


MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAFAEL PAZ, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER
MEMBERS OF THE CITY COMMISSION

FROM: RAFAEL A. PAZ, CITY ATTORNEY 

DATE: JANUARY 20, 2022

SUBJECT: SUMMARY AND DISCUSSION OF RECENTLY ENACTED CRIMINAL PROSECUTION REFORM MEASURES AND THOSE STILL UNDER CONSIDERATION

Commissioner Mark Samuelian has placed a discussion item on the January 20, 2022 City Commission Agenda regarding the various legislative options that the City of Miami Beach ("City") has recently debated and/or enacted in order to address crime within the City, and those that are currently under consideration. The aim of the discussion and this memorandum is to provide a holistic backdrop and an aid for the City Commission's consideration of the various proposals on the table today.

As such, this memorandum contains a summary of recently debated and/or enacted crime prevention measures and a summary of those measures on the agenda today.

A. RECENTLY DEBATED AND/OR ENACTED MEASURES:

- 1) The City's Municipal Prosecution Team to Assume the Prosecution of Municipal Ordinance Violation Charges in Cases Where the Miami-Dade SAO Declines to Prosecute the Offender's State Law Violations**

(Resolution No. 2021-31957 – sponsored by Commissioner Steven Meiner)

The City's Municipal Prosecutor is directly responsible for prosecuting those individuals charged exclusively with violating one or more of the City's criminal ordinances. However, the Miami-Dade State Attorney's Office ("SAO") remains the prosecutorial entity responsible for the prosecution of those offenders arrested for the commission of any felony, misdemeanor, and/or County ordinance violation(s) committed within the City (and within Miami-Dade County). The Miami-Dade SAO also prosecutes cases where any felony, misdemeanor, and/or County ordinance violation is charged along with any City ordinance violation(s).

In some cases, a defendant is arrested and charged with multiple counts, including at least one State and/or County law violation, and one or more municipal ordinance violation(s). The

Miami-Dade SAO sometimes determines, for a variety of possible reasons, that it will not move forward with the prosecution of the State and/or County law offenses. However, the City's municipal prosecution team retains the legal authority to proceed with the prosecution of any City municipal ordinance violation(s) charged in those cases where the Miami-Dade SAO elects not to proceed with the prosecution of the associated State and/or County law violations.

In order for the City's municipal prosecution team to be advised that the Miami-Dade SAO has declined to prosecute the State and/or County law violations in those criminal cases that include at least one municipal ordinance violation, a mechanism must be established between the municipal prosecution team, the Miami-Dade SAO, and the Miami-Dade Clerk of the Courts to provide the City's municipal prosecution team with notification of such occurrence.

On December 8, 2021, the Mayor and City Commission adopted a Resolution directing the City Attorney's Office and City Administration to develop a plan, in collaboration with the State Attorney's Office and the Miami-Dade Clerk of the Courts, to enable the City's municipal prosecution team to assume the prosecution of municipal ordinance violation charges where the State Attorney's Office declines to prosecute the offender; and further, authorizing the City Attorney to hire one additional municipal prosecutor and one additional legal assistant to support the City's expanded municipal prosecution program.

The State Attorney communicated her support for this item.

2) Development of a Local Community Court

(Resolution No. 2021-31669 – sponsored by Vice-Mayor Michael Góngora and co-sponsored by Commissioner Steven Meiner and Commissioner Mark Samuelian)

Pursuant to Fla. Stat. 948.081, which became effective October 1, 2019, each judicial circuit is authorized to create a community court program for defendants charged with certain criminal offenses. The creation of a community court, through the development of innovative and positive community partnerships, would attempt to address the needs of homeless misdemeanor and municipal ordinance offenders who elect to accept help through this program.

Each participant in the community court program (including, most significantly, the offender) would be required to take an active role in effectuating the problem-solving intent of any proposed community court. Participating community court offenders may benefit from drug and alcohol treatment, mental health services, and educational, job training and counseling programs provided by the community court. Primarily, the community court program has the goal of providing alternatives to sending non-violent offenders to jail for those low-level violations including trespassing, disorderly conduct, disturbing the peace, public intoxication, open container violations, and obstructing traffic (amongst others), while engaging the community and assisting those individuals who desire help and need services and resources.

