

**KEARNY POLICE DEPARTMENT**  
**Standard Operating Procedures**

**Procedure # 222**

<b>Early Warning System</b>			
<b>Date of Issue</b> 5-19-2018	<b>Effective Date</b> 5-19-2018	<b>Revision Date</b>	<b>Number of Pages</b> Page 1 of 6

**I. PURPOSE:**

- A. An Early Warning System ("EW System") is an important management tool designed to detect patterns and trends in police conduct before that conduct deteriorates into misconduct. 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.
- B. The purpose of this directive is to establish this agency's policy and procedures concerning a personnel early warning system.

**II. POLICY**

- A. It is the policy of the Kearny Police Department to implement and utilize an early warning system to track and review incidents of risk and provide timely intervention consistent with controlling Attorney General Guidelines.

**III. PROCEDURE:**

**A. EARLY WARNING SYSTEM**

- 1. An early warning system is designed to detect patterns and trends before the conduct escalates into more serious problems. The primary intent is to address potential problems through the use of appropriate management and supervisory intervention strategies before negative discipline becomes necessary.
- 2. All levels of supervision, especially first line supervisors, are expected to recognize potentially troublesome officers, identify training needs, and provide professional support in a consistent and fair manner. Emphasis should be placed on anticipating problems among officers before they result in improper performance or conduct.

**IV. IMPLEMENTATION**

**A. SELECTION OF PERFORMANCE INDICATORS**

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1. Many different measures of officer performance (i.e. performance indicators) can be regularly examined for patterns or practices that may indicate potential problems. To the extent possible, performance indicators should be objectively measurable and reasonably related to potentially escalating harmful behavior by the officer.
  
2. Pursuant to *Attorney General Law Enforcement Directive No. 2018-3*, the following performance indicators shall be included in the Early Warning System:
  - a. Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
  - b. Civil actions filed against the officer;
  - c. Criminal investigations of or criminal complaints against the officer<sup>1</sup>;
  - d. Any use of force by the officer that is formally determined or adjudicated (e.g. by Internal Affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
  - e. Domestic violence investigations in which the officer is an alleged subject;
  - f. An arrest of the officer, including on a driving under the influence charge;
  - g. Sexual harassment claims against the officer;
  - h. On-duty vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
  - i. A positive drug test by the officer<sup>2</sup>;
  - j. Cases or arrests by the officer that are rejected or dismissed by a court<sup>3</sup>;
  - k. Cases in which evidence obtained by an officer is suppressed by a court<sup>4</sup>;
  - l. Insubordination by the officer;

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<sup>1</sup> If EW System notification to the officer could jeopardize an ongoing criminal investigation, the County Prosecutor or Chief of Police may in his or her discretion permit delayed notification to the officer or delayed initiation of the EW System review process.

<sup>2</sup> The *Attorney General's Law Enforcement Drug Testing Guideline* provides that an officer who tests positive for illegal drugs shall be suspended immediately and then terminated upon final disciplinary action.

<sup>3</sup> The Hudson County Prosecutor's Office has interpreted *A.G. Directive 2018-3* to mean that rejected or dismissed cases/arrests and evidence suppressions will only qualify as EW System performance indicators when the dismissal, rejection, or suppression was founded on an officer credibility issue. This department will follow the prosecutor's interpretation in this regard. The department will rely on cooperative reporting by prosecutors, courts, and subject officers to track these performance indicators.

<sup>4</sup> Ibid.

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- m. Neglect of duty by the officer;
  - n. Unexcused absences by the officer; and
  - o. Any other indicators, as determined by the agency's chief executive.
3. Officers shall report in writing to the Internal Affairs Unit, as soon as practicable, any instances of performance indicators (as listed in Section III. A. 4., above) involving themselves unless they have confirmed that written notification has been made to the Internal Affairs Unit by another member of this department (e.g. crash report filed with the KPD Traffic Bureau).

**B. INITIATION OF EARLY WARNING PROCESS**

1. Three separate instances of performance indicators (as listed in Section III. A. 4., 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.

