

CLINTON TOWNSHIP POLICE DEPARTMENT
RULES AND REGULATIONS/POLICIES AND PROCEDURES

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| VOLUME: 2 | CHAPTER: 15 | # OF PAGES: 9 | LAST REVISION | PAGE # |
| SUBJECT: EMPLOYEE EARLY WARNING SYSTEM | | | 4-27-18 | ALL |
| EFFECTIVE DATE: August 15th, 2007 | | OFFICER-IN-CHARGE: LT. RYAN MELSKY | <u>Standard</u> 2.2.3 | |
| CROSS REFERENCE: Volume 1, Chapter 9 Volume 2, Chapter 14 Attorney General Directive 2018-03 | | POLICE DEPARTMENT: CLINTON TOWNSHIP | | |

POLICY

Law enforcement agencies must strive to prevent employee misconduct. To facilitate this goal, the New Jersey Attorney General now requires that New Jersey’s law enforcement agencies establish an ‘*Early Warning System*,’ a mechanism used to detect, track, and remediate patterns of employee behavior which correlate with present and future misconduct.

An ‘*Early Warning System*’ is designed to interrupt improper conduct before it escalates, thereby enhancing agency integrity, providing an optimal level of service, and reducing exposure to civil liability. The establishment of an ‘*Early Warning System*’ is not enough, however. Law enforcement agencies shall react to an activation of the ‘*Early Warning System*’ in a meaningful manner (as opposed to reacting with “deliberate indifference”; see e.g. Beck v. City of Pittsburgh, 89 F.3d 966 (1996)).

As a result, the Clinton Township Police Department hereby establishes an ‘*Early Warning System*’ to identify warning signs of employee misconduct in an attempt to stop improper behavior before it becomes more serious. The Clinton Township Police Department shall also provide timely, meaningful intervention services to employees who have been identified by the ‘*Early Warning System*’. Although disciplinary action may be taken if necessary, discipline is not the sole or even primary intent of the ‘*Early Warning System*’.

I. DEFINITIONS

- A. Chief Executive Officer—that person who is responsible to serve as the head of the police department. The Chief Executive Officer may be a civilian Police Director or a sworn officer such as the Chief of Police or Officer-In-Charge. “Officer” as used herein shall not denote sworn status.
- B. Confidential—secret information, the dissemination of which is prohibited.
- C. Counselor—a licensed psychologist, psychiatrist, peer counselor, police chaplain, or physician who gives advice and recommends a course of conduct.

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- D. Employee—everyone employed by the Clinton Township Police Department, including sworn and civilian personnel. Volunteers, though not technically “employees,” are considered employees when performing a function for the police department in the course of their official responsibilities.
- E. Employee Assistance Program—a confidential, non-disciplinary program provided by the Township of Clinton whereby a counselor can assist employees and their families with the resolution of suspected personal or work-related issues such as drug, alcohol, family, finance, and anger management problems.
- F. Misconduct—as used in this general order, “misconduct” means behavior that is unlawful, contrary to rule, unethical, socially improper, or otherwise cause for alarm and may also include the expression of clearly inappropriate ideals, a clear lack of concern for the well-being of the public, a clear lack of understanding of or inability to comply with accepted procedures, or any other disposition that may indicate a propensity toward improper behavior.
- G. Performance Indicators—as used in this general order, “performance indicators” are employee behaviors or conduct that correlate with or otherwise indicate present and future misconduct. Conduct which indicates an escalating risk of harm to the public, the agency, and/or the officer.
- H. Supervisory Officer (also known as a “Supervisor”)—a member of the Clinton Township Police Department assigned to a position requiring exercise of immediate supervision over the activities of other employees.

PROCEDURE

II. PERFORMANCE INDICATORS

- A. The Clinton Township Police Department recognizes the following performance indicators and uses them to determine whether to activate the ‘*Early Warning System*’:
 - 1. Three (3) internal affairs complaints against the employee in twelve (12) months, whether initiated by another employee or by a member of the public.
 - 2. Civil actions filed against the employee,
 - 3. Criminal investigations of, or criminal complaints against, the employee,¹
 - 4. Three (3) use of force incidents by the officer in twelve (12) months,

¹ However, if activation of the ‘*Early Warning System*’ could jeopardize an ongoing criminal investigation, the Hunterdon County Prosecutor may, in his or her discretion, permit delayed initiation of the ‘*Early Warning System*’.