On April 29, 2021, the Mayor and City Commission adopted Resolution No. 2021-31669, which authorized the Miami Beach Police Department to proceed with spearheading the development of a local community court program to leverage resources in a collaborative effort to further the City's goals of reducing non-violent low-level crime, supporting public safety, reducing homelessness, and addressing quality of life issues with a swift, humane, and

constructive prosecution approach for public order offenders.

The State Attorney communicated her support for this item.

3) Establish a Pre-Trial Diversion Program for Certain First-Time and Qualifying Offenders Charged Exclusively with Municipal Ordinance Violations

(Resolution No. 2021-31956 – sponsored by Commissioner Steven Meiner and co-sponsored by Commissioner Alex J. Fernandez)

On October 13, 2021, the Mayor and City Commission adopted Resolution No. 2021-31903, which directed the City Attorney's Office and City Administration to take all necessary steps to establish a diversion program for use by the City's municipal prosecution team.

On December 8, 2021, the Mayor and City Commission adopted a Resolution which authorized the City Manager to execute a Memorandum of Understanding ("MOU") with Court Options, Inc. to establish a pre-trial diversion program, at no cost to the City. The Resolution also established that the pre-trial diversion program may be offered by the City's municipal prosecutor to certain first-time and qualifying offenders charged exclusively with municipal ordinance violations, which is intended to provide such offenders the opportunity to accept responsibility for their actions by voluntarily entering and successfully completing the program, and all required conditions.

To that end, the City is currently negotiating an MOU with Court Options, Inc., a full-service pre-trial diversion provider with over forty (40) years of experience in the criminal justice field and that is the long-time pre-trial diversion program provider for the Miami-Dade SAO. Court Options, Inc. provides a comprehensive array of quality, court-related services (including anger management classes, drug and alcohol education, values clarification classes, anti-shoplifting classes, and supervision of community service hours) that are designed to deliver effective remedial alternatives for certain qualifying individuals within the criminal justice system.

The City's municipal prosecution team will have the discretion to enroll certain first-time and qualifying offenders (charged exclusively with municipal ordinance violations) into the Court Options pre-trial diversion program, subject to the offender accepting responsibility for their action(s) by voluntarily entering into, and successfully completing, the pre-trial diversion program (including all associated conditions pursuant thereto). Upon the offender accepting responsibility for their actions and successfully completing the pre-trial diversion program, the municipal prosecution team would then close the case. Successful completion of the diversion program would thereby allow such first-time and qualifying offenders to avoid having a criminal conviction for that case on their record.

4) Urge the County Court Criminal Judges to Appropriately Sentence Qualifying Habitual Misdemeanor Offenders in Accordance with the Habitual Misdemeanor Offender Law

(Resolution No. 2021-31959 – sponsored by Commissioner Steven Meiner)

On December 08, 2021, the Mayor and City Commission adopted a Resolution urging the Miami-Dade State Attorney's Office to vigorously prosecute qualifying repeat criminal misdemeanor offenders, pursuant to Florida's habitual misdemeanor offender law, as set forth in Florida Statute 775.0837; and further urged the Eleventh Judicial Circuit Court of Florida, County Court Criminal Division, to appropriately sentence qualifying habitual misdemeanor offenders in accordance with, and to the fullest extent permitted by, Florida's habitual misdemeanor offender law.

As background, the Miami-Dade SAO and the Judges of the Miami-Dade County Court typically have considerable discretion pertaining to the prosecution and sentencing of those criminal cases involving misdemeanor offenses.

However, with regard to certain repeat misdemeanants, Florida Statute §775.0837 sets forth enhanced sentencing options pertaining to habitual misdemeanor offenders convicted of additional specified misdemeanor offenses. Pursuant to Fla. Stat. §775.0837, a habitual misdemeanor offender is a defendant before the court for sentencing for a specified misdemeanor offense and having previously been convicted, as an adult, of committing four (4) or more specified misdemeanor offenses within the twelve months preceding the commission of the offense for which such defendant is being sentenced. Specified misdemeanor offense, as that term is defined in Fla. Stat. §775.0837, includes, but is not limited to, the following offenses: assault, battery, prostitution, theft, trespass, disorderly intoxication, indecent exposure, and loitering or prowling. Accordingly, a defendant before the Court for sentencing as a habitual misdemeanor offender, on a specified misdemeanor offense, must be sentenced to a term of imprisonment or detention, or a residential treatment program, for a period of at least six (6) months, unless the Court makes a finding that an alternative disposition is in the best interests of the community and the defendant.

