



# MIDDLESEX COUNTY PROSECUTOR'S OFFICE POLICIES AND PROCEDURES



<b>SUBJECT:</b>  <b>EARLY WARNING SYSTEM (EW SYSTEM) POLICY</b>	<b>DATE OF ISSUE:</b>  <b>05-05-2021</b>	<b>EFFECTIVE DATE:</b>  <b>05-10-2021</b>
<b>RELATED POLICY/PROCEDURE:</b>  <b>N.J. ATTORNEY GENERAL DIRECTIVE NO. 2018-3</b>  <b>REVISION DATES:</b>		<b>POLICY NUMBER:</b>  <b>21-01</b>
		<b>Page 1 of 9</b>

**I. BACKGROUND**

The Early Warning System, (“*EW System*”), is an important management tool designed to detect patterns and trends in police conduct before the 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 jurisdiction to use them. For all these reasons, A.G. Directive No. 2018-3 now mandates that all law enforcement agencies in New Jersey adopt and implement *EW Systems* consistent with the requirements set forth below. The purpose of this policy is to establish an *EW System* within the Middlesex County Prosecutor’s Office (*MCPO*).

**II. POLICY**

It is the policy of this agency to implement and utilize an *EW System* for tracking and reviewing performance indicators and provide for prompt intervention. The system will identify, reward, and promote professionalism, civil rights, integrity, best practices, as well as identify, intervene, and remediate potentially problematic employee 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 supplements, but in no way, supersedes the Attorney General Directive No. 2018-3 regarding the *EW System*.



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		Page 2 of 9

### III. ACTION

<b>TABLE OF CONTENTS</b>		
A.	EARLY WARNING SYSTEM ( <i>EW SYSTEM</i> )	pp. 2-3
B.	ADMINISTRATION OF THE <i>EW SYSTEM</i>	p. 3
C.	TRACKING SYSTEM AUDIT	p. 3
D.	AUDIT OF <i>EW SYSTEM</i>	pp. 3-4
E.	SUPERVISOR RESPONSIBILITIES	p. 5
F.	UNIT COMMANDERS	pp. 5-6
G.	CORRECTIVE INTERVENTION	p. 7
H.	NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER	p. 8
I.	NOTIFICATION TO THE ATTORNEY GENERAL	p. 8
J.	ANNUAL REPORT	p. 8
K.	PUBLIC ACCESSIBILITY AND CONFIDENTIALITY	p. 9

#### A. **EARLY WARNING SYSTEM (*EW SYSTEM*):**

1. **TYPES OF EMPLOYEE CONDUCT TO BE CONSIDERED:** Many different measures of employee performance (actions or behaviors) can be regularly examined for patterns or practices that may indicate potential problems. These performance indicators may include, but are not limited to, the following:
  - a. Internal Affairs complaints against an employee, whether initiated by another employee or by a member of the public, regardless of outcome;
  - b. Civil actions filed against the employee, regardless of outcome;
  - c. Criminal investigations or criminal complaints made against the employee;
  - d. Any use of force by an employee that is formally determined or adjudicated (for example, by the Internal Affairs Unit or a grand jury) to have been excessive, unjustified, or unreasonable;
  - e. Domestic Violence investigations in which the employee is an alleged subject;
  - f. An arrest of the employee, including a driving under the influence charge;
  - g. Sexual harassment claims against the employee;
  - h. Vehicular collision involving an employee that is formally determined to have been the fault of the employee;
  - i. A positive drug test by an employee;



