

MONMOUTH COUNTY PROSECUTOR'S OFFICE					
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SUBJECT: EARLY INTERVENTION SYSTEM					
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UNDER THE AUTHORITY OF: Acting Prosecutor Lori Linskey		3/22/2021	All		
		6/14/2021	2, 3		
BY ORDER OF:  Acting Chief John G. McCabe, Jr.					
SUPERSEDES ORDER #:					

PURPOSE: The purpose of this written directive is to establish an Early Intervention System (previously known as Early Warning System)¹.

POLICY: It is the policy of this agency to implement and utilize an Early Intervention System for tracking and reviewing incidents of risk and provide timely intervention consistent with Attorney General Guidelines.

¹ By memo dated December 4, 2019, the Attorney General announced a statewide transition from an “Early Warning System” to an “Early Intervention System” and that the Attorney General’s office was in the process of developing a proposal for a new statewide system. Accordingly, this revised policy uses the term “Early Intervention System”.

PROCEDURE:

I. EARLY INTERVENTION SYSTEM

A. The Early Intervention System (EIS) is designed to detect patterns and trends before conduct escalates. Employees must understand that the EIS is not identical to the disciplinary process. Although it is possible that disciplinary action may be taken as the result of evidence that policies, written directives and rules and regulations were violated, this is not the sole or even primary intent of the system. The primary intent of an EIS is to address potential problems with appropriate management and supervisory strategies before formal discipline is warranted.

B. Performance Indicators

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:

1. Internal Affairs complaints against a detective whether initiated by another law enforcement officer or by a member of the public;
2. Civil actions filed against a detective;
3. Criminal Investigations of or criminal complaints against a detective;²
4. Any use of force by a detective 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 a detective is an alleged subject (regardless of whether or not a complaint or a temporary or final restraining order has been issued);
6. An arrest of a detective, including on a driving under the influence charge;
7. Sexual harassment claims against a detective;
8. Vehicle collisions involving a detective that are formally determined to have been the fault of a detective;³
9. A positive drug test result of a detective (also covered under the MCPO Drug Use and Testing Policy);
10. Cases or arrests by a detective that are rejected or dismissed by a court;
11. Cases in which evidence obtained by a detective is suppressed by a court;
12. Insubordination by a detective (also covered under the MCPO Rules and Regulations Policy);

² If Early Intervention System notification to a detective could jeopardize an ongoing criminal investigation, the Prosecutor or designee may, at his or her discretion, permit delayed notification to the detective or delayed initiation into the Early Intervention System review process.

³ The performance indicator refers to on-duty vehicular collisions.

13. Neglect of duty by a detective (also covered under the MCPO Rules and Regulations Policy);
 14. Unexcused absences by a detective;
 15. Vehicular pursuits;
 16. Claims of duty-related injury; and,
 17. On or off duty conduct by a detective that creates a potential appearance of impropriety touching on the detectives' official position as determined by the Chief of Detectives.
- C. Three (3) separate instances of performance indicators (as listed above) within a twelve (12) month period will trigger the EIS process.⁴ 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. The EIS is designed to detect patterns and trends before the conduct escalates. As such, employees must understand that the EIS differs from the disciplinary process. Although it is possible that disciplinary action may be taken as a result of evidence that policies, written directives and rules and regulations were violated, this is not the sole or even primary intent of the system. The primary intent of an EIS is to address potential problems with appropriate management and supervisory strategies before formal discipline is warranted. ***Should disciplinary action be necessary, all applicable Attorney General Guidelines, Directives, Monmouth County Uniform Policy, laws, labor contracts, and arbitration agreements shall be followed.***

To come off the EIS process, the detective must have a twelve-month period of no performance indicators.

II. ADMINISTRATION OF EARLY INTERVENTION SYSTEM

- A. The EIS is primarily the responsibility of the Deputy Chief of Detectives or designee; but, any supervisor may initiate the EIS process based upon his or her own observations. Emphasis should be placed on anticipating employee problems before it escalates to improper performance or conduct.
- B. Biannually, the Deputy Chief of Detectives or designee shall conduct a manual or computerized audit of his or her records to determine if an employee has the emergence of a pattern, practices or trend of inappropriate behavior or misconduct. In addition, the Deputy Chief of Detectives or designee shall conduct a review of an individual detective's early intervention history any time a new complaint is received.
 1. Using this information and his or her experience, the Deputy Chief of Detectives or designee may be able to identify employees who may need

⁴ It should be noted that MCPO may initiate remedial or corrective action at any time in response to an officer's behavior. AG Directive 2018-3, however, states that remedial or corrective action "shall" be initiated when an officer displays the requisite number of performance indicators necessary to trigger the EIS review process. AG Directive 2018 does not preclude the MCPO from taking corrective action prior to a detective having three performance indicators.

remedial/corrective intervention even before such is indicated by the EIS data audit.

- C. If the review indicates the emergence of a pattern, practice or trend of inappropriate behavior or misconduct, the Deputy Chief of Detectives or designee shall consult with the employee's Supervisor and/or Unit Commander. Same shall also be reported to the Chief of Detective.
- D. The Deputy Chief of Detectives or designee and the employee's Supervisor shall review this information and any relevant information from MCPO records for the purpose of initiating a course of intervention designed to correct/interrupt the emerging pattern, practice or trend.
 - 1. If the review indicates that the EIS has returned an incorrect identification or "false positive", that conclusion should be documented and, in those instances, remedial or corrective action is not required.
 - 2. If the review reveals that an employee has violated agency rules and regulations, policies or written directives, the Deputy Chief of Detectives or designee will proceed with an internal investigation and possible disciplinary action.
 - 3. If the review 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 Deputy Chief of Detectives or designee to determine the appropriate course of remedial/corrective intervention.