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5. Any use of force by the officer that is formally determined or adjudicated (e.g., by internal affairs investigators, a grand jury, etc.) to have been excessive, unjustified, or unreasonable,
 6. Domestic violence investigations in which the employee is the accused (as opposed to the victim),
 7. An arrest of the employee,
 8. Sexual harassment claims against the employee,
 9. Two (2) vehicular collisions involving the employee in twelve (12) months that are formally determined to have been the fault of the employee and that involve a government-owned vehicle or that occurred while the employee was actively performing official duties.
 10. A positive drug test by the officer.
 11. Three (3) vehicular pursuits by the officer in twelve (12) months,
 12. Three (3) incidents of cases or arrests by the officer being rejected or dismissed by a court in twelve (12) months.
 13. Three (3) incidents in which evidence obtained by an officer is suppressed by a court in twelve (12) months,
 14. Three (3) incidents of insubordination by the employee in twelve (12) months,
 15. Three (3) incidents of neglect of duty by the employee in twelve (12) months,
 16. Three (3) incidents of tardiness by the employee in twelve (12) months,
 17. Two (2) unexcused absences by the employee in twelve (12) months,
- B. If one incident triggers multiple performance indicators, that incident shall not be counted multiple times but, rather, shall count as only one (1) performance indicator.
- C. In addition, the above-listed performance indicators may be supplemented based upon the Clinton Township Police Department's unique characteristics and/or the community it serves.
- D. To the extent possible, supplemental performance indicators should be objectively measurable and reasonably related to potentially escalating harmful behavior by the officer.

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- E. For more information, see the New Jersey Attorney General's '*Internal Affairs Policy & Procedures*' guidelines, as revised (November 2017).

III. MANAGEMENT'S RESPONSIBILITIES: TRACKING AND ADMINISTRATION

- A. Supervisors shall track departmental reports and incidents in an effort to identify officers who may display the requisite number of performance indicators necessary to trigger the '*Early Warning System*'.
- B. The Clinton Township Police Department is small enough that supervisors and the Internal Affairs Officer can track employee behavior by:
 - 1. Reviewing the incidents reported in the records management system every single day,
 - 2. Reviewing their subordinates' performance evaluations, mid-year appraisals, and any other performance-related notes; even verbal communications with the subject employee's immediate supervisor, and
 - 3. In the case of the Internal Affairs Officer, reviewing the Internal Affairs Index.
- C. Immediate Supervisor's Responsibilities
 - 1. All levels of supervision, including first-line supervisors, are expected to recognize at-risk employees, identify training needs for those employees, and provide them with consistent and fair professional support.
 - 2. Supervisors shall fully document all incidents involving potential performance indicators. Supervisors who fail to document such incidents shall be subject to discipline.
 - 3. Emphasis shall be placed on stopping improper behavior before it escalates.
 - 4. Once the '*Early Warning System*' has been activated, supervisors shall perform all other duties as required by this general order.
- D. Division Commanders' Responsibilities
 - 1. The Division Commanders (the Administrative Division, Investigative Division, and Operations Division Commanders) shall serve as the coordinators of the '*Early Warning System*'.
 - 2. As stated, the Division Commanders shall be responsible for conducting daily reviews of agency records for performance indicators.

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3. The Division Commanders may bring any pattern of behavior that may signify a need for intervention to the attention of the Chief Executive Officer.
4. Once the '*Early Warning System*' has been activated, Division Commanders shall perform all other duties as required by this general order.
5. The '*Early Warning System*' shall be evaluated by the Division Commanders periodically to determine the program's effectiveness and to provide a method to implement necessary changes.

