INVESTIGATIONS
Criminal versus Administrative
Sheriff’s Department Oversight Board Meeting
March 1, 2024
Criminal Investigations

- To determine whether evidence about conduct supports criminal charges.
- Beyond a reasonable doubt.
- “No person… shall be compelled in any criminal case to be a witness against himself” or herself. (United States Constitution, 5th Amendment, 1791).
Administrative Investigations

- To determine whether evidence about conduct supports violations of policies, procedures, or laws.
- Preponderance of the evidence. *(Fukada v. City of Angels (1999) 20 Cal. 4th 805).*
- You (public safety officer) **do not** have the right to remain silent. *(Gov’t. Code Section 3303(e)).*
- Public employees **may be compelled** to cooperate. *(Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822).*
Compelled = Use Immunity

- Refusal subject to punitive action/discipline:
  - Admonished that information cannot be used in a criminal prosecution.
  - Use immunity.
- Immunized statements ➞ inadmissible in criminal proceedings.
Derivative Use Immunity

- Investigative leads, decisions, evidence, witness statements
  ➔ Evidence derived from compelled statement:
    - Claim of testimony under immunity – burden shifts to the government. *(Id. 461-462).*
    - Prosecution “heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources.” *(Id. 460-462).*
- Potentially taints all the evidence for a criminal prosecution.
Safeguards

- Start administrative interviews after criminal investigation. (Gov’t. Code Section 3304(d)(2)(E)).
- Create separate units / divisions:
  - SFSO 2014 – Investigative Services Unit (ISU) split:
    - Internal Affairs Unit (IAU); and
    - Criminal Investigations Unit (CIU).
- Intra-agency Firewalls.
- Separate Agencies.
- Fully develop each investigation.
Questions & Comments…

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