This Resolution urged vigorous prosecution and appropriate sentencing of these habitual offenders.

5) Miami Beach Police Department Officer to Attend the Initial Criminal Court Bond Hearings for Offenders Committing Crimes in Miami Beach

(Resolution No. 2021-31963 – sponsored by Commissioner Steven Meiner)

On December 8, 2021, the Mayor and City Commission adopted a Resolution endorsing the proactive efforts of the Miami Beach Police Department to have a Police Department officer at the initial criminal court bond hearings for offenders committing crimes in Miami Beach; and further directed the Police Department to provide the City Commission with an update, within three (3) months, regarding the status of its implementation efforts and any additional observations relating to bond hearings.

Many of the individuals arrested each day for committing criminal offenses within the City appear before a Judge on the following day for the purpose of the Court making a finding of probable cause (or no probable cause) for such person's arrest and setting an appropriate bond and/or conditions of release.

Pursuant to Fla. Stat. 903.046, the purpose of a bond determination in a criminal proceeding is to ensure the appearance of the criminal defendant at subsequent proceedings, and to protect the community against unreasonable danger from the criminal defendant. Florida law further provides that, in setting the appropriate bond and/or conditions of release for a criminal defendant, the Court should consider a myriad of factors including, but not limited to:

- a) The nature and circumstances of the offense charged;
- b) The weight of the evidence against the defendant;
- c) The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- d) The defendant's past and present conduct; and
- e) The nature and probability of danger which the defendant's release poses to the community.

The presence of a Miami Beach Police Department officer at criminal court bond hearings may aid the Court in its determination in setting the appropriate bond and/or conditions of release by providing the Court with any additional information that MBPD possesses concerning the bond factors.

6) Urging the Florida Legislature to Amend the Florida Constitution to Provide Express Authority for the City (or Any Municipality of the State) to Establish a Local Criminal Court

(Resolution No. 2021-31960 – sponsored by Commissioner Steven Meiner)

Pursuant to Article V, Section I, the Constitution of the State of Florida (the "State Constitution") vests judicial power in a Supreme Court, District Courts of Appeal, Circuit Courts and County Courts. The State Constitution further expressly states that no other courts may be established by the State, any political subdivision, or any municipality.

Presently, in Miami-Dade County, there are approximately sixteen County Court Criminal Judges who oversee cases in which the defendants are charged with State law misdemeanors and/or the City's municipal ordinance violations. Establishing a local court in the City of Miami Beach, comprised of an elected judiciary, would enable such Miami Beach judges to gain a clear perspective and familiarity with regard to those issues affecting the City, and develop a deeper understanding as to the impact these criminal misdemeanor, quality of life offenses have upon the City's residents and visitors.

7) Dedicating Certain Miami-Dade Assistant State Attorney(s) to Prosecute All Misdemeanor Violations Committed within the City of Miami Beach

(Resolution Failed as Item R7 X on the 12/8/21 City Commission Agenda – sponsored by Commissioner Steven Meiner)

Presently, the Miami-Dade SAO regularly rotates the attorneys handling misdemeanor cases throughout County Court, and the Miami-Dade SAO also prosecutes criminal cases emanating from all thirty-four (34) municipalities in Miami-Dade County. As a result, attorneys

initially assigned to criminal cases frequently will not handle the prosecution of such cases to their conclusion.

Additionally, generally speaking, many Assistant State Attorneys may not possess a complete understanding and awareness of the impact quality of life misdemeanors have upon the City's residents and visitors. Assigning dedicated Assistant State Attorneys to exclusively prosecute misdemeanor cases committed in the City of Miami Beach would serve to provide such Assistant State Attorneys a better grasp of the crimes being committed, those individuals committing such crimes, and the impact of these offenses upon the City's residents and visitors.

The State Attorney communicated her opposition to this item.

B. MEASURES UNDER CONSIDERATION TODAY:

1) Approve a Justice Advocate Program in the City of Miami Beach

(Resolution – Item C7 AP on 1/20/22 Agenda – sponsored by Mayor Dan Gelber and co-sponsored by Commissioner Steven Meiner, Commissioner Alex J. Fernandez, and Commissioner Mark Samuelian)

The Justice Advocate Program (the "Program") is a proposed tool (which is presently utilized by the City of Coral Gables) to supplement and assist the Miami-Dade SAO in its prosecution of specific, designated criminal defendants. The Program is designed to focus additional resources and attention on offenders of special concern and those defendants who repeatedly commit crimes.