E. Internal Affairs Officer's Responsibilities

1. In addition to periodic reviews of the '*Early Warning System*' by the Division Commanders, the Internal Affairs Officer shall query the '*Early Warning System*' and review an employee's history any time a new complaint is made.
2. Using this information and their experience, Internal Affairs investigators may identify employees in need of intervention even before such is indicated by the '*Early Warning System's*' ongoing data review.

IV. NOTIFICATIONS/REPORTING AN ACTIVATION OF THE EARLY WARNING SYSTEM

- A. If a review or query indicates a possible need to activate the '*Early Warning System*,' the Division Commanders shall forward an initial report to the Chief Executive Officer within ten (10) days after identifying targeted indicators.
- B. The report shall contain the identity of the employee exhibiting the behavior(s), the date(s) of the event(s), and a brief description of the incident(s).
- C. The Division Commanders shall meet with the subject employee's immediate supervisor to notify him or her of the activation of the '*Early Warning System*,' as well as to gather additional information about the employee.
- D. The subject employee's immediate supervisor shall provide all necessary input and any other assistance requested by the Division Commanders.
- E. The subject employee's immediate supervisor shall keep the activation of the '*Early Warning System*' confidential until such time as the Division Commanders have had the opportunity to notify the subject employee.
- F. Unless notification would jeopardize an ongoing investigation, the Division Commanders shall formally notify the subject employee in writing that the '*Early Warning System*' has been activated.

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- G. The Internal Affairs Officer shall also be notified when the '*Early Warning System*' is activated.

V. EARLY WARNING SYSTEM MEETINGS

- A. Upon approval of the Chief Executive Officer, a meeting shall be held with the subject employee, the subject employee's immediate supervisor, the Division Commanders, and the Chief Executive Officer.
- B. Prior to the meeting, the Division Commanders and the Chief Executive Officer shall review all relevant information for the purpose of initiating a course of remedial action designed to interrupt the emerging pattern of behavior.
- C. '*Early Warning System*' meetings shall be conducted to inform the employee that they have been identified by the '*Early Warning System*,' why they have been identified, and that the meeting(s) per se are to be facilitative and non-disciplinary in nature.
- D. '*Early Warning System*' meetings shall result in the collective determination regarding the best course of action for correcting the subject employee's conduct.
- E. Such determination shall be made by the Chief Executive Officer with input from the subject employee, the employee's immediate supervisor, and the Division Commander(s).

VI. REMEDIAL ACTIONS

- A. Once an officer has displayed the requisite number of performance indicators necessary to trigger the '*Early Warning System*,' appropriate remedial action shall be initiated.
- B. Appropriate remedial action may include but is not limited to:
 - 1. Informal counseling/guidance by employee's immediate supervisor, with subsequent monitoring,
 - 2. Formal counseling,
 - 3. Intensive supervision based upon adherence to a '*Performance Improvement Plan*,' with reviews and reports,
 - 4. Referral to the Clinton Township Police Department's health care professional,
 - 5. Voluntary or mandatory referral to the Clinton Township Police Department's '*Employee's Assistance Program*' and/or mental health professional (see the Clinton Township Police Department's '*Employee Assistance Program*' general order at Volume 2, Chapter 14),

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6. Mandatory remedial or additional training designed to improve the employee's skills,
 7. Physical fitness-for-duty examination,
 8. Psychological fitness-for-duty examination,
 9. Discipline, as administered in conformance with all internal affairs written directives,
 10. Other applicable remedial action as determined by the employee, the employee's immediate supervisor, the Division Commanders, and the Chief Executive Officer.
- C. The Chief Executive Officer always has the prerogative to notify the Internal Affairs Unit and initiate an internal investigation.
- D. Internal disciplinary action, remedial action, and fitness-for-duty examinations are not mutually exclusive and shall be jointly pursued if and when appropriate.

