

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Kevin Allen
Director

April 4, 2006

Captain Charles Keohane
San Francisco Police Department
850 Bryant Street
San Francisco, CA 94103

Re: Early Intervention System (EIS) DGO Revisions

Dear Captain Keohane:

I am writing in regards to the Department's "discussion draft" of the new Early Intervention System (EIS)¹ Department General Order issued last week. While we are encouraged that the Department is focused on this crucial topic, we are troubled by several glaring weaknesses—beginning with the deletion of the Department's previous policy statement that emphasized that "misconduct complaints will be taken seriously." In light of the exhaustive negotiations between the ACLU and the Department on the early warning system (see DGO 3.19 dated 9/23/04) and the sophisticated Early Warning Systems now instituted in major cities under DOJ guidance, we strongly urge the Department to set aside the most problematic aspects of this current draft and instead adopt a system that is effective and transparent. Below I will address three of our agency's main concerns.

- **The Current Draft Has Omitted Key Risk Factors for Intervention.**

Over three years ago, the San Francisco Controller's Office called for a complete revision of the Department's Early Warning System. ("The current intervention triggering system lacks sufficient scope and detail to be effective."²) The Controller reviewed EWS best practices across the nation and specifically highlighted twenty risk indicators for EW intervention that were adopted by the Oakland Police Department pursuant to its Rider case settlement. Additionally, the Controller emphasized that the U.S. Department of Justice has incorporated sophisticated EWS in settlement agreements with police departments in Los Angeles, Cincinnati and Washington D.C. Relying upon this blueprint of risk factors, the ACLU conducted extensive negotiations with the Department throughout 2003 and 2004. By September 2004 the ACLU and the

¹ Note Early Warning System (EWS) and Early Intervention System (EIS) are terms used interchangeably to connote a data-based management system for reviewing police officer performance, identifying officers with recurring problems in dealing with citizens (e.g. frequent complaints), and providing an intervention designed to correct the officers' performance."

² Office of the Controller, Best Practices Review, April 2003, p. 9.

Department reached an agreement on a draft DGO that included **sixteen risk factors** for early intervention.

Under the Department's current draft, previous risk "indicators" have now been reclassified as "associated factors."³ For example, a criminal case not filed or dismissed because of officer misconduct is no longer an "indicator" for early intervention but is not classified as an "associated factor" that may "shed light on the identified threshold." Likewise, charges of resisting or obstructing a police officer or assault on a police officer have been reclassified as "associated factors" even though the Controller and best practices throughout the nation designate these cases as indicators. Moreover, under the Department's proposal, it is not clear what, if any point value, is assigned to "associated factors." It appears that certain "associated factors" such as a compliment or commendation could potentially serve to counter or cancel out risk indicators such as civilian complaints.

Equally problematic is the Department's deletion of significant risk factors that it had agreed to during negotiations with the ACLU. For example, the current draft no longer designates the following as "indicators" for early warning intervention: 1) any criminal arrests of and charges against SFPD members; 2) any granted Pitchess Motions or similar motions in Federal Courts; 3) all in-custody deaths or injuries not otherwise reported as a use of force incident; 4) oleoresin Capsicum (pepper spray) spray canister issuance; 5) officer's involvement in on-duty traffic violations; 6) all failures to appear, 7) emergency time off; and 8) all reports of civil financial claims such as bankruptcy, tax matters, and other liens if a member is transferring to or serving in the Vice/Narcotics Division.

The Department has provided no explanation for excluding the very "indicators" that are being used by the Department of Justice and other law enforcement agencies across the nation.

