

AVON-BY-THE-SEA POLICE DEPARTMENT STANDARD OPERATING PROCEDURES



SUBJECT: EARLY WARNING SYSTEM

BY THE ORDER OF:

Christopher Garrity, Chief of Police

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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 Monmouth County Prosecutor's Directive, June 2016, and the New Jersey Attorney General's Law Enforcement Directive No. 2018-3.

PROCEDURE:

I. 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 may include, but are not limited to, the following documented indicators:
1. Internal affairs complaints against an employee, whether initiated by another employee or by a member of the public;
 2. Civil actions filed against the officer;
 3. Criminal investigations of or criminal complaints against an employee;
 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 employee is an alleged subject;
 6. An arrest of the employee, including on a driving under the influence charge;
 7. Sexual harassment claims against an employee;
 8. Vehicular collisions involving an officer that is 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 employee;
 13. Neglect of duty by the employee;
 14. Unexcused absences by the employee;
 15. Vehicular pursuits;

16. All domestic violence incidents (regardless of whether or not a complaint or TRO/FRO was issued);
 17. Off-Duty Contact with Law Enforcement Agencies as a result of personal conduct.
- 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.

II. 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 or 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 an audit of the agency records to determine if an employee has the emergence of a pattern, practices or trend of inappropriate behavior or misconduct. In addition, the Internal Affairs Unit Supervisor shall review an individual employee's history any time a new complaint is received.
 1. Using this information, the Internal Affairs Unit Supervisor may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the 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/commander.
- D. The Internal Affairs Unit Supervisor and the employee's supervisor and/or commander shall review the information 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 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 after consultation with Internal Affairs Unit Supervisor should proceed with an internal 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 three (3) months, internal affair's personnel shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.

III. PATROL SERGEANTS

- A. An employee's respective patrol sergeant is usually the first member of the department to encounter and document specific incidents that affect an employee. It is essential for the patrol sergeant to speak with the employee, document these incidents and report findings to Captain of Police. The success of this program relies heavily on the patrol sergeants participation and involvement.
- B. If a patrol sergeant has initiated remedial/corrective intervention, Internal Affairs shall be formally notified of such efforts. Internal Affairs shall be formally notified of such efforts and this shall be documented and appropriate copies shall be forwarded to the Internal Affairs unit for filing. No entry should be made in the employee's formal 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 agencies written directive governing training (remedial training).
- D. Patrol sergeants shall forward all documentation as required by agency written directives established to assist in a comprehensive audit. This data shall minimally include: use of force reports, vehicle pursuit reports, and attendance records.

IV. CAPTAIN OF POLICE

- A. The Captain of Police shall periodically review an individual employee's history. Using this information and his/her experience, the Captain may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the audit. The Captain of Police shall serve as the officer monitoring any patrol sergeant that has triggered the early warning system.
- B. When under early warning system monitoring, the Captain of Police shall meet with the employee and respective patrol sergeant 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 commitment on a plan for long-term improved performance;
 - d. 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 (6) months when an early warning flag is triggered.
- D. Employee Meeting
 - 1. All employee meetings shall be thoroughly documented in the audit file, which will automatically be forwarded to the Chief of Police or his designee. The affected employee and patrol sergeant 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.
 - 3. An additional six (6) months of documented monitoring is required following removal from the early warning system. Monthly monitoring reports from the employee's patrol sergeant are required.
- E. Any statement made by the subject employee in connection with the Early Warning System review process may not be used against the subject employee in any disciplinary or other proceeding.

V. 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;
 - 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 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.

