Administrative Investigations and Criminal Investigations

A basic comparison and overview by:

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Objectives:

General comparisons
  Burden of Proof
  Penalties
  Investigative focus
  Interviews/Interrogations
  Statements
  Report Writing
  Confidentiality
Parallel Investigations
  Garrity v. New Jersey (1967)
GENERAL COMPARISONS
Administrative Investigations:

- Usually non-adversarial in nature
- Involves more interviews rather than interrogations
- Doesn’t affect a person’s liberty/freedom
Criminal Investigations:

- Can become adversarial in nature
- Can involve interviews and interrogations
- Can affect a person’s liberty/freedom
BURDEN OF PROOF
Administrative Cases

- Preponderance of the Evidence
  - is more likely, than not, to have occurred.
  - 51% vs 49%
Criminal Cases

Proof beyond a reasonable doubt

- Unanimous jury verdict

- Reasonable doubt is not the same as “any doubt”.
- Prosecuting Attorney must convince all 12
- Defense Attorney must only convince 1.
PENALTIES
PENALTIES for Administrative Cases

- Administrative, Civil or Regulatory actions
  - Professional or Licensing boards
  - Employer administrative actions
  - State agency regulatory actions
  - Civil fines or penalties
PENALTIES for Criminal Cases

- Fines
- Probation
- Jail/Prison
- Death
Investigative Focus
ADMINISTRATIVE INVESTIGATION

- Misconduct
  - as it relates to established policy, rules or regulations.
    - Fraud, Waste or Abuse
Internal Affairs Units

- Matter is between an employee and the Department
  - May involve Garrity protections against compelled testimony and self-incrimination.
  - Department policy to cooperate and answer all questions truthfully
Regulatory Programs – Medicaid

- a matter between parties in which a contract is utilized.
  - HHSC and healthcare providers in which cooperation is governed by contract and/or legal statutes, or both.
CRIMINAL INVESTIGATION

- Focuses upon violations of Texas Penal Code and guided by Texas Code of Criminal Procedure statutes and Rules of Evidence.
These matters are ultimately between the defendant and a criminal prosecutorial entity and corresponding court having jurisdiction in the criminal case.
INTERVIEWS & INTERROGATIONS
Interview – A conversational inquiry with specific goals or purposes up to the point of confrontation. (gather information)
- They speak about 95% of the time.
- Free flowing
- Non-accusatory in Nature
Interrogation – An interview from the point of confrontation with the purpose of eliciting information against the individual’s interests which the individual may be reluctant to provide. (Obtain a confession)

– You speak about 95% of the time.
– Structured
– Accusatory in nature
Generally, in criminal investigations, complainants should be interviewed first followed by witnesses, and lastly the accused subject.
Initially, not all witnesses or involved subjects are capable, or willing, to divulge all pertinent details for various reasons. BE PATIENT, UNDERSTANDING AND MAINTAIN OBJECTIVITY.

The complainant may feel the need for support from peers or friends during the interview. Evaluate any such request(s).
When interviewing the complainant, remember to ask questions that can assist you in properly framing the allegation(s).
Investigators should attempt to get the facts as the complainant sees them.

Sometimes these complaints have already been provided in writing, but the interview will most often reveal important additional details or provide clarification for the investigator.
Witnesses are interviewed to provide additional details related to a particular event or observation made by the complainant or the accused subject.
Witness testimony may provide assistance in determining the credibility and/or accuracy of information and details provided by the complainant and the accused employee.
Although subject (accused) interviews are normally conducted last, there are instances where earlier interviews may prove beneficial.
Does the subject/provider/employee have the right to have an attorney present during your interview?

- Policies and Procedures
- Case Law
- Legal statutes
- U S Constitution
Administrative investigations

Early interviews with the subject of the investigation may elicit specific explanations or excuses for their alleged misconduct and may identify potential items of evidence.
Subject’s explanation may involve real or perceived exceptions to the policy, rule or regulation.

- Subject may direct blame at someone else.

Investigator may solicit the subject to provide them with all the proof (evidence) the subject has in order to “help” the investigator prove the subject’s innocence.
ADMINISTRATIVE VS CRIMINAL INVESTIGATIONS

When conducting administrative investigations, the subject should be afforded with the opportunity to provide you with the truth and admit any mistakes they may have made related to the specific allegations made against them and the relation those actions have to established policies, rules or regulations.

*Interviews are common; Interrogations are not.*
Complainants, Witnesses and Accused Employees will often ask questions – answer them, if appropriate.

If not appropriate, tell them you cannot answer without contaminating their personal knowledge of the case facts or compromising the integrity of the investigation itself.

Be Honest and you will be appreciated. Treat others with respect and you will be respected.
Remember:

*If you don’t ask the proper questions, in a clear and straightforward manner, it will be possible for a subject/provider/employee to believe they have answered your questions truthfully and honestly.*
STATEMENTS
Statements should be obtained when the information provided is or appears to be material to the investigation.

Statements should be submitted as an attachment to the Report Of Investigation (ROI).

- In criminal cases, must comply with requirements set forth in CCP, Art. 38.22
REPORT WRITING
Is generally identified as the who, what, where, when and how (and why, if it can be determined).

The report must be thorough, well written, flowing, and answer the necessary questions as to ascertain the TRUTH AND THE FACTS of the allegations being investigated.

In preparing your report, try to use wording that will minimize misperception and/or manipulation from the reader’s perspective. (Clarify your own words when you write them)
It is imperative that all investigations be conducted with \textit{strict adherence to confidentiality during, throughout and following any assignments}.

1. To protect the integrity of the investigation itself
2. To protect all parties involved in the investigation, to include:
   (a) the affected subject
   (b) witnesses
   (c) YOU – the investigator
   (d) all chain of commands in administrative matters
       – the employee’s, witnesses’ and yours.
INTEGRITY (investigative caution):

- Don’t play “Gotcha”.
- When encountering answers to questions that appear to be less than accurate or complete, be sure you ask for clarification – don’t just move on.
- The key to a successful interview is “preparation” on your part.
PARALLEL INVESTIGATIONS
Government Agencies and Government Employees

Internal Affairs Units

- Often responsible for joint Administrative and Criminal Investigations of government employees
Garrity v. New Jersey (1967)

- Applies to government employees
- Protects compelled testimony from being used in a subsequent or concurrent criminal prosecution.

- Prevents sharing of Garrity obtained material (statements) from being used against the employee in a related criminal investigation.
- Administrative cannot share with Criminal, but Criminal can share with Administrative
United States v. Stringer, 535 F.3d 929 (9th Circuit, 2008)

Courts have recognized that “there is nothing improper about the government undertaking simultaneous criminal and civil investigations” provided that we use those proceedings and associated investigative tools for their proper purposes and in appropriate ways.
United States v. Kordel, 397 U.S. 1, 10 (1970)

“It would stultify enforcement of federal law to require a government agency...invariably to choose either to forego recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the outcome of a criminal trial.”
A true leader has the **confidence** to stand alone,

The **courage** to make tough decisions,

And the **compassion** to listen to the needs of others.

They do not set out to be a leader,

But become one by the **quality** of their actions and

The **integrity** of their intent.