- **The Composition and The Ill-Defined Authority of the EIS Board Undermines the Goal of Early Intervention**

The current draft vests unlimited discretionary power to screen officer's entry into the Early Warning System. The "EIS Unit" is never defined; there is no information as to who comprises the EIS unit, who is in charge of the EIS Unit, how often it meets and to whom it reports. The EIS unit has the discretion to determine that even though a member "exceeds the stated thresholds...the information does not reveal a pattern of negative behavior and that corrective action is not necessary." There are no parameters provided as to how the EIS unit determines

³ Under the Department's latest version, some previous "indicators" have been converted to "associate factors"—a term vaguely described as "topics that may help shed light on the identified thresholds." This two-tier approach is vague and highly problematic because it lessens the value of "triggers" that the Department of Justice as well as other police departments have historically found significant as indicators for early warning intervention.

whether “information does not reveal a pattern of negative behavior and that corrective actions is not necessary.” (See SFPD Discussion Draft, pg. 4)

In addition, the EIS Unit appears to report to a Board that is comprised solely of police officers and a POA representative. Noticeably absent is any representative from the OCC, community organization or any other non-police stakeholders. Furthermore, only the POA is represented, not other labor organizations. More importantly, the role of a POA representative is diametrically opposed to the goals of the early warning system: POA representatives are specifically hired to defend and mitigate officer misconduct—not to detect it early on and prevent it reoccurrence and/or escalation.

Additionally, there are no provisions concerning the EIS Unit or the EIS Board that provide transparency and accountability to the Police Commission.

- **The Current Draft Limits the Police Commission’s Ability to Oversee the EIS System by Reducing the Department’s and the OCC’s Reporting Requirements.**


Under the previous Early Warning System, the OCC was required to report quarterly to the Police Commission those officers who had received three civilian complaints within six months and four civilian complaints within a year. Under the Department’s current draft, OCC’s reporting requirement has been altered; the OCC provides this list to the Department only.

The Department’s own reporting requirements to the Commission are vague. Risk Management is required to conduct an audit every six months that shall “evaluate the data entry system, the quality of supervisory evaluation, the outcomes of supervisory evaluations, and the quality of supervisory reviews.” These audits are to be presented to the Chief, OCC and Police Commission. However, nothing in the current proposal requires the Department to report to the Police Commission as to what officers have been identified as engaging in problematic behavior, the nature of such behavior, and what actions the Department has been taken to intervene.

In conclusion, the primary goals of revising the Early Intervention System were to increase transparency within the Department and to the Police Commission. This draft most assuredly decreases it.

I look forward to further discussing these issues with you so that we can implement an Early Intervention System that is of the highest quality.

Sincerely,



Samara Marion
OCC Attorney

cc: Chief Heather Fong, Police Commission, City Attorneys Molly Stump & Dorji Roberts, ACLU Police Practices Policy Director Mark Schlosberg

DISCUSSION DRAFT

EARLY INTERVENTION SYSTEM

I. POLICY

The San Francisco Police Department's members are its greatest asset. The Department has a responsibility to its members and the community to identify and assist members who show symptoms of job stress and /or personal problems. Such symptoms may be exhibited in problematic performance behaviors.

The San Francisco Police Department's Early Intervention System (EIS) is a structured system that identifies and manages behaviors that result in performance related problems by individual members. The intent of this system is to provide non-disciplinary intervention, whenever possible, to assist our members in their professional development in order to provide the highest level of service and professional conduct to the public.

It is the policy of the Department to provide for the protection and confidentiality of the EIS records maintained by the Department.

II. DEFINITIONS

EIS OR SYSTEM DEFINED. Early Intervention System.

INDICATOR DEFINED. Risk activities tracked in EIS that are given specific numerical value(s) to allow for a compilation scoring. This compilation score will be the basis for comparison of members within their peer group. Numerical values begin from the date of the first indicator entry and time is calculated on a rolling basis.

ASSOCIATED FACTOR DEFINED. Topics that may help shed light on the identified thresholds .

THRESHOLD DEFINED. Aggregate value(s) of indicators that would trigger EIS review. (Once the system has been in use, thresholds may be modified to make the best use of the analysis capabilities of the EIS system).

INTERVENTION DEFINED. A proactive management tool intended to improve the efficiency of individual members and the Department as a whole.

PERFORMANCE REVIEW DEFINED. A performance review, for the purposes of this order, is defined as an informal examination of all aspects of a member's work, with an emphasis on the manner in which the member performs job tasks and how that manner may contribute to EIS Indicator Entries.

