



## County of Passaic

Administration Building

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### Passaic County Prosecutor's Office (973) 881-4800

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#### PASSAIC COUNTY PROSECUTOR'S OFFICE EARLY WARNING SYSTEM POLICY

**TO:** All Passaic County Prosecutor's Office Personnel  
**FROM:** Camelia M. Valdes, Passaic County Prosecutor  
**DATE:** Effective July 12, 2018  
**SUBJECT:** Early Warning System

#### **I. PURPOSE**

To enhance its integrity and provide an optimal level of service to the community, the Passaic County Prosecutor's Office is committed to implementing an Early Warning System ("EWS") in accordance with New Jersey Attorney General Law Enforcement Directive No. 2018-3 ("EWS Directive"). An EWS is an important management tool designed to detect patterns and trends in police conduct before that conduct escalates. An effective EWS 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. An EWS, therefore, serves to not only increase public safety and public confidence in law enforcement, but also to assist officers through early intervention.

It is the policy of this agency that an EWS shall be implemented in a manner consistent with the provisions outlined in this policy and New Jersey Attorney General Law Enforcement Directive No. 2018-3. All members of this agency must adhere to all provisions of this policy, as well as all provisions of New Jersey Attorney General Law Enforcement Directive No. 2018-3.

The EWS 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.

## II. DEFINITION OF TERMS

- A. **Early Warning System “EWS”:** An important management tool designed to detect patterns and trends in police conduct before that conduct escalates.
- B. **Performance Indicators:** Different categories of officer conduct that indicate a potentially escalating risk of harm to the public, the agency, and/or the officer. In accordance with Attorney General Directive 2018-3, these indicators shall be objectively measurable and reasonably related to potentially escalating harmful behavior by the officer. The following performance indicators are hereby recognized:
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;<sup>1</sup>
  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. Cases in which the State moves to dismiss based on officer conduct or testimony;
  13. Insubordination by the officer;

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

14. Neglect of duty by the officer;
  15. Unexcused absences by the officer; and
  16. An adverse credibility finding of an officer by a judge or hearing officer.
- C. **Internal Tracking and Reporting:** The tracking and reporting of performance indicators related to Passaic County Prosecutor's Office detective staff.
- D. **External Tracking and Reporting:** The tracking and reporting of performance indicators related to sworn police officers serving in Passaic County law enforcement agencies other than the Prosecutor's Office.

### III. PROCEDURES

A. Initiation of Early Warning Process—*Internal*

Three separate instances of performance indicators (as listed in Section II(B) above) within any twelve-month period will trigger the EWS 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.

B. Administration-Tracking and Reporting

The overall administration of the Passaic County Prosecutor's Office EWS shall be the responsibility of the Public Integrity Unit. However, all assistant prosecutors as well as investigative supervisory staff have a role in identifying, reporting and addressing both external and internal performance indicators.

1. *Internal Tracking:* All PCPO legal or supervisory investigatory staff are hereby required to report any identified internal performance indicators (as defined in Section II (B) above) directly to the Public Integrity Unit.
  - a. The assigned Public Integrity Unit detective shall enter the information in the InfoShare system as an Internal Affairs intake under the heading *Internal Performance Indicator*.
  - b. The assigned Public Integrity Unit detective shall cause a search of the system to ascertain whether additional performance indicators have been entered regarding the same detective within a twelve (12) month period.
  - c. If appropriate, the EWS review process shall be initiated.