VII. PSYCHOLOGICAL SERVICES PROCESS

- A. If an employee is referred for psychological services, the services shall begin with the administering of diagnostic tests to confirm that the employee requires psychological treatment.
- B. Treatment shall be administered upon the advice of the counselor and with the approval of the Chief Executive Officer.
- C. The Chief Executive Officer, the counselor, and the employee's immediate supervisor may review the recommendations of the counselor as to the placement and status of the employee.
- D. If an employee is terminated as a result of his or her inability to regain acceptable job performance, the employee's psychological treatment record shall be placed in the employee's personnel file.
- E. If an employee regains acceptable job performance, the record of referral shall remain in the files of the Chief Executive Officer and those of the psychological services only.

VIII. REPORTING REQUIREMENTS

- A. A follow-up report shall be submitted to the Chief Executive Officer regarding the form of intervention employed.

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- B. If the review indicates that there is no employee misconduct and that further action is unwarranted, this conclusion shall be documented.
- C. All employee-supervisor meetings shall be thoroughly documented and forwarded to the Chief Executive Officer.
- D. The subject employee and his or her immediate supervisor shall meet on a regular basis, minimally monthly for three (3) months, to monitor progress toward the agreed-upon goals and objectives.
 - 1. All regular monthly progress/status reports shall be submitted.
 - 2. All reports shall be forwarded to the Chief Executive Officer for review.
- E. These reports have the same confidential status as Internal Affairs documents and are subject to the same disclosure and retention regulations and guidelines.
- F. No entry shall be made in the employee's personnel file unless the action results in disciplinary action.

IX. JOB SECURITY AND INTERNAL CONFIDENTIALITY

- A. Any statement made by the subject employee in connection with the '*Early Warning System*' may not be used against the subject employee in any disciplinary or other similar proceeding.
- B. In matters involving "doctor-patient" communications, the applicable law shall dictate confidentiality parameters.
- C. Due to the nature of the '*Employee Assistance Program*,' a counselor may disclose a general opinion/recommendation relating to an employee's continued performance.
- D. Job security and promotional opportunities shall not be jeopardized by an employee's participation with a counselor.
- E. However, failure to correct deficiencies in job performance may eliminate promotional consideration or jeopardize continued employment.

X. NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER

- A. If any employee who is or has been subjected to the '*Early Warning System*' applies to or accepts employment at a different law enforcement agency, the Clinton Township Police Department shall notify the prospective or subsequent employing law enforcement agency of the employee's '*Early Warning System*' history and outcomes.

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- B. Upon request, the Clinton Township Police Department shall share the employee's *'Early Warning System'* files with the subsequent employing agency.

XI. NOTIFICATION TO THE HUNTERDON COUNTY PROSECUTOR

- A. Upon initiation of the *'Early Warning System,'* the Chief Executive Officer shall make a confidential written notification to the Hunterdon County Prosecutor or his/her designee of the identity of the subject employee, the nature of the triggering performance indicators, and the planned remedial program.
- B. Upon completion of the *'Early Warning System'*, The Chief Executive Officer shall make a confidential written notification to the Hunterdon County Prosecutor or his/her designee of the outcome, including any remedial measures taken on behalf of the subject employee.
- C. By January 31st of each year, the Hunterdon County Prosecutor shall submit a report to the New Jersey Attorney General through the Division of Criminal Justice's *'Prosecutors' Supervision and Training Bureau.'*
- D. This report shall include a statement indicating those law enforcement agencies under the Hunterdon County Prosecutor's supervision that are in compliance with relevant *'Early Warning System'* directives and those that are not.

XII. PUBLIC ACCESSIBILITY AND EXTERNAL CONFIDENTIALITY

- A. This general order and all related written directives shall be made available to the public upon request.
- B. This general order shall be posted on the Clinton Township Police Department's website.
- C. Annual reports from the County Prosecutors to the Attorney General (as required by above) also shall be made available to the public upon request and shall be posted on the agency's website.
- D. All written reports created or submitted pursuant to this general order that identify specific officers are confidential and not subject to public disclosure.

All police procedures heretofore employed by the Clinton Township Police Department which conflict with this order are hereby rescinded. Supervisors shall be held accountable for the enforcement and application of this order. All members of the Clinton Township Police Department are required to follow this order as applicable. Violations of this order subject members of this agency to disciplinary action.