COUNSELING DEFINED. For the purposes of this order, personnel counseling is defined as a process in which a command or supervisory officer meets with a member in a non-punitive setting to discuss the member's performance. Counseling sessions employ techniques designed to reinforce good performance, improve poor performance, and when appropriate, correct behaviors that precipitate or contribute to EIS Indicator Entries. The counseling defined in this order is intended to be a positive tool to assist members in reaching a higher level of effectiveness. Supervisors are encouraged to use counseling sessions to help improve communication with members.

TRAINING DEFINED. Training is a non-punitive tool used to make members more efficient by providing instruction and practice. Training can be in-house or outside training, specific to the needs of the member and the Department.

EAP/BSU REFERRAL DEFINED. Supervisory or self-initiated referral to Employee Assistance Program or Behavior Science Unit.

PERFORMANCE IMPROVEMENT PLAN DEFINED. A written performance improvement plan, agreed upon by the member, the reviewing supervisor and the member's commanding officer, is designed to reduce or eliminate identified behaviors that contribute to EIS Indicator Entries. A performance improvement plan must describe the behaviors to be addressed, actions designed to change those behaviors, measures to enable both the member and supervisor to gauge progress and a time-line for reaching the objective of changing, moderating or eliminating the behavior(s). The plan, once agreed to by member and supervisor, shall be placed in the member's PIP folder (or Personnel File). Once the time period of the plan has expired, the supervisor shall write a memorandum to the member's commanding officer describing the outcome of the plan and recommending further action, if warranted. Completed performance improvement plans shall be retained in the member's PIP folder for six months after completion and then forwarded to the Personnel Section for filing. If the member subject to the review does not have a PIP folder, the supervisor shall document the review in a memorandum to his/her Commanding Officer. Memoranda documenting such reviews shall be retained in a member's Personnel File.

REASSIGNMENT DEFINED. Placing a member, who has been identified as reaching a threshold, to another assignment as a means of intervention, for the welfare of the member and the Department.

POST INTERVENTION MONITORING DEFINED. Follow-up to determine the effectiveness of the imposed intervention(s) in reducing and/or eliminating negative behavioral patterns. Also, to reassess additional intervention needs and to ensure the facilitation of any additional intervention needs to further assist a member's success.

DISCIPLINE DEFINED. Punishment intended to correct inappropriate behavior. (For purposes of the EIS, cases will only be forwarded for discipline when intervention has been ineffective or when the member refuses to cooperate in the intervention process).

III. EARLY INTERVENTION SYSTEM TRACKING

The EIS shall identify and track the following indicators:

1. Use of force as required by DGO 5.01
2. Officer Involved Shootings
3. Officer Involved Discharges
4. OCC Complaints
5. MCD Complaints
6. EEO Complaints
7. Civil Suits
8. Tort Claims
9. On Duty Accidents
10. Vehicle Pursuits

The EIS shall also identify and track the following associated factors:

1. Citizen initiated compliments and commendations
2. Department commendations and awards
3. Arrest by officers
4. Citations by officers
5. Motor vehicle stops
6. Pedestrian stops
7. Training history
8. Voluntary overtime worked
9. Discretionary time off
10. Sick Pay
11. Principal participant in a critical incident
12. Criminal cases not filed or dismissed due to documented concerns with a member's conduct by the District Attorney's Office.
13. Charges of resisting or obstructing a police officer
14. Charges of assault on a police officer

IV. EARLY INTERVENTION SYSTEM INDICATOR ENTRIES

The early intervention system is being established to identify and evaluate the behavior of members who have received:

- Five (5) or more EIS Indicator Points, or
- Three (3) or more citizen complaints within a six (6) month period, or
- Six (6) or more EIS Indicator Points, or
- Four (4) citizen complaints within a year, or
- Three (3) or more documented uses of force as mandated in Department General Order 5.01, or
- Are involved in an officer involved shooting or discharge.

Indicators tracked in the system are given specific points to allow for a compilation scoring. This compilation score will be the basis for comparison of members within similar job assignments, based on variance from the mean.