VI. MONMOUTH COUNTY PROSECUTOR'S OFFICE NOTIFICATIONS

A. Domestic Violence Protocol

1. For all incidents where it is alleged that a law enforcement officer committed an act of domestic violence or was the victim of domestic violence, regardless of whether or not complaints and/or a temporary or final restraining order has been issued, the Chief of Police or his/her designee shall promptly notify the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crime Unit by emailing mcpopru@mcponj.org.
2. All police officers of the Avon-by-the-Sea Police Department are required to identify themselves as law enforcement officers to responding officers when their off-duty conduct results in a police call, regardless of whether or not complaints and/or a temporary or final restraining order has been issued. The involved off-duty police officer shall also be required to self-report the incident to Internal Affairs. Said identification will ensure that the responding police department may notify the involved officer's agency of said police call. Notification is not required when the police involvement consists of minor traffic infractions where no injury was sustained by any party. A police officer's failure to make such notification may result in departmental discipline in accordance with departmental policy and procedures.
3. This notification should include the following information:
 - a. Agency name;
 - b. Officer's name;
 - c. Victim's name, if other than officer;
 - d. Reported date/time;
 - e. Date of incident, if other than reported date/time;
 - f. Incident location, including municipality;
 - g. Assigned case number;
 - h. Nature of incident;
 - i. Injuries sustained by victim;
 - j. Witness names;
 - k. Criminal complaint and/or TRO/FRO issued;
 - l. Assigned personnel, e.g., (local law enforcement officer, internal affairs officer); and
 - m. Copies of all police reports and relevant paperwork, e.g.,

(complaint, TRO, VNF, etc.).

4. All emergent matters shall be reported directly to the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crime Unit by calling 732-577-8700.
5. The Avon-by-the-Sea Police Department shall provide to the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crimes Unit a listing of any and all calls where it is alleged that a law enforcement officer committed an act of domestic violence or was the victim of domestic violence, regardless of whether or not complaints and/or a temporary or final restraining order has been issued to include, but not limited to:
 - a. All incidents that occurred within their jurisdiction in the past three (3) years;
 - b. All out of county and/or state notifications of domestic violence calls involving law enforcement officers;
 - c. Verification that if an officer from another county, state or out of state agency was involved that notification has been made to the involved officer's employing agency.
6. It is the continuing responsibility of the Professional Responsibility and Bias Crimes Unit to open a file, review the incident, and investigate the matter further, if necessary.

B. Fitness-for-Duty Protocol

1. The Chief of Police or his/her designee shall make notification to the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crimes Unit by emailing mcpopru@mcponj.org to include, but not limited to the following:
 - a. Any time an officer is sent for a fitness for duty evaluation regardless of the reason for the evaluation;
 - b. Any time an officer is disarmed, regardless of the reason for the disarming;
 - c. Any time the early warning system results in the law enforcement officer being counseled, disciplined, sent for a fitness for duty evaluation, or disarmed; or
 - d. Any time the early warning system indicates the officer has received three (3) citizen complaints within a six (6) month period, regardless of the reason.
2. All emergent matters shall be reported directly to the Monmouth County Prosecutor's Office Professional Responsibility and Bias Crime Unit by calling 732-577-8700.
3. When a law enforcement officer has been disarmed, regardless of the reason and prior to the Avon-by-the-Sea Police Department rearming the

officer, the Monmouth County Prosecutor's Office must be provided with a copy of the corresponding fitness-for-duty report and a written plan regarding the rearming of the officer. This written plan should include whether or not the rearming will be conditional or unconditional. If it is a conditional rearming, the agency must notify the Monmouth County Prosecutor's Office of all the terms of the conditional rearming, and the duration of the conditional rearming.

4. In addition, whenever the Avon-by-the-Sea Police Department sends any officer for a fitness-for-duty evaluation, the Chief of Police or his/her designee is also required to submit to the physician, psychiatrist or psychologist an itemized list of the documents it forwarded to him/her along with the documents it submitted. A copy of this itemized list must be maintained in the agency's internal affairs file and made available to the Monmouth County Prosecutor's Office upon request.
5. It is the continuing responsibility of the Professional Responsibility and Bias Crimes Unit to open a file, review the incident, and investigate the matter further, if necessary.

VII. ANNUAL REVIEW

- A. The Avon-by-the-Sea Police Department shall review its early warning system on an annual basis during the month of January. The Chief of Police or his/her designee shall provide a letter to the Monmouth County Prosecutor's Office documenting proof of such review. The review shall include, but not be limited, to the following:
 1. Number of audits conducted;
 2. Number of employees flagged;
 3. Number of instances where remedial/corrective action was taken;
 4. Number of internal affairs cases opened as result of early warning system;
 5. Changes in number of internal affairs complaints with reference to flagged indicators and whether they have increased/decreased;
 6. Number of notifications made to the Monmouth County Prosecutor's Office.

VIII. EARLY WARNING SYSTEM 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.

IX. EARLY WARNING SYSTEM 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.

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 agency website.