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		<b>Page 3 of 9</b>

- j. Cases or arrests by an employee that are rejected or dismissed by a court;
  - k. Cases or arrests in which evidence obtained by an employee is suppressed by a court;
  - l. Insubordination by the employee;
  - m. Neglect of duty by the employee;
  - n. Unexcused absences by the employee;
  - o. Improper Vehicle Pursuits;
  - p. Injury Claims – Frequent Claims of duty-related injuries;
  - q. Disciplinary Actions;
  - r. Abuse of Drugs and/or Alcohol;
  - s. Any other performance indicators, as determined by the agency’s chief executive.
2. Generally, three (3) instances of questionable conduct, listed in section A 1 above, within any 12-month period would initiate the *EW System* process although three (3) are not required.
  3. If one incident triggers multiple performance indicators, that incident shall not be double or triple counted, but instead shall count as only one (1) performance indicator. The most serious indicator should be identified in the *EW System*.
- B. ADMINISTRATION OF THE EW SYSTEM:** The administration of the *EW System* is primarily the responsibility of the *Professional Responsibility/Internal Affairs Unit*; however, any supervisor may initiate the *EW System* review process based upon his/her own observations. Emphasis should be placed on anticipating employee stressors before they result in improper conduct or inferior performance.
- C. TRACKING SYSTEM AUDIT:** At least every three (3) months, the *Professional Responsibility/Internal Affairs Unit Commander* shall audit the agency’s tracking system and records to assess the accuracy of the tracking system.
- D. AUDIT OF THE EW SYSTEM:** Audits serve as a safety net to confirm that the information contained therein is accurate, complete, is applied consistently, and can identify patterns not previously discovered, all of which enhances the integrity and goal of the *EW System*.



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		<b>Page 4 of 9</b>

1. The *Professional Responsibility/Internal Affairs 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 *Professional Responsibility/Internal Affairs Unit*, the *Professional Responsibility/Internal Affairs Unit Commander* shall audit an individual employee's history any time a new complaint is received.
  
2. Based upon the audit conducted in Paragraph a. above and their experience, *Professional Responsibility/Internal Affairs Unit detectives* may be able to identify employees who may need corrective intervention even before such action is indicated by the *EW System* data audit.
  
3. If the audit indicates the emergence of a pattern, practice or trend of inappropriate behavior or misconduct, the *Professional Responsibility/Internal Affairs Unit Commander* shall consult with the employee's supervisor and/or Unit Commander.
  
4. The *Professional Responsibility/Internal Affairs Unit Commander* and the employee's supervisor and/or Unit Commander shall then review the information provided by the *Professional Responsibility/Internal Affairs Unit*, along with any other relevant information from the agency's records for the purpose of initiating a course of intervention designed to correct the emerging pattern, practice, or trend.
  
5. If the audit indicates that the *EW System* has been triggered inappropriately or generated a "false positive," that determination should be documented.
  
6. If the audit reveals that the employee has engaged in conduct which indicates a pattern of a lack of understanding or inability to comply with accepted procedures, the supervisor shall consult with the *Professional Responsibility/Internal Affairs Unit* to determine the appropriate course of corrective intervention.



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		Page 5 of 9

**E. SUPERVISOR RESPONSIBILITIES:**

1. An employee’s first line supervisor is usually the first member of the agency to encounter and document specific incidents that affect an employee. Supervisors should pay particular attention to any pattern of inappropriate conduct/behavior as delineated in Section A 1 of this policy.

It is essential for the supervisor to speak with the employee, document these incidents and report findings to their Unit Commander and if warranted, the *Professional Responsibility/Internal Affairs Unit Commander*. The success of this program relies heavily on the first line supervisor’s participation and involvement.

2. If a supervisor has initiated remedial/corrective intervention, the *Professional Responsibility/Internal Affairs Unit* shall be formally notified of such efforts. This information shall be documented, and appropriate copies forwarded to the *Professional Responsibility/Internal Affairs Unit Commander* for filing.
  - a. No entry should be made in the employee's personnel file unless the action resulted in some form of discipline being imposed.
3. If training is the corrective intervention to be taken, documentation shall be filed in accordance with the *MCPO* Policy #09-36, titled “*Training Policy*”.
4. Supervisors shall forward all documentation to the *Professional Responsibility/Internal Affairs Unit Commander* to assist in a comprehensive audit. This data shall minimally include use of force reports, vehicle pursuit reports, and attendance records.

**F. UNIT COMMANDERS:**

1. In addition to the regular data audits conducted by the *Professional Responsibility/Internal Affairs Unit*, Unit Commanders shall periodically audit an individual employee's performance. 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.



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		Page 6 of 9

2. When under early warning system monitoring, the employee's Unit Commander shall notify the subject employee in writing. A copy of which shall be provided to the *Prosecutor, Chief of County Detectives, Professional Responsibility/Internal Affairs Unit Commander*, and or their respective designee(s).
  