If a member is involved in an incident where multiple points could be accrued, only the highest point value will be counted.

Initially, thresholds will be set at one (1) standard deviation, however, once the system has been in use, thresholds may be modified to make the best use of the analysis capabilities of the system.

EARLY INTERVENTION PERFORMANCE REVIEW. The Early Intervention System involves a two-step approach. The EIS Unit will conduct an initial performance review of members who exceed the stated thresholds. The EIS Unit may determine that the information does not reveal a pattern of negative behavior and that corrective action is not necessary. Conversely, the EIS Unit may determine that a pattern exists, or may exist, and will electronically forward the name(s) of the member(s) to the respective commanding officer, who shall ensure that the member's supervisor engage in a performance review and intervention with the member. Further, the commanding officer shall ensure that the supervisor electronically transmit a report within 21 days to the EIS Unit, indicating that intervention has taken place. The supervisor shall continue to monitor the member's performance after the intervention has taken place, and transmit a follow-up report at three months and at one year after the initial intervention.

On a quarterly basis, the EIS Unit will forward the names of members, indicator and associated factor information, and supervisor's performance review documentation, to the Deputy Chief of Administration for EIS Board review.

V. EIS PANEL BOARD MEMBERS

The Deputy Chief of Administration is responsible for the operation of the EIS and for reports to the Chief of Police and the Police Commission.

The Deputy Chief of Administration shall serve as Chairperson for the EIS Board.

The EIS Board will consist of the following individuals.

Deputy Chief of Administration (Chairperson)
Captain of Risk Management
Captain of the Training Division
Officer in Charge of the EIS Unit
Police Officers' Association representative
Officer in Charge of the EAP/BSU Unit

The board will meet on the first Wednesday of every quarter at 1000 hours at the Hall of Justice, Room 505, to review information for those members who have attained the thresholds for the previous quarter.

The main purpose of the board's quarterly meetings will be to:

- Deliberate on files presented by the EIS Unit, for those members who have attained the threshold and there appears to be a pattern of negative behavior.
- Report its recommendations to the member's commander/deputy chief.
- Recommend additional intervention in the form of training, professional counseling, supervisory counseling, and policy revisions for those members where initial intervention has been ineffective.
- Review and make recommendations based on identified patterns of successes or ineffectiveness resulting from intervention efforts of supervisors and commanding officers.
- Review and make recommendations when a supervisor fails to conduct a performance review or initiate intervention when required to do so.

Additionally, the board will be responsible for:

- Overseeing all interventions performed under the auspice of the EIS program.
- Determining future direction, needs and development for the EIS program.
- Discussing modifications to the EIS.
- Reviewing new trends and thresholds as recommended by the EIS administrative staff.
- Reviewing quarterly and annual reports prepared by the OIC of the EIS Unit.

The Chairperson may designate a replacement in his/her absence. The number of board members needed for a quorum will be four.

VI. PROCEDURES FOR INTERVENTION

EIS PROCEDURES. On a daily basis, the EIS Unit will review the system to determine if any member(s) has attained a threshold. The EIS Unit will review the indicators and associated factor information to determine if it appears that a pattern of negative behavior

exists. When a pattern appears probable, the EIS Unit will electronically transmit the information to the member's commanding officer, for review and intervention. On a quarterly basis, the EIS Unit will forward names of members and related information to the EIS Board, through the Chairperson, for review of interventions that have occurred and for determination as to whether additional intervention appears warranted. Also, on a quarterly basis, the EIS Unit will provide the names of members who have attained a threshold to the Captain of Risk Management. The EIS Unit will provide quarterly and annual statistical reports to the Deputy Chief of Administration.

OCC PROCEDURES. On a daily basis, the Office of Citizen Complaints will input new complaint information into the system in order for the EIS Unit to accurately track indicator entries and threshold issues. On a weekly basis, OCC will forward the names of members who have received any complaints to the member's commanding officer. Quarterly, OCC will compile a list of officers who have received three citizen complaints within a six month period or four or more citizen complaints within a year. The report will be forwarded to the Commanding Officer of the Risk Management Office. (Although this reporting may appear to be duplicative, it will aid in verification by cross-referencing with the EIS database). For purposes of any second or third referral under this order, no citizen complaint that was filed more than two years prior to the current quarter shall be counted or included in the OCC's Quarterly Report.

