

Early Identification and Intervention Systems:

Legal Considerations



Police Department

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Definition

An Early Identification and Intervention System (also known as Early Warning System) is a personnel management tool designed to identify individual or group performance problems at the earliest possible stage so that intervention can be made to re-direct work performance toward organizational goals.

(Amendola 2003)

Legal Issues: The U.S. Department of Justice

- The U.S. Department of Justice, Civil Rights Division (established 1957) is responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin.
- The Division is currently headed by **Assistant Attorney General Wan J. Kim.**

U.S. DOJ Civil Rights Division

- The Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of violating citizens' federal rights and to seek "equitable and declaratory relief to redress a pattern or practice of illegal conduct by law enforcement agencies."

Federal Law

Under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C., Sect. 14141):

State and Local Law Enforcement are prohibited from engaging in a “pattern or practice” that deprives citizens of rights (regardless of whether or not discrimination has occurred).

How is it Enforced?

- The Division's Special Litigation Section, headed by **Shanetta Y. Cutlar**, enforces the Police Misconduct Provision of the Violent Crime Control and Law Enforcement Act of 1994.
- The Special Litigation Section also gets its authority from the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964 which prohibits discrimination by police departments that receive federal funds.

Special Litigation Section

- Takes a cooperative approach to resolve cases.
- Works closely with various sections in the Division, the Office of Justice Programs, and the FBI in the Department-wide efforts to combat police misconduct.

Actions of the DOJ, Civil Rights Division, Special Litigation Section

- Investigate police department by interviewing police officials and witnesses of alleged wrongdoing, reviewing records, and evaluating practices.
- Develop remedies to address deficiencies.
- Monitor remedies.
- Enter into settlements:
 - Memoranda of Agreement
 - Consent Decrees

U.S. Department of Justice Investigative Processes

Complaints -- *complaints filed in federal court initiating lawsuits*

Investigative Findings -- *letters notifying jurisdictions of the results of investigations*

Briefs -- *selected briefs filed in federal court*

Settlements and Court Decisions--
settlements resolving cases and decisions by federal courts in litigation

Results of Investigations

1. Terminate investigation without litigation.

Usually when the city has taken positive steps to remedy situation warranting investigation.

2. Enter into Memorandum of Agreement

A legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities

3. Enter into a Consent Decree.

An agreement between two parties that is sanctioned by the court; for example, a company might agree to stop certain questionable practices without admitting guilt.

What Precipitates a DOJ Investigation?

- Allegations (often brought by civil rights organizations)
- Invitations: Mayor and/or Chief
- Major events: Riots (i.e. Cincinnati)

CURRENT INVESTIGATIONS **by the U.S. Department of Justice**

ALL IN 2004

- **Alabaster, AL**
- **Bakersfield, CA**
- **Beacon, NY**
- **U.S. Virgin Isles**

RECENT INVESTIGATIONS by the U.S. Department of Justice

ALL IN MARCH, 2003

- **Miami, Florida**
- **Schenectady, New York**
- **Portland, Maine**
- **Cleveland, Ohio (7/02)**

Consent Decrees

- *Steubenville, Ohio (1997)* -- for excessive force, false arrests, improper searches and seizures, and related management failures
- *Pittsburgh, Pennsylvania (1997)*-- same allegations as for Steubenville
- *State of New Jersey (1999)*--primarily racial profiling
- *City of Los Angeles (2001)*--most comprehensive EWS requirements

Consent Decrees

- *Detroit, Michigan (2003)* -- for excessive force, false arrests, improper searches and seizures, and related management failures

Memoranda of Agreement

- *City of Buffalo, New York* (2002)
- *City of Cincinnati, Ohio* (2002)-- separate agreements focus on UOF, canine bites, intervention, and an independent monitor
- *City of Villa Rica, Georgia* (2003)

Primarily traffic stops, searches/seizures:

- *Montgomery County, Maryland* (2000) -- included FOP in settlement agreement)
- *Village of Mount Prospect, Illinois* (2003)

Memoranda of Agreement

- City of Highland Park, Illinois (2001) -- pursuant to U.S. District Court consent decree with private plaintiffs for racial profiling
- Metropolitan Police, Washington, DC (2001) -- investigation was requested by Mayor Williams and Chief Ramsey

Typical DOJ Mandates

- Modify policy on use of force and improve documentation (including less lethal and canine)
- Improve policy and reporting on pursuits
- Clarify policy on misconduct
- Develop risk management system incorporating early identification and intervention program (e.g. Pittsburgh)
- Collect and analyze stop data to assess profiling by race and ethnicity
- Fully utilize in car video and audio tapes

Typical DOJ Mandates

- Improve training
 - Use of force/firearms
 - Supervisory
- Review IA staffing, training, and equipment needs
- Improve citizen complaint filing procedures and investigations
- Review disciplinary practices
- Modify search/seizure practices

NOTE: The focus is on civil rights/liberties

TYPICAL DOJ MANDATES FOR EWS

- **Complaints**
- **Force (lethal/non-lethal)**
- **Searches/Seizures**
- **Civil Lawsuits**
- **Arrests/Citations**
- **Stops**
- **Unit Comparisons**
- **Demographics of Involved Citizens**
- **Positive Indicia**

ROLE OF UNIONS

- Columbus, OH (1999)
 - City leaders, DOJ, the Urban League, and the NAACP endorsed it. However, UNION not involved. Capital City Lodge of the FOP had collective bargaining agreement requiring union endorsement before the city could sign the decree and it refused. Averted decree. Argued on basis that 3 cases do not render it a “pattern or practice.”
- Montgomery County, MD
 - Entered into a settlement agreement with the county and the Fraternal Order of Police (FOP) to resolve the Section's administrative investigation, in which the Section found discriminatory traffic enforcement practices and problems with training, supervision, complaint investigation, and discipline in January 2000.

ROLE OF UNIONS (cont' d)

- Los Angeles, CA (2002)
 - The Ninth Circuit Court of Appeals ruled that the LA Police Protective League had the right to intervene in legal proceedings concerning departmental reform due to a previously bargained-for contract.
 - The U.S. District Judge who approved the Consent Decree by the DOJ previously denied motions brought the LAPPL and the ACLU Foundation.
 - KEY: Cannot marginalize officers who have acquired certain rights. They need to be at the table.

Conclusions

- DOJ has the authority to investigate law enforcement agencies.
- The process of a DOJ investigation is burdensome on the agency.
- Concerns typically fall into the areas of pursuits, use of force, profiling, training, and complaint procedures.
- Size of the agency does not matter in terms of who is targeted for investigation.
- Agencies should bring the unions to the table.
- EIIS should include UOF, stops, complaints, arrests, and more.

Sources: Web links

www.usdoj.gov

[/crt/split/overview.htm](http://www.usdoj.gov/crt/split/overview.htm)

[/crt/split/documents/policespeech.htm](http://www.usdoj.gov/crt/split/documents/policespeech.htm)

[/crt/split/police.htm](http://www.usdoj.gov/crt/split/police.htm)

[/crt/split/policestat.htm](http://www.usdoj.gov/crt/split/policestat.htm)

[/crt/split/findsettle.htm](http://www.usdoj.gov/crt/split/findsettle.htm)

[/crt/split/whatsnew_p2.html](http://www.usdoj.gov/crt/split/whatsnew_p2.html)