III. SUPERVISORS

- A. An employee's first line supervisor is usually first to encounter and document specific incidents that could trigger the EIS. It is essential for the supervisor to speak with the employee regarding non-disciplinary remedial/corrective action warranted incidents, document the non-disciplinary remedial/corrective action and report findings to their Unit Commander. If the incident appears to warrant disciplinary action, the supervisor shall immediately notify the Deputy Chief of Detective or designee. 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 Deputy Chief of Detectives or designee shall be immediately notified of such efforts. This information shall be documented and appropriate copies forwarded to the Deputy Chief of Detectives or designee for filing.
- C. 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. If a supervisor has initiated remedial/corrective intervention, personnel assigned to the EIS shall be formally notified of such efforts. This information shall be documented and appropriate copies forwarded to the Deputy Chief of Detectives or designee in writing.
- D. In any instance where remedial/corrective intervention is taken pursuant to the EIS, no entry should be made in the employee's formal personnel file, unless the action results in a sustained internal affairs investigation

- E. Supervisors shall forward all documentation to assist in a comprehensive audit. This data shall minimally include: use of force reports, vehicle pursuit reports, and attendance records.

IV. UNIT COMMANDERS

- A. In addition to the regular data audits/reviews conducted by Deputy Chief of Detectives or designee, the unit commanders, in consultation with the Deputy Chief of Detectives, shall periodically review an individual employee's history. Using this information and their experience, the commander may be able to identify employees who may need remedial/corrective intervention even before such is indicated by the EIS data audit.
- B. When under EIS monitoring, the employee's unit commander and supervisor shall meet with the employee to discuss the situation to:
 - 1. Identify problems or potential problems;
 - 2. Determine short and long-term goals for improvement;
 - 3. Come to a consensus 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 six (6) months when an Early Intervention flag is triggered. Any statements made by the detective in connection with the EIS *MAY NOT* be used against the detective in any disciplinary or other proceedings.
- D. Supervisor/Employee Meeting
 - 1. All supervisor/employee meetings shall be thoroughly documented. The affected employee and supervisor shall meet on a regular basis, minimally monthly, to discuss progress towards the agreed upon goals and objectives.

V. REMEDIAL/CORRECTIVE INTERVENTION

- A. Supervisory and command personnel, in consultation with the Deputy Chief of Detectives, 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.
- B. The Deputy Chief of Detectives may initiate 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 examination⁵;
6. Employee Assistance Program, when warranted, if available;
7. Peer counseling.

VI. THE EARLY INTERVENTION SYSTEM AND INTERNAL AFFAIRS INVESTIGATIONS/DISCIPLINE

- A. The EIS is focused on corrective action to remediate a detective's behavior and to provide assistance to a detective. It does not address disciplinary actions that might be warranted against a detective. Some situations may trigger the EIS, some situations may trigger an internal affairs investigation and some situations may trigger both.
- B. If a detective has violated the MCPO agency's rules and regulations, policies or written directives, an internal investigation should be commenced. Any disciplinary actions that may result – to include the decision to suspend or terminate – remain within the purview of the MCPO's internal affairs function, and may be imposed in accordance with existing internal affairs guidelines and applicable law, separate from and independent of the EIS.
 1. Internal disciplinary actions, remedial/corrective interventions, and fitness for duty examinations are not mutually exclusive.

VII. CONFIDENTIAL/DOCUMENTS/INFORMATION

A. Documents Created/Submitted Under the Early Intervention System

1. When any intervention has been undertaken, such actions must be documented in writing. All reports shall be forwarded through the chain of command, on a need to know basis, to the Chief of Detectives for review. 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.
2. These reports have the same confidential status as internal affairs documents and are subject to the same disclosure and retention regulations and guidelines.

⁵ Fitness for Duty Examinations shall be pre-approved by the Chief of Detectives after conferring with the Prosecutor or designee.

B. Exception for Law Enforcement Applicants to Other Agencies

1. If an MCPO detective who is or has been the subject of the EIS review process applies to or accepts employment at a different law enforcement agency, it is the responsibility of the MCPO to notify the subsequent employing law enforcement agency of the detective's EIS review process history and outcomes. Upon request, the MCPO shall share the detective's EIS review process files with the subsequent employing agency.

VIII. WEBSITE POSTING AND ANNUAL REPORT

- A.** The Deputy Chief of Detectives or designee shall ensure that the MCPO EIS policy and Annual Report to the Attorney General is posted on the agency's website.
- B.** By January 15th of each year, the Deputy Chief of Detectives or designee shall document within the Annual Report the following with respect to the prior calendar year:
1. Number of EIS audits conducted;⁶
 2. Number of detectives who have triggered the EIS review process;⁷
 3. Number of Internal Affairs cases opened as a result of the EIS;
 4. Number of instances where remedial/corrective action was taken; and,
 5. Number of instances in which there were false positive results.⁸

⁶ This reporting requirement *does not include* every time a detective's history is reviewed due to receiving a new complaint. This requirement *only includes* the number of system-wide EIS audits and must be at least two per year.

⁷ The number of EIS should equal the number of detectives who triggered the EIS review process.

⁸ The number of instances where remedial/corrective action was taken and number of false positives should equal the total number of detectives who have triggered the EIS review process.