RISK MANAGEMENT OFFICE PROCEDURES. Upon receipt of the EIS and the OCC Quarterly Reports, the Commanding Officer of the Risk Management Office will prepare a memorandum to the Chief of Police identifying members who fall within the provisions of the EIS as outlined in section I (D) of this order. A copy of the memorandum shall be sent to the member's deputy chief and commander, if applicable. Another copy shall also be sent to the member and to the member's commanding officer, along with copies of the records creating the EIS Tracking Indicators and underlying information. For purposes of any second or third referral under this order, no EIS Tracking Indicator that was filed more than two years prior to the current quarter shall be counted or included in the Risk Management Office's Quarterly Report.

DUTIES OF COMMANDING OFFICERS AND SUPERVISORY OFFICERS

Commanding Officers shall ensure that supervisors input data into the system by the end of their tour of duty in order to track indicator entries and threshold levels. (Refer to DM 17, EIS Manual)**

On a daily basis, supervisors shall review the EIS system for members under their supervision. Based on the information in the EIS system and their knowledge of the members' work performance, a supervisor may initiate a counseling session prior to a threshold being attained. Members on loan or special assignment will be tracked with their currently assigned supervisor and their regularly assigned supervisor.

Commanding officers shall review electronically transmitted information sent by the EIS Unit for members under their command who have attained thresholds and promptly assign these reviews to the appropriate supervisor(s).

Command and supervisory officers are encouraged to initiate performance reviews and counseling sessions with members under their command whenever they deem it appropriate. Information developed in counseling sessions may not be used in any future disciplinary proceedings and shall not be considered as discipline; however, the fact that a counseling session took place may be considered. Counseling sessions should be recorded in the member's PIP binder (or personnel file) after the member has been given an opportunity to review and sign the documentation.

INITIAL REFERRAL-PERFORMANCE REVIEW.

- i.* If the Commanding Officer is not familiar with the member subject to review due to a recent transfer, the Commanding Officer's superior officer shall determine whom to assign the Performance Review. The Officer in Charge of the EIS Unit shall be notified of any changes in assignment of a Performance Review.
- ii.* Commanding Officers shall review the EIS's Unit and Risk Management Office's Quarterly Report with the member's supervisor.
- iii.* If the member has attained any of the thresholds, and the EIS Board determines that intervention is appropriate and has not occurred, the member's supervisor shall immediately conduct a performance review with the officer and note the occurrence of the review in the member's PIP folder at Section II - Record of Entry, as well as transmit an electronic reply through the EIS System.
- iv.* If the member subject to the review does not have a PIP folder, the supervisor shall document the review in a memorandum to his/her Commanding Officer. Memoranda documenting such reviews shall be retained in a member's Personnel File.
- v.* Commanding officers shall, within 21 days of receipt of an EIS referral for a member of their command, certify that the required performance reviews have been completed and that the information has been electronically transmitted to the Officer in Charge of the EIS Unit.

SECOND REFERRAL-PERFORMANCE REVIEW SESSION. A second performance review session shall be held with any officer who has had one review but receives one or more additional EIS Indicator Entries within a six (6) month period after the Initial Referral – Performance Review . This session shall be conducted by both the member's supervisor and commanding officer within 21 days of the referral from the EIS Unit.

- i.* When conducting this second performance review session, commanding officers and supervisors shall review Quarterly Reports along with the member's EIS Indicator and associated factor history for the last five years.
- ii.* The member, the member's commanding officer and the member's supervisor shall jointly develop, in the course of this performance review session, a performance improvement plan in order to reduce or eliminate behaviors on the part of the member that may contribute to unnecessary conflicts. The plan shall be agreed to by the member and signed by the member, the supervisor, and the commanding officer. The original of the plan shall be placed in the member's PIP folder. Any member subject to a second referral, who refuses to assist in the development of a performance improvement plan or declines to sign the plan, shall be immediately referred to a counseling panel.
- iii.* If the member's complaint history indicates similar conduct, as reported in the Quarterly Reports, a behavior pattern may be evident. If the member's PIP file documents any prior corrective action or failed performance plans, the matter shall be immediately referred to a counseling panel (~~see III. C. 4 below~~ new formatting will address area) so that a comprehensive plan can be developed to correct the behavior.

