

# 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.
- “You have the right to remain silent...”  
(*Miranda v. Arizona* (1966) 384 U.S. 436).
- “No person... shall be **compelled** in any **criminal case** to be a witness against himself” or *herself*.  
(United States Constitution, 5<sup>th</sup> 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. 4<sup>th</sup> 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).

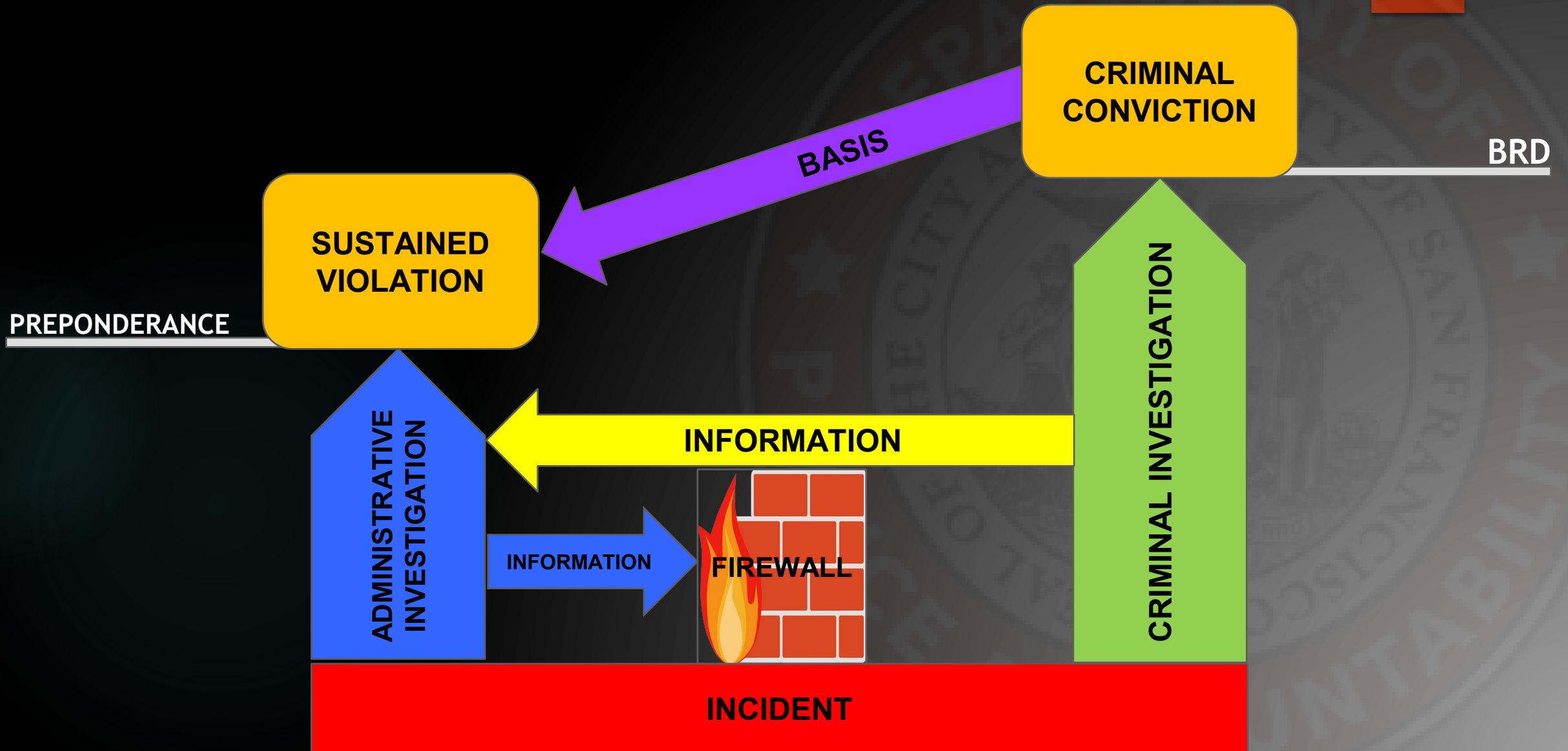
# Compelled = Use Immunity

- Refusal subject to punitive action/discipline:
  - Admonished that information cannot be used in a criminal prosecution.
  - Use immunity.  
(*Spielbauer v. Santa Clara* (2009) 45 Cal. 4<sup>th</sup> 704).
- Immunized statements → inadmissible in criminal proceedings.  
(*Garrity v. New Jersey* (1967) 385 U.S. 500).

# Derivative Use Immunity

- Investigative leads, decisions, evidence, witness statements
  - ➔ Evidence derived from compelled statement:
    - Inadmissible in criminal proceedings. (*Kastigar v. U.S.* (1972) 406 U.S. 441).
    - 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.

# Separate & Parallel Tracks

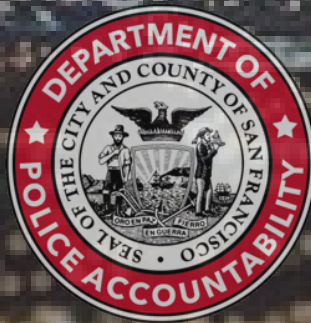




# Safeguards

- 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...



**Marshall Khine**

**Department of Police Accountability**

**Email: [marshall.khine@sfgov.org](mailto:marshall.khine@sfgov.org)**

**Phone: (415) 241-7711**