The Police Department would determine which defendants warrant inclusion in the Program. Once the Police Department identifies an individual as an offender of special concern for inclusion in the Program, the City Attorney would assign an attorney to work with the Police Department as the justice advocate, who would monitor all aspects of the case (and ensure that the City has an opportunity to be heard at all significant stages of the criminal proceedings through communication directly with the assigned assistant state attorney(s)), and continue to track the case and attend court hearings as the case travels through the criminal justice system.

Approving a Justice Advocate Program in the City of Miami Beach, in conjunction with the Police Department's utilization of such Program to focus additional resources towards enhancing and aiding the prosecution of certain repeat offenders and offenders of special concern whom the Police Department determines warrant particularized attention, would permit the City to allocate additional resources and litigation support to the Miami-Dade SAO's efforts to ensure the prosecution of repeat offenders, while minimizing the costs to the City of duplicating and/or taking on functions currently handled by the Miami-Dade State Attorney's Office.

The State Attorney communicated her support for this item.

2) Establish a Unified Tracking System in Order to Compile and Obtain More Accurate and Accessible Statistical Data Pertaining to the Prosecution of Criminal Offenses

(Resolution – Item C7 AJ on 1/20/22 Agenda – sponsored by Commissioner Steven Meiner and Commissioner Alex J. Fernandez; and co-sponsored by Commissioner Mark Samuelian)

The City Attorney's Office, by and through its City municipal prosecution team and the Miami-Dade SAO are the prosecutorial entities responsible for the prosecution of all violations of State, County, and City laws committed within the City's jurisdictional boundaries.

The efficacy of prosecutions may be reviewed and analyzed by way of statistical crime and prosecution data, in conjunction with case disposition data, from both the City Attorney's Office and the Miami-Dade State Attorney's Office. Data may also be utilized as an effective tool to acquire a detailed understanding surrounding criminal conduct and may assist in identifying any challenges which may have impacted the successful prosecution of those persons committing criminal offenses in the City. Furthermore, statistical crime and prosecution data may further assist in identifying any tools, policies, procedures, and/or resources which may be utilized to aid in the future prosecution(s) of criminal offenders.

Currently, data compiled by the Miami Beach Police Department, the Miami-Dade SAO, and the City's municipal prosecution team is not kept in a format that lends itself to easy documentation and analysis of the prosecution of crimes committed in Miami Beach. To remedy this problem, a resolution authorizing a Memorandum of Understanding ("MOU") between the City and the Miami-Dade SAO has been placed on the January 20, 2022 commission agenda. The proposed MOU would establish a uniform system of data collection and reporting to ensure an effective way to track prosecutions of crimes committed in Miami Beach.

The State Attorney communicated her support for this item.

3) Implement a Plan for the City to Become the Primary Entity Responsible for the Prosecution of Certain State Law Misdemeanor Offenses

(Resolution – Item R7 M – sponsored by Commissioner Steven Meiner)

The City Attorney's Office, by and through its City municipal prosecution team, are responsible for prosecuting those individuals exclusively charged with violating the City's criminal ordinances. However, as referenced previously herein, the Miami-Dade SAO remains the prosecutorial entity responsible for the prosecution of those offenders arrested for the commission of any felony, misdemeanor, and/or County ordinance violation(s) committed in the City (and within Miami-Dade County). The Miami-Dade SAO also prosecutes cases where any felony, misdemeanor, and/or County ordinance violation is charged along with any City ordinance violation(s).

The commission of misdemeanor and municipal ordinance offenses adversely impact residents' quality of life and tourists' vacation experience, and continue to generate issues and complaints from the City's residents, visitors, and businesses. Some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery,

indecent exposure, and criminal mischief.

In order to acquire greater control and discretion regarding the prosecution of those identified misdemeanor offenses occurring in the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City could become the entity responsible for the prosecution of those specified State law misdemeanor offenses.

However, prior to commencing the prosecution of any misdemeanor offenses (State law violations), the City Attorney's Office and City Administration would have to coordinate such effort, and implement a plan to do so, in conjunction with various stakeholders including, but not limited to: the Judiciary