

MEMORANDUM

Agenda Item No. 11(A)(13)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 6, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution urging the Florida
Legislature to enact
legislation expanding the
ability of courts to inquire
into and determine a criminal
defendant's financial
resources and ability to pay,
and authorizing courts to
waive, suspend or modify the
payment of legal financial
obligations based on the
defendant's ability to pay

Resolution No. R-959-22

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Geri Bonzon-Keenan
County Attorney

GBK/ks



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 6, 2022

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Gen Bonzon-Keenan
County Attorney

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Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(13)
10-6-22

RESOLUTION NO. R-959-22

RESOLUTION URGING THE FLORIDA LEGISLATURE TO ENACT LEGISLATION EXPANDING THE ABILITY OF COURTS TO INQUIRE INTO AND DETERMINE A CRIMINAL DEFENDANT’S FINANCIAL RESOURCES AND ABILITY TO PAY, AND AUTHORIZING COURTS TO WAIVE, SUSPEND OR MODIFY THE PAYMENT OF LEGAL FINANCIAL OBLIGATIONS BASED ON THE DEFENDANT’S ABILITY TO PAY

WHEREAS, the Florida Constitution provides that funding for the state courts system shall be provided from state revenues appropriated by general law, while funding for the Clerks of Court (“clerks”) court-related functions must be provided by filing fees, service charges, and court costs assessed to parties accessing the courts; and

WHEREAS, the financial obligations assessed against participants in the court system fall generally into three categories: fees, fines, and restitution; and

WHEREAS, fees (also known as costs) are amounts authorized by statute that represent what a user of the court system is expected to pay; and

WHEREAS, fees are applicable in both civil and criminal cases—for instance, someone filing a lawsuit in a civil case has to pay a filing fee, and in criminal cases, fees assessed against defendants include the state’s cost to prosecute the case; and

WHEREAS, fines are imposed by the court as part of the judgment and are used to punish offenders, while restitution is intended to make the victim whole; and

WHEREAS, in civil proceedings, under sections 57.081 and 57.082, Florida Statutes, for any person determined by the clerk to be indigent, the filing fee, cost of summons, and cost of service may be waived, and additional fees such as the cost of copies or cost of preparation of the record on appeal may be deferred; and

WHEREAS, additionally, clerks are permitted under section 28.246, Florida Statutes, to offer payment plans to indigent individuals for outstanding fees, service charges, court costs or fines; and

WHEREAS, in criminal cases, however, while judges do have the ability under section 938.30, Florida Statutes, to convert court-imposed financial obligations including fees and court costs into community service obligations, courts and clerks have limited discretion over the imposition of fees because most are mandated by statute; and

WHEREAS, for instance, in a first- or second-degree felony case, the amount of assessed fines and fees can be several thousand dollars or more, exclusive of any restitution, with the total potentially being considerably larger depending on the amounts assessed for cost of prosecution and defense; and

WHEREAS, according to a 2019 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) entitled “Assessment, Collection, and Distribution of Fines and Fees in Criminal Cases”, Report No. 19-14 (the “OPPAGA Report”), in county Fiscal Year 2017-18, clerks assessed over \$315,000,000.00 in fines and fees for criminal cases in Florida, including over \$12,000,000.00 in Miami-Dade County; and

WHEREAS, the OPPAGA Report also found that in county Fiscal Year 2017-18, the collection rate for criminal fines and fees was nine percent statewide in circuit criminal cases (13 percent in Miami-Dade County) and 40 percent statewide in county criminal cases (20 percent in Miami-Dade County); and

WHEREAS, the OPPAGA Report found that other states have taken steps to change the assessment and collection of fines and fees in criminal cases to reduce the court system's dependency on fines and fees—particularly from low-income individuals who are likely to become mired in a cycle of post-incarceration debt and delinquency—while at the same time ensuring that the state court system remains adequately funded; and

WHEREAS, these steps include requiring judges to assess amounts based on the defendant's financial resources and giving judges expanded ability to waive legal financial obligations; and

WHEREAS, the OPPAGA Report noted that much of the focus in other states has been on increasing the court's role in determining indigency; and

WHEREAS, for instance, in Ohio, the court must conduct a hearing about financial resources at initial sentencing and then each time the defendant comes before the judge on the same case, and Arizona, Michigan, and Texas also require a financial resources inquiry at the time of sentencing; and

WHEREAS, to assist judges, states such as Ohio, Texas, and Washington have developed bench cards, which recommend reviewing and assessing areas such as a defendant's income, other financial resources, housing costs, other expenses, and employment status, and also provide guidance about how to conduct a financial resources inquiry; and

WHEREAS, Ohio trial courts also have statutory authority to waive, suspend, or modify the payment of costs at the time of sentencing or any time thereafter, and in Texas, the determination of indigence is coupled with a judge's ability to waive or modify legal financial obligations; and

WHEREAS, this Board believes that similar steps in Florida may help reduce our state court system's reliance on fines and fees—particularly from indigent individuals where such fines and fees can undermine post-incarceration goals of re-entry such as finding housing, transportation, and employment—while at the same time ensuring that our court system remains fully funded and able to serve all Floridians,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to enact legislation expanding the ability of courts to inquire into and determine a criminal defendant's financial resources and ability to pay, and authorizing courts to waive, suspend or modify the payment of legal financial obligations based on the defendant's ability to pay.

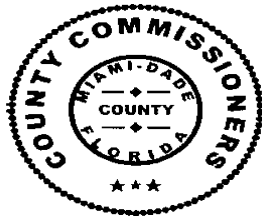
Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, and the Chair and Members of the Miami-Dade County State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate for the actions set forth in section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to include this item in the 2023 State Legislative Package when it is presented to the Board.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Keon Hardemon** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	absent		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Kionne L. McGhee	aye
Jean Monestime	aye	Raquel A. Regalado	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MSM

Michael J. Mastrucci