- d. A *Brady/Giglio* designation shall be entered by the Public Integrity Unit in InfoShare when appropriate.
  - e. At least every six months, the Public Integrity Unit shall audit the internal tracking system and records to assess the accuracy and efficacy of the tracking system.
2. **External Tracking:** All PCPO legal or supervisory investigatory staff are hereby required to report any identified external performance indicators (as defined in Section II(B) above) directly to the Public Integrity Unit.
- a. The PCPO legal or supervisory investigatory staff member shall include the following information in a written notification to the Public Integrity Unit:
    - i. Name of officer
    - ii. Employing agency
    - iii. Performance indicator
    - iv. Case caption of underlying matter (e.g., State v. Jones, Ind. No. 12-34-5678-I, Docket No. 12-345)
    - v. Brief description of circumstances surrounding reporting of performance indicator (e.g., Judge Smith suppressed evidence due to officer's conduct; Officer Doe willfully or chronically failed to respond to a trial subpoena)
    - vi. Any materials relevant to the performance indicator requiring reporting (e.g., judge's written decision; order of dismissal)
  - b. The assigned Public Integrity Unit detective shall enter the information in the InfoShare system as an Internal Affairs intake under the heading *External Performance Indicator*.
  - c. The assigned Public Integrity Unit detective shall make written notification to the Internal Affairs Unit of the officer's agency.
  - d. A *Brady/Giglio* designation shall be entered by the Public Integrity Unit in InfoShare when appropriate.
  - e. At least every six months, the Public Integrity Unit shall audit the external tracking system and records to assess the accuracy and efficacy of the tracking system.

C. Remedial/Corrective Action—*Internal*

In the event a detective has displayed the requisite number of performance indicators necessary to trigger the EWS review process (as set forth in Section III(B)(1), above) the assigned supervisory personnel shall initiate remedial action to address the officer's behavior.<sup>2</sup> When an EWS review process is initiated, the Public Integrity Unit should:

1. Formally notify the subject detective, in writing;
2. Conference with the subject detective 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, refer for disciplinary action.

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.<sup>3</sup>

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<sup>2</sup> The Attorney General's EWS Directive requires that any statement made by the subject detective in connection with the EW System review process may not be used against the subject detective in any disciplinary or other proceeding.

<sup>3</sup>This policy, Attorney General Directive 2018-3, and EW Systems generally, are focused on corrective actions to remediate officer behavior and to provide assistance to the officer. This policy, the EWS 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 Passaic County Prosecutor's Office internal affairs function, and may be imposed in accordance with existing internal affairs guidelines and applicable law, separate from and independent of the EWS.

D. Notification to Subsequent Law Enforcement Employer

If any officer who is or has been subject to an EWS review process applies to or accepts employment at a different law enforcement agency than the one where he or she underwent the EWS 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 EWS review process history and outcomes. Upon request, the prior or current employing agency shall share the officer's EWS review process files with the subsequent employing agency.

E. Notification to County Prosecutor—*Internal*

1. Initiation of EWS: Upon initiation of the EWS review process, the commanding officer of the Public Integrity Unit shall make a confidential written notification to the Chief of Detectives for forwarding to the County Prosecutor. The confidential written notification shall include the identity of the subject detective, the nature of the triggering performance indicators, and the planned remedial program.
2. Completion of EWS: Upon completion of the EWS review process, the commanding officer of the Public Integrity Unit shall make a confidential written notification to the Chief of Detectives for forwarding to the County Prosecutor. The confidential written notification shall indicate the outcome of the EW System review, including any remedial measures taken on behalf of the subject detective.

F. Annual Report to Attorney General

1. By January 31st of each year, the 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 the Attorney General EWS Directive and those that are not.
2. Any notification required to be made by a law enforcement agency pursuant to Section II (H) of the Attorney General EWS Directive shall be made to the Public Integrity Unit.
3. The Public Integrity Unit shall be responsible for tracking any notifications (external and internal) required to be made by a law enforcement agency pursuant to Section II(H) of the Attorney General EWS Directive and for preparing the annual report as required by Section II(I) of the Attorney General EWS Directive and Section III(F)(1) of this policy.

**IV. PUBLIC ACCESSIBILITY AND CONFIDENTIALITY**

- A. This policy shall be made available to the public upon request and shall be posted on the Passaic County Prosecutor's Office website.
- B. The annual report from the County Prosecutor to the Attorney General (as required by Section III(F)(1), above) also shall be made available to the public upon request and shall be posted on the office's website.
- C. All written reports created or submitted pursuant to this policy or the EWS Directive that identify specific officers are confidential and not subject to public disclosure.