



## ***Kern County Sheriff's Office*** **Policies and Procedures**

<b>TITLE:</b>	<b>EMPLOYEE DISCIPLINE – PRE-DISPOSITION SETTLEMENT AGREEMENT</b>	<b>NO: D- 0700</b>	
<b>APPROVED:</b>	<b>Donny Youngblood, Sheriff-Coroner</b>		
<b>EFFECTIVE:</b> <b>November 22, 2010</b>	<b>REVIEWED:</b> <b>8/31/2017</b>	<b>REVISED:</b> <b>11/22/2010</b>	<b>UPDATED:</b> <b>8/31/2017</b>

### **POLICY**

The Kern County Sheriff's Office recognizes that good order and discipline are essential elements of the law enforcement profession. As such, the Kern County Sheriff's Office endeavors to hold its employees, sworn and non-sworn, to the highest standards of the police profession. An essential element of maintaining these standards and ideals is the imposition of discipline when an employee's conduct falls short of the standards established by the Sheriff's Office.

All disciplinary matters will be investigated and handled consistent with accepted investigative standards, the California Peace Officers Procedural Bill of Rights (Government Code 3300 et. seq.) as applicable, and current statutory and case law. If employee misconduct requires the imposition of disciplinary action, such disciplinary action shall be taken in an informed, reasonable, timely, fair, and uniform fashion, without compromising the mission of the Sheriff's Office.

It is recognized that occasions exist where both the Sheriff's Office and the subject of an investigation will benefit from a prompt, mutually-agreed upon resolution to specific, non-serious disciplinary matters. Pre-disposition settlement agreements offer the following advantages over traditional full investigations:

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

This policy is therefore enacted in order to establish policies and procedures relevant to pre-disposition settlement agreements.

### **DEFINITIONS**

A pre-disposition settlement agreement (PDSA) is an alternative to a full disciplinary investigation to be employed only under specific, limited circumstances as described in this policy.

## **DIRECTIVE A – ELIGIBILITY**

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

- The subject employee readily acknowledges his/her error, accepts responsibility for his/her conduct and desires the matter be rapidly resolved.
- The issue is not a serious policy violation.
  - Internal Affairs cases that, if sustained, could possibly result in a termination of employment or demotion are not eligible for a PDSA.
  - Allegations of sexual or discriminatory harassment or other serious violations of Sheriff's Office policy are not eligible for a PDSA.
- The subject employee agrees to forego a full investigation and agrees to all conditions of the PDSA.
- The involved bureau chief and division commander concur that the PDSA is an appropriate remedy to the disciplinary situation.

## **PROCEDURE A – PRE-MEETING PROCEDURES**

Prior to sending any complaint to a bureau chief for evaluation, the Internal Affairs Unit will evaluate the complaint to determine if it meets the criteria of a PDSA.

Upon becoming aware of any PDSA-eligible personnel complaint against a member under his/her command, the affected bureau chief will evaluate the complaint and authorize the complaint for a PDSA or order the complaint investigated pursuant to D-0200 or D-0300 as applicable. The Chief Deputy's decision will be indicated on the associated complaint documentation.

Upon receiving a PDSA-authorized complaint from a chief deputy, Internal Affairs Unit personnel will prepare a PDSA package and forward the package to the subject employee's division commander. The PDSA package will minimally contain:

- The PDSA authorized complaint.
- A summary of the subject employee's past and pertinent disciplinary history, if any.
  - Documents concerning any discipline stemming from an incident that occurred more than five years before the date of the PDSA authorized complaint will be excluded from the package.
- Additional relevant information as appropriate.

The division commander will:

- Thoroughly review the complaint and make him or herself aware of the facts of the matter and any mitigating or aggravating factors that may exist.
- Develop a proposed disciplinary action based on the facts of the case and past practice.
- Contact his/her bureau chief and present the proposed discipline for approval.
  - The bureau chief will evaluate the commander's proposed discipline and either authorize the discipline or suggest alternatives. In any case, PDSA disciplinary actions must have both the involved division commander and the chief deputy's approval before being presented to the subject employee.

D 0700-2

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- Once the appropriate discipline has been agreed upon, the division commander will personally contact the subject employee. Pursuant to Government Code §3303, the commander will not ask the subject employee any questions regarding the complaint, but will:
  - Inform the subject employee a complaint has been lodged against him/her.
  - Inform the employee of the nature of the complaint including approximate date, time, and policy, procedure or law violated.
  - Inform the employee that the matter has been approved for a pre-disposition settlement agreement.
  - Provide the employee a copy of the complaint and a PDSA notification letter.
  - 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 provisions of D-0200 or D-0300 as applicable if he/she wishes.
  - 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.
  - 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 in the complaint and must include a statement that outlines how the employee will go about ensuring the errant behavior will not be repeated.
  - Inform the subject employee that the responsibility memorandum will be retained with the Internal Affairs case file.
  - Order the subject employee to contact the commander or his/her designee within 5 business days with a decision on whether he/she wishes to pursue the PDSA.
    - 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.
    - If the subject employee fails to contact the commander or designee within 5 business days to schedule the PDSA meeting, the matter will be returned to the Internal Affairs unit for investigation and adjudication pursuant to D-0200 or D-0300 as applicable.

**PROCEDURE B – PDSA MEETING PROCEDURES**

The affected division commander will conduct the PDSA meeting in a manner that affords the subject employee all applicable rights pursuant to County and Sheriff’s Office Policies and Procedures and the Peace Officer Bill of Rights.

- The PDSA meeting will commence with the commander specifically telling the subject employee:
  - 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 the right to record the meeting.
  - The employee has the right to waive the PDSA and have the matter investigated pursuant to D-0200 and D-0300 as applicable.

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- The employee has the right to have an attorney or representative of her/his choice present during the meeting. This representative shall not be a person subject to, or involved in the investigation.
- The commander will verbally present the proposed discipline to the employee. The commander and the employee may discuss the proposed discipline, but the commander will not interrogate the subject employee regarding any aspect of the complaint. Unless the employee immediately refuses the proposed discipline, the commander will prepare, and present to the subject employee, a written, but unsigned, settlement agreement document containing the proposed discipline.
- 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.

At the subject employee's discretion, the remaining actions may be conducted during 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.

- If the employee agrees to the discipline, the employee will present his/her prepared memorandum of responsibility to the division commander.
- The commander will review the employee's memorandum of responsibility and verify the memorandum meets the criteria established in this policy before signing pre-disposition settlement agreement.
- The employee and the commander will sign the PDSA document. The commander will add the original, signed PDSA document to the case file and will cause the file to be returned to the Internal Affairs Unit. Internal Affairs Unit personnel will retain the case file consistent with County and Sheriff's Office policies.
- The division commander will cause the agreed-upon discipline to be administered.

**DIRECTIVE A- PDSA TERMINATION**

The employee has the right to abort 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 Internal Affairs Unit for investigation and adjudication pursuant to D-0200 or D-0300 as applicable.

**DIRECTIVE B- MEMORANDUM OF RESPONSIBILITY**

The subject employee may prepare his/her written memorandum of responsibility prior to the PDSA meeting, or after being verbally advised of the proposed discipline. The memorandum must minimally include the following:

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

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