain of command will, by default, have access to this newly created documentation.

VI. INTERNAL AFFAIRS OFFICER

A. The early warning system is primarily the responsibility of the OCI Internal Affairs Officer; but, any supervisor may initiate the early warning process based upon his or her own observations. Emphasis should be placed on anticipating employee problems before it results in improper performance or conduct.

B. The Internal Affairs Officer shall be alerted by the Tracking Software if an SA has the emergence of a pattern, practices or trend of inappropriate behavior or misconduct. In addition, both the Operations & Strategic Group Commanders shall query the Tracking Software and review an individual employee's history any time a new internal affairs complaint is received.

1. Using this information, the OCI Internal Affairs Officer may be able to identify an SA who may need remedial/corrective intervention even before such is indicated by the Tracking Software.

C. If the Tracking Software indicates the emergence of a pattern, practices or trend of inappropriate behavior or misconduct, the OCI Internal Affairs Officer; shall consult with the SAs supervisor.

D. The OCI Internal Affairs Officer and the SAs supervisor shall review the information along with any other relevant information from Department, Division or OCI records for the purpose of initiating a course of intervention designed to correct/interrupt the emerging pattern, practice or trend.

1. If the Tracking Software has returned an incorrect identification or "false positive," that conclusion should be documented.

2. If the Tracking Software reveals that an SA may have engaged in misconduct in violation of the OCI Special Agent Rules Regulations or other OCI written directives, memorandum, etc. including NJOAG Directives or Guidelines an internal investigation will be initiated.

3. If the Tracking Software reveals that the SA has engaged in conduct which indicates a performance deficiency or lack of understanding or inability to comply with accepted procedures, the supervisor shall consult with the OCI Internal Affairs Officer to determine the appropriate course of remedial/corrective intervention.

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

F. When under early warning system monitoring, the OCI Internal Affairs Officer shall meet with the SA and his / her supervisor to discuss the situation in depth to accomplish the following and thoroughly document the substance of these meetings in the Tracking System.

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.

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

H. Employee Performance Review Meetings inclusive of PAR assessment.

NOTE: it is recognized that this creates double work in some instances for SA Supervisory personnel between the Civil Service PAR system and the PPMS requirements. However, each system compliments the other and each satisfies separate mandates.

1. All SA Performance Review meetings shall be thoroughly documented in the Tracking Software, which will automatically be forwarded to the SAC and the OCI Internal Affairs Officer. The affected SA and supervisors 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 via the Tracking Software.
3. Any statement made by an SA in connection with the early warning system review process may not be used against them in any disciplinary or other proceeding.

VI. REMEDIAL/CORRECTIVE INTERVENTION

A. OCI 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 SAC shall ensure that such actions are documented in writing. No entry should be made in the SA's personnel file, unless the 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.

VII. CONFIDENTIALITY OF PPMS DATA/INFORMATION

A. PPMS data is confidential and shall not be disclosed to the public or any unauthorized Department, Division or OCI employee. PPMS data will not be disclosed to any person not authorized by law or regulation to have access to such information, except governmental representatives acting in connection with their official duties.

B. Information deemed confidential and/or protected by federal or state statute, or regulation shall not be recorded in PPMS.

1. No confidential medical information (i.e., nature of employee illness or names of treating physicians) shall be entered into PPMS.
2. No internal affairs reports shall be entered into PPMS. However, the immediate SA supervisor shall enter early warning behaviors and briefly summarize the conduct or performance warranting the entry.

C. The duplication or reproduction of any PPMS data/information for non-official department purposes not authorized by the SAC is strictly prohibited.

VIII. NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER

A. If any SA 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 SA's Early Warning System review process history and outcomes. Upon request, the prior or current employing agency shall share the SA's Early Warning System review process files with the subsequent employing agency.


IX. NOTIFICATION TO DIRECTOR of CRIMINAL JUSTICE

A. Upon initiation of the Early Warning System review process, the SAC or a designee shall make a confidential written notification to the Director NJ Division of Criminal Justice or his/her designee of the identity of the subject SA, the nature of the triggering performance indicators, and the planned remedial program. Upon completion of the Early Warning System review process, the SAC shall make a confidential written notification to the Director NJ Division of Criminal Justice or his/her designee of the outcome of the Early Warning System review, including any remedial measures taken on behalf of the subject Special Agent.

X. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY

A. The Early Warning System policy shall be made available to the public upon request and shall be posted on the OCI website.

ADDENDUM: NJ Attorney Generals Directive 2018-3



Authorized by: SAC Charles Giblin

2/14/2019

Date



State of New Jersey

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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;

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