

**EAST BRUNSWICK
DEPARTMENT OF PUBLIC SAFETY
STANDARD OPERATING PROCEDURE**



EARLY WARNING SYSTEM

BY THE ORDER OF:
Chief James Conroy

OF PAGES: 9

EFFECTIVE DATE: June 28, 2018

ACCREDITATION STANDARDS: 2.2.3

SUPERSEDES ORDER #: SOP 123

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

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 Attorney General Guidelines. This written directive is in accordance with the New Jersey Attorney General’s Law Enforcement Directive No. 2018-3.

PROCEDURE:

I. MAINTAINING FITNESS FOR DUTY

- A. All members are to be sufficiently fit to perform the essential functions of their positions in a safe, effective and efficient manner. This means that all employees are to be physically, psychologically and mentally prepared and able to perform the essential functions of their positions. All members are to avoid any activity that might adversely affect their general health and well-being. All members shall be conscious of their diet, shall get proper rest and sleep, and shall have any health problems treated promptly. The department strongly encourages all members to participate in a physical fitness program. Any physical fitness program should be followed only after consultation with the member's physician. As such, all employees are strongly encouraged to avail themselves of medical guidance through their respective health benefits program which is provided by the township.

II. EVALUATING FITNESS FOR DUTY

- A. There may be situations where an employee's fitness for duty may be in question. The nature and circumstances surrounding a question of fitness may require a fitness evaluation. An example may be a person who wishes to return after an extended medical leave, who has been taking prescription drugs as part of the medical leave. This employee can expect to be physically and medically evaluated and tested for drugs. Each situation must be judged on a case-by-case basis. However, where there exist facts that provide a reasonable objective basis to suspect an officer is illegally using drugs; Random Drug Testing will be strictly adhered to.
- B. Medical/Psychological Examinations
 - 1. Where a medical psychological examination is indicated and required by the department, said examination shall be provided at no cost to the employee.
 - 2. Where an examination is required of an employee who has been out due to illness for a condition unrelated to the job, a medical note authorizing the employee's return to work may be required, but shall be at the cost of the employee.

III. MEDICATION AND LAW ENFORCEMENT DUTY

- A. The increasing use of medications, both prescribed and over-the-counter (OTC), within the Law Enforcement Profession, presents a significant challenge to law enforcement agencies, given their due diligence responsibilities to public safety. All medications may have adverse effects that may render law enforcement officers (LEO) unsafe to perform their duties.
 - 1. It is the professional duty of the LEO to provide the department with immediate information regarding his/her personal health conditions and medications that may reasonably be assumed to affect the fundamental

ability of the LEO to perform the essential functions of the job in a safe and effective manner. Such information may include, but may not be limited to, issues of social judgment, impulsivity, reaction time, and/or vision (or hearing) problems related to illness or impairment or the **use of medications** that may be reasonably expected to cause sedation, inhibition of normal behavior, disinhibition of impulses, impairment of restorative sleep, and/or disruption of memory efficiency.

- a. Members using drugs or therapeutic treatments prescribed by a physician or other authorized health practitioner shall determine from the prescribing person whether the treatment prescribed has any side effects which may interfere with the performance of their duties. If the treatment prescribed has such side effects, the member shall report this fact to their immediate supervisor.
 - b. Members using legal, over-the-counter, non-prescribed drugs which in any way impair or affect their ability to safely and effectively perform the essential functions of their job shall report this fact to their immediate supervisor.
2. The supervisor receiving a notification from an employee indicating that the employee believes they have a health condition or are taking lawfully prescribed or over-the counter medication that may reasonably be assumed to affect their fundamental ability to perform the essential functions of their assigned job in a safe and effective manner will make immediate notification to the appropriate division commander.
 3. Agency members who are part of any action regarding the above must hold such information in strict confidence, and actions must be consistent with the best interests of the LEO, the department, and the general public. All information pertaining to an employee's report of a health condition or medication use that may reasonably be assumed to affect their fundamental ability to perform the essential functions of their assigned job in a safe and effective manner will be forwarded to the Administrative Division Commander, in a secure envelope marked confidential.
 4. The division commander, with the approval of the Chief of Police, may order a temporary change of assignment to one which may be safely and effectively performed by the employee. If no such assignment is available, the employee will be directed to take sick leave.
 5. The department reserves the right to consult with a qualified physician or mental health provider regarding the effects of health conditions and medication use as it relates to LEO job performance and duties. The physician, police psychologist or other mental health provider may consult with specialized experts on the department's behalf regarding the likely impact upon business necessity and direct threat to others.
 6. All members of the East Brunswick Department of Public Safety have an obligation to inform a supervisor or ranking officer if another employee is using drugs or alcohol in violation of this Standard Operating Procedure or the Rules and Regulations for the Government of the Department of Public Safety.

7. If any employee actually ingests any drug in the performance of their duties, this fact shall be immediately reported to a supervisor or ranking officer and shall be documented on an Official Report directed to the Chief of Police. Both the officer making the initial report and the supervisor receiving the report shall complete Official Reports. The officer's report will be completed as soon as practicable, based on the need for medical attention. The supervisor will ensure that the employee is provided with immediate medical attention, if necessary, and immediate notification will be made to the appropriate division commander. The employee will be placed on the appropriate duty status. The Chief of Police will review the documentation and decide what action will be taken. Every effort should be made to avoid such ingestion. Unless the employee is in imminent danger of suffering death or serious bodily harm, they will refrain from the consumption, ingestion, injection, or inhalation of any substance, which may be either physically or mentally dangerous.
8. Employees subjected to the passive inhalation of a drug (e.g., marijuana) will document the incident on an Official Report directed to the ranking supervisor on duty. The report will indicate the substance the individual was exposed to, the period of exposure, and will include a brief statement explaining the necessity of the exposure. The report will be forwarded to the Chief of Police, who will review the documentation and decide what action will be taken.
9. **Prohibited Activity:** The following rules will apply to all applicants, probationary and sworn and non-sworn employees, while on or off duty:
 - a. No employee shall illegally possess any controlled dangerous substance.
 - b. No employee shall ingest any controlled or other dangerous substance, unless and prescribed by a license medical practitioner.
 - c. No employee shall ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage.

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 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 shall include, but are not limited to, the following documented indicators:

1. Internal complaints, whether initiated by another employee or by a member of the public and regardless of outcome;
 2. Civil actions filed against an officer, regardless of outcome;
 3. Criminal investigations or complaints made against an employee;
 4. Any use of force by an officer that is formally determined or adjudicated to have been excessive, unjustified or unreasonable;
 5. Domestic violence investigations in which the employee is an alleged subject;
 6. An arrest of an employee, including on a driving under the influence charge;
 7. Sexual harassment claims against an employee;
 8. Vehicular collisions involving an officer that are formally determined to have been the fault of the officer;
 9. A positive drug test by an 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. Vehicular pursuits;
 15. Unexcused absences or sick time abuse;
 16. Any other indicators, as determined by the agency's chief executive.
- 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 Internal Affairs 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 it results in improper performance or conduct.
- B. The Internal Affairs Unit shall conduct a manual or computerized audit of its records to determine if an employee has the emergence of a pattern, practices or

trend of inappropriate behavior or misconduct. In addition to the regular data audits by the Internal Affairs Unit, the Internal Affairs Unit Supervisor shall audit an individual employee's history any time a new complaint is received.

1. Using this information and his/her experience, the Internal Affairs Unit Supervisor 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 Internal Affairs Unit Supervisor shall consult with the employee's supervisor and/or commander.
- D. The Internal Affairs Unit Supervisor and the employee's supervisor and/or 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.
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 department rules and regulations or written directives, the supervisor in consultation with the Internal Affairs Unit Supervisor should proceed with an Internal Affairs 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 Internal Affairs Unit Supervisor to determine the appropriate course of remedial/corrective intervention.
- E. At least every six (6) months, internal affair's personnel shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

VI. SUPERVISORS

- A. 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 report findings to their commander and if warranted, the Internal Affairs 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 Internal Affairs Unit shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Internal Affairs Unit Supervisor 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 was training, documentation shall be filed in accordance with the department's written directive governing training (remedial training).
- D. Supervisors shall forward all documentation as required by department written directives established to assist in a comprehensive audit. This data shall minimally include, but is not limited to: use of force reports, vehicle pursuit reports, and attendance records.

VII. COMMANDERS

- A. The commanders shall forward any information regarding an employee to Internal Affairs. The 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 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 at least three (3) months when an early warning flag is triggered or until the supervisor concludes that the employee's behavior has been remediated (whichever is longer).
- D. Supervisor/Employee Meeting
 1. All supervisor/employee meetings shall be thoroughly documented, which will be forwarded to the Chief of Police or 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 Chief of Police or 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 officer in connection with the early warning system review process may not be used against them in any disciplinary or other

proceeding.

VIII. 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 Chief of Police 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 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 or designee 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.

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

X. NOTIFICATION TO COUNTY PROSECUTOR

- A. Upon initiation of the Early Warning System review process, the Chief of Police 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 Early Warning System review process, the Chief of Police shall make a confidential written notification to the County Prosecutor or his/her designee of the outcome of the Early Warning System review, including any remedial measures taken on behalf of the subject officer.

XI. 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 agency website.