



KERN COUNTY PROBATION DEPARTMENT

Policies And Procedures

TITLE: Pre-Disposition Settlement Agreement (PDSA)		Article: 1406.02	
APPROVED: TR Merickel, Chief Probation Officer			
EFFECTIVE: September 2019	REVIEWED:	REVISED:	UPDATED:

I. POLICY

The Kern County Probation Department recognizes that accountability and discipline are essential elements of the law enforcement profession. It is recognized that occasions exist where both the Probation Department and an employee who is the subject of an investigation may benefit from a prompt, mutually-agreed upon resolution to specific disciplinary matters. Pre-disposition settlement agreements (PDSA) offer the following benefits over traditional full investigations:

- A. The matter is resolved relatively quickly, and the subject employee is able to put the matter behind him/her.
- B. Less investigatory time and effort is required.

II. ELIGIBILITY

This policy is therefore enacted in order to establish policies and procedures relevant to pre-disposition settlement agreements. A pre-disposition settlement agreement is an alternative to a full disciplinary investigation to be employed only under specific, limited circumstances as described in this policy.

Pre-disposition settlement agreements may be utilized in lieu of a full investigation only under the following circumstances:

- A. The subject employee readily acknowledges his/her error, accepts responsibility for his/her conduct and desires the matter to be rapidly resolved.
- B. The allegations, if sustained, would not result in a termination of employment.
- C. The allegations do not involve sexual or discriminatory harassment.
- D. The subject employee agrees to forego a full investigation and agrees to all conditions of the PDSA.
- E. The involved Deputy Chief and Probation Division Director concur that the PDSA is an appropriate remedy to the allegations.

III. PRE-PDSA MEETING PROCEDURES

Prior to sending any investigations to the Administrative Services Probation Division Director, the Deputy Chief Probation Officer assigned to oversee Administrative Services will evaluate the allegations to determine if it meets the criteria of a PDSA.

Upon becoming aware of any PDSA-eligible personnel matters under his/her bureau, the Deputy Chief will evaluate the allegations and authorize a PDSA or recommend an investigation through the normal investigative procedure: ie: Divisional or Administrative Investigation. Upon authorization of the PDSA, the Administrative Services Probation Division Director will log the allegation as PDSA eligible and forward the information to the subject employee's Probation Division Director. The information will generally contain: the PDSA authorized information, the employee's personnel file and additional relevant information as appropriate.

A. The Probation Division Director will:

1. Review the allegations and make him or herself aware of the facts of the matter and any mitigating or aggravating factors that may exist.
2. Develop a proposed disciplinary action based on the facts of the case and past practice.
3. Present the proposed discipline for Deputy Chief approval.
4. Once the appropriate discipline has been agreed upon, the Probation Division Director (or Assistant Probation Division Director-APDD in their absence) will personally contact the subject employee. Pursuant to Government Code 3303, the PDD will not ask the subject employee any questions regarding the complaint, but will:
 - a. Inform the subject of the allegations lodged against him/her.
 - b. Inform the employee of the nature of the allegations including approximate date, time and policy, procedure or law violated.
 - c. Inform the employee that the matter has been approved for a pre-disposition settlement agreement.
 - d. Provide the employee a copy of the PDSA notification letter.
 - e. Inform the subject employee that he/she has the right to refuse the PDSA and have the matter fully investigated and adjudicated pursuant to the Administrative Investigation process if he/she wishes.
 - f. Inform the employee that he/she has the right to consult with an attorney or representative before making any decisions regarding

the PDSA. The representative shall not be a person subject to, or involved in the investigation.

- g. Inform the employee that all matters resolved by PDSA require the subject employee to accept full responsibility for his/her misconduct and submit a responsibility memorandum. The memorandum must clearly acknowledge personal responsibility for the misconduct or policy violation alleged and must include a statement that outlines how the employee will ensure the errant behavior will not continue or be repeated.
- h. Inform the subject employee that the responsibility memorandum will be retained with the Administrative Investigations file and personnel file.
- i. Direct the subject employee to re-contact the PDD (or APDD in their absence) within 5 days with a decision on whether or not he/she wishes to pursue the PDSA.
 - a) If the employee wishes to pursue the PDSA, a PDSA meeting will be scheduled at a mutually convenient date and time pursuant to Government Code 3303.
 - b) If the subject does not want to pursue the matter through the PDSA or does not contact the PDD within the 5-day period, the matter will be returned for an Administrative Investigation.
 - c) Declining the PDSA or failing to contact the PDD within the 5-day period will have no negative affect on the investigation and is not a factor that prejudices the investigators or management in any way against the subject employee.

IV. PDSA MEETING PROCEDURES

- A. The affected Probation Division Director (or APDD in their absence) will conduct the PDSA meeting along with one other designee at his/her discretion. An audio recording will be made of the meeting and the employee has a right to a copy of the recording. The employee also has a right to record the meeting. The employee has the right to waive the PDSA and have the matter investigated through a full Administrative Investigation. The employee has a right to have a representative at the meeting, however, shall not be a person subject to, or involved in the investigation.
- B. The Probation Division Director will verbally present the proposed discipline to the employee. The PDD and the employee may discuss the proposed discipline, but the PDD will not interrogate the subject employee regarding any aspect of the allegations. Unless the employee immediately refuses the proposed discipline,

the PDD will prepare, and present to the subject employee, a written, but unsigned settlement agreement document containing the proposed discipline.

- C. The employee will be afforded a reasonable period of time, not to exceed 72 hours, to privately discuss the proposed discipline and the settlement agreement document with his/her representative or attorney, if the employee so desires.
- D. At the subject employee's discretion, the remaining actions may be conducted at the PDSA meeting, or at a later, mutually agreed upon time, not to exceed 72 hours after the employee receives the verbal presentation of the proposed discipline.
 - 1. If the employee agrees to the discipline, the employee will present his/her prepared memorandum of responsibility to the PDD.
 - 2. The PDD will review the employee's memorandum of responsibility and verify the memorandum meets the criteria established before signing the PDSA.
 - 3. The employee and the PDD will sign the PDSA settlement agreement. The PDD will add the original, signed PDSA document to the file, and it will be returned to the Administrative Services PDD.
 - 4. The PDD will cause the agreed upon discipline to be administered.

V. **MEMORANDUM OF RESPONSIBILITY**

The memorandum must minimally include the following:

- A. A description of the relevant incident.
- B. A statement accepting full responsibility for his/her misconduct as alleged in the complaint
- C. A statement explaining the specific actions the employee will take or has taken to ensure the errant behavior will not be repeated.

VI. **PDSA TERMINATION**

The employee has the right to terminate the PDSA process at any time prior to signing the PDSA document. If the meeting is aborted by the employee, the matter will be returned to the Administrative Services Division for investigation.

- VII. The entire PDSA settlement agreement and Memorandum of Responsibility will be maintained in the personnel file, if an employee participates in the PDSA process.