THIRD AND SUBSEQUENT REFERRALS- COUNSELING SESSION/
COUNSELING PANEL. Whenever a third counseling session is warranted, the matter will be examined by a counseling panel composed of the member's supervisor, Commanding Officer, Deputy Chief or Commander, the Officer-in-Charge of the Management Control Division and the Commanding Officer of the Risk Management Office. The panel will review the member's EIS Indicator and associated factor history and recommend a course of action in writing to the Chief of Police. Upon the Chief's approval, the action plan shall be initiated; a copy of the plan shall be included in the member's PIP folder (or Personnel File).

If intervention has been ineffective and/or a member fails to comply with the action plan, the EIS Board shall review the intervention strategies used and determine if other intervention is appropriate. In cases where the member has been non-compliant with the intervention process, the Board may make a recommendation to the Chief of Police that an administrative investigation be initiated.

PIP BINDERS (See PIP, A Supervisor's Guide, DM-06). Supervising officers are required to review citizen complaints as they are received, notify the involved member that a complaint has been filed against him or her, and file the complaint in the member's PIP binder.

VII. BEHAVIOR FACTORS

When conducting a performance review or a counseling session, the following should be considered:

- a. Whether or not the EIS Indicator Entries have been investigated or sustained, is there a behavior pattern that may be causing these EIS Indicator Entries?
- b. How does the EIS Indicator history of the member compare with other members in similar assignments?
- c. Can EIS Indicator Entries be reduced by simply informing the member of Department policies and procedures?
- d. Can better interpersonal skills be developed?
- e. Can formal or informal training correct the problem?
- f. Are the details of the EIS Indicator Entries and the allegations so different as to suggest that there is no improper behavior pattern?
- g. Is there any other relevant information about the member or the circumstances that contributes to the number of EIS Indicator Entries?
- h. Is there a common thread of conduct in separate EIS Indicator Entries that seems to point to a personality trait that may be contributing to the frequency of EIS Indicator Entries?
- i. In addition to the other options provided in this order, supervisors may make referrals to the Employee Assistance Program or other intervention programs available to Department members (see DGO 11.09, Employee Assistance Program/Stress Unit).

UNFOUNDED COMPLAINTS. Unfounded complaints shall not be counted or included in OCC quarterly reports or EIS quarterly reports.

VIII. OVERSIGHT OF THE EARLY INTERVENTION SYSTEM.

1. Each Deputy Chief is responsible for ensuring that his or her subordinates adhere to the provisions of this order. If the Deputy Chief determines that a supervisor has not complied with the requirements of this order, the supervisor, and the supervisor's commanding officer will be subject to disciplinary actions. In addition, the commanding officer may be required to prepare a plan to bring the unit into compliance.

2. The Commanding Officer of the Risk Management Office is responsible for conducting audits every 6 months of the early intervention system. Such audits shall evaluate the data entry system, the quality of supervisory evaluations, the outcomes of supervisory evaluations, and the quality of supervisory reviews. Audits shall be presented to the Chief of Police, the OCC, and the Police Commission.

IX. REPORTS

1. The EIS Unit will provide quarterly and annual statistical reports to the Deputy Chief of Administration.
2. The Deputy Chief of Administration shall review the reports and provide this statistical information to the Chief of Police and the Police Commission.

References

DGO 1.04, Duties of Sergeants

DGO 1.06, Duties of Superior Officers

DGO 2.04, Citizens Complaints against Officers

DGO 11.09, Employee Assistance Program/Stress Unit

**DM 17 EIS Procedures (this is currently not in existence)