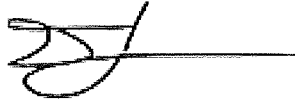


**MEMORANDUM**  
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To: Hon. Adelita Grijalva, Chair, Hon. Sharon Bronson, Hon. Steve Christy, Hon. Matt Heinz, and the Hon. Rex Scott.

From: Daniel Jurkowitz, Assistant Chief Civil Deputy County Attorney 

Date: September 22, 2023

Subject: Request for investigation of the Pima County Sheriff's Department

The Board of Supervisors passed a motion at the September 19, 2023 meeting requesting an outside investigation of the Pima County's Sheriff's Department's internal affairs investigation regarding an alleged rape of a deputy by a sergeant while off duty.

A.R.S. § 11-251(1) provides that the Board of Supervisors does "Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that the officers faithfully perform their duties and direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection." Caselaw has interpreted this provision to apply to all county officers. "The County exercises supervision of all county officers as provided by A.R.S. § 11-251, subsec. 1. Inasmuch as the Sheriff is a county officer under A.R.S. § 11-401 subsec. A, par. 1. the County exercises supervision of the official conduct of the Sheriff. However, in the instant case, the County, having no right of control over the Sheriff or his deputies in service of the writ of restitution, is not liable under the doctrine of Respondeat superior for the Sheriff's torts."<sup>1</sup>

In this instance, the County also has no right of control over the Sheriff.

<sup>1</sup> *Fridena v. Maricopa Cnty.*, 18 Ariz. App. 527, 530 (1972).

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The purpose of an internal affairs investigation is to determine whether a law enforcement officer has committed a criminal violation, or violated policy and, if so, whether any disciplinary or other action should be taken in response. Complaints are generally classified as either criminal or administrative.<sup>2</sup> When an incident involves allegations of criminal conduct, a criminal investigation will be conducted and generally takes precedence over any administrative investigation. *Id.* at 2.4 (“It is common practice to hold an administrative investigation in abeyance during the pendency of a criminal investigation based on the same facts.”) Typically, the administrative investigation will be stayed pending the outcome of a criminal investigation and the criminal investigation will be used by the administrative investigation. As the primary purpose of an administrative investigation is to determine whether any disciplinary actions are warranted, this is solely within the domain of the Sheriff. Only the Sheriff can take disciplinary action against his employees, not the Board of Supervisors.<sup>3</sup>

The Pima County Sheriff’s Department has adopted a department policy detailing its internal affairs process.<sup>4</sup> If there are concerns that a law enforcement agency’s internal affairs process is deficient, one option would be to make a complaint to the Arizona Peace Officer Standards and Training Board (AZPOST). AZPOST can act against a peace officer’s certification, for example, if the peace officer engages, “...in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.”<sup>5</sup> AZPOST’s website states, “AZPOST policy affords agencies the opportunity to look into a complaint and assign discipline, when appropriate. AZPOST will review the information provided in the complaint, and if a potential AZPOST Rule violation is identified, may request a review and response by the involved agency. Agencies are responsible for investigating officer misconduct, however AZPOST will review an agency’s complaint process to ensure the process and outcome appropriately address officer conduct.”

The Board of Supervisors suggested that a complaint could also be made to the Department of Public Safety (DPS), the Arizona Attorney General’s Office (AG), or the Pima Regional Critical Incident Team (CRIT). The CRIT, by IGA, permits conflicting from officer-involved shootings, other critical incidents, and in-custody death investigations). The AG and DPS have the authority to conduct criminal investigations. However, the criminal investigation into this incident has already been tendered to the Santa Cruz County Attorney’s Office. There is no statutory authority for either DPS or the AG to conduct a review of the administrative internal affairs investigation (or, lack thereof) in another agency. Even assuming the CRIT IGA were applicable, conflicting an administrative internal affairs investigation would be at the discretion of the Sheriff.

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<sup>2</sup> See STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS, U.S. Department of Justice.

<sup>3</sup> *Hounshell v. White*, 220 Ariz. 1 (App. 2008).

<sup>4</sup> PIMA COUNTY SHERIFF'S DEPARTMENT GENERAL ORDER 2022-040, Chapter 7, Section XVI.

<sup>5</sup> A.A.C. R13-4-109(A)(12)