**C. ADMINISTRATION AND TRACKING**

1. The EW System shall be administered by the Internal Affairs Unit. Supervisory officers in the subject officer's chain of command also should be directly involved in any EW System review process. With notification to, and approval of, the Chief of Police, any supervisor may initiate the EW System process based upon his own observations.
2. *LawSoft*, the police department's computerized records management system, includes an EW System component. *LawSoft* will be utilized as the department's EW System tracking device. In the event that *LawSoft* is superseded by another records management system, the superseding system should be utilized as the department's EW System tracking device.
3. At least every six months, the Internal Affairs Unit shall audit the EW System tracking device and records to assess the accuracy and efficacy of the tracking device.

**D. REMEDIAL/CORRECTIVE ACTION**

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1. Once an officer has displayed the requisite number of performance indicators necessary to trigger the EW System review process (as set forth in Section III. A. 4., above), the supervisor of the Internal Affairs Unit shall review all available documentation regarding the triggered performance indicators to ensure there are no false positive triggers (e.g. obviously frivolous Internal Affairs complaints not made in good faith). Should a false positive trigger be identified, the Internal Affairs supervisor shall document his findings in writing in the EW System tracking device.
2. Once the Internal Affairs supervisor confirms that false positive triggers have not caused the initiation of the EW System review process, he shall see that remedial action is initiated to address the officer's behavior.
3. When an EW System review process is initiated, an Internal Affairs investigator should
  - a. Formally notify the subject officer, in writing;
  - b. Conference with the subject officer and appropriate supervisory personnel;
  - c. Develop and administer a remedial program including the appropriate remedial/corrective actions listed below;
  - d. Continue to monitor the subject officer, in conjunction with the officer's tour commander or unit supervisor for at least three months, or until the officer's tour commander or unit supervisor concludes that the officer's behavior has been remediated (whichever is longer);
  - e. Document and report findings to the appropriate supervisory personnel and the Chief of Police.
4. 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. Therefore, if Internal Affairs personnel feel that their participation in an EW System conference with a subject officer might interfere with an Internal Affairs investigation, Internal Affairs personnel should notify the subject officer's supervisory personnel to conduct the conference in the absence of an Internal Affairs investigator. In these cases, the subject officer's supervisory personnel should not share with Internal Affairs personnel statements made by the subject officer in connection with the EW System review process.

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5. Should Internal Affairs or supervisory personnel suspect that a subject officer might make a statement during the EW System review process that would incriminate the officer in a criminal matter, the EW System conference shall not be initiated without notification to, and approval from, the county prosecutor's Internal Affairs Unit. In the event that an EW System conference has already begun and an officer makes a criminally incriminating statement, the conference shall be suspended until approval to resume is granted by the county prosecutor's Internal Affairs Unit.
6. Remedial/corrective action may include but is not limited to the following:
  - a. Training or re-training;
  - b. Counseling;
  - c. Intensive supervision;
  - d. Fitness-for-duty examination;
  - e. Employee Assistance Program (EAP) referral; and
  - f. Any other appropriate remedial or corrective action<sup>5</sup>.

**E. NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER**

1. 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, this department shall notify the subsequent employing law enforcement agency of the officer's EW System review process history and outcomes. Upon request, this department shall share the officer's EW System review process files with the subsequent employing agency.

**F. NOTIFICATION TO COUNTY PROSECUTOR**

1. Upon initiation of the EW 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

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<sup>5</sup> 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.

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of the triggering performance indicators, and the planned remedial program. Upon completion of the EW 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 outcome of the EW System review, including any remedial measures taken on behalf of the subject officer.

**V. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY**

This standard operating procedure shall be made available to the public upon request and shall be posted on the department's website.

All written reports created or submitted pursuant to this procedure that identify specific officers are confidential and not subject to public disclosure.

**VI. NON-ENFORCEABILITY BY THIRD PARTIES**

Nothing in this Directive shall be construed in any way to create any rights beyond those established under the Constitutions of the United States and the State of New Jersey, or under any New Jersey statute or Court Rule. The provisions of this procedure are intended to be implemented and enforced by the Kearny Police Department, and these provisions do not create any promises or rights that may be enforced by any other persons or entities.