



M E M O R A N D U M

Pima County Attorney’s Office
Civil Division
32 North Stone Ave, Suite 2100
Phone 520.724.5700 Fax 520.620.6556

To: Pima County Board of Supervisors
From: Sean Holguin, Deputy County Attorney
Date: March 13, 2024
Subject: Ability of Pima County Sheriff Nanos to Adopt a Deflection Program

Background

Some years ago, the Tucson Police Department (“TPD”) enacted a “Deflection Protocol” vesting its officers with the discretion to facilitate placement of qualifying individuals in a drug treatment program in lieu of charging them with criminal offenses.

Question

Whether Pima County Sheriff Nanos, in his discretion, may enact a “Deflection Protocol” like that of TPD.

Analysis

Arrests must be based on probable cause, however, the decision to arrest is generally discretionary. *See* A.R.S. § 13-3883 (“A peace officer *may*, without a warrant, arrest a person if he has probable cause . . .”). (Emphasis added). *See also, Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 761-763 (2005) (discussing the “deep-rooted nature of law-enforcement discretion”). This inherent discretion can be limited by “mandatory arrest” statutes that require arrests for certain criminal acts. Arizona has such a statute for certain domestic violence offenses. *See* A.R.S. § 13-3601(B).

Conclusion

Unless otherwise limited by state law peace officers have discretion in determining whether to arrest an individual. Accordingly, Sheriff Nanos, in his discretion, may lawfully adopt “deflection” protocols applicable to criminal offenses other than the domestic violence offenses specified in A.R.S. § 13-3601(B).

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