3. The *Professional Responsibility/Internal Affairs Unit Commander* or designee and the appropriate supervisory personnel shall meet with the employee to discuss the situation in depth to:
  - a. Identify problems or potential problems;
  - b. Determine short and long-term goals for improvement;
  - c. Come to a consensus regarding a plan for long-term improved performance;
  - d. Provide updates on the monitoring process and inform employees of the repercussions of future *EW System* triggers.
  
4. Generally, personnel should expect to remain under intensive monitoring and supervision for six (6) months or until the *Prosecutor, Chief of County Detectives, Commander, Supervisor*, or their respective designee concludes that the behavior of the employee, which triggered the *EW System* has been corrected.
  
5. **SUPERVISOR/EMPLOYEE MEETING:**
  - a. All supervisor/employee meetings shall be thoroughly documented. The documentation shall be forwarded to the *Prosecutor* and the *Chief of County Detectives* or their respective designee(s). The affected employee and supervisor shall meet on a regular basis, minimally monthly, to discuss progress towards the agreed upon goals and objectives.
  - b. All regular monthly progress/status reports shall be submitted to the *Prosecutor* and *Chief of County Detectives* or their respective designee(s) through the chain of command.
  
6. Any statement made by the subject employee in connection with the *EW System* review process may not be used against the subject employee in any disciplinary or other proceeding.



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		Page 7 of 9

**G. CORRECTIVE INTERVENTION:**

1. Supervisory or command personnel shall initiate corrective intervention to address the performance indicators. Corrective intervention may include, but is not limited to:
  - a. Training;
  - b. Retraining;
  - c. Counseling;
  - d. Intensive supervision;
  - e. Fitness for duty examination;
  - f. Employee Assistance Program (EAP) referral, COP 2 COP referral, when warranted and if available;
  - g. Peer counseling;
  - h. Any other appropriate remedial or corrective actions.
  
2. Internal disciplinary action, corrective intervention, and fitness for duty examinations are not mutually exclusive and should be jointly pursued if/and when appropriate.
  
3. When corrective intervention has been undertaken, the *Prosecutor* and/or *Chief of County Detectives* shall ensure that such actions are documented in writing and placed in the employee's personnel file.
  - a. No entry should be made in the employee's personnel file unless the action results in a sustained disciplinary finding.
  - b. Any *EW System Trigger*, that results in a sustained disciplinary action shall NOT remain in the employee's personnel file any longer than the sustained disciplinary finding itself.
  
- c. If the corrective intervention is a training program, attendance and successful completion of that program must be noted in both the employee's training record and personnel file if permanently noted therein.
  
- d. All reports shall be forwarded to the *Prosecutor* and the *Chief of County 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.



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		Page 8 of 9

H. **NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER:** If any employee of the *MCPO*, 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 *MCPO Professional Responsibility/Internal Affairs Unit Commander* to notify the subsequent employing law enforcement agency of the employee's *EW System* review process history and outcomes. Upon request, the *MCPO* shall share the employee's *EW System* review files with the subsequent employing agency.

I. **NOTIFICATION TO THE ATTORNEY GENERAL:**

1. 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 corrective program.
2. Upon completion 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 outcome of the *EW System* review, including any remedial measures taken on behalf of the subject employee.

J. **ANNUAL REPORT:**

1. By January 31<sup>st</sup> of each year, a report shall be generated by the *Professional Responsibility/Internal Affairs Unit Commander* and submitted to the *Prosecutor* and *Chief of County Detectives* for review. Once this report is approved, the *Prosecutor* or his/her designee shall submit the report to the Attorney General, through the Division of Criminal Justice Prosecutor's Supervision and Training Bureau. This summary will include a statement indicating the agencies within Middlesex County that are in compliance with Attorney General Directive No. 2018-3 and those that are not.
2. This Annual Report to the Attorney General will be posted on the *MCPO* website.





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		Page 9 of 9

**K. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY:**

1. The *EW System* policy shall be made available to the public upon request and shall be posted on this agency's website.
2. The identity of *MCPO* personnel subject to *EW System* review, regardless of disposition shall remain confidential and are not to be publicly disclosed.
3. All *EW System* documents have the same confidential status and are subject to the same disclosure and retention regulations and guidelines as *Professional Responsibility/Internal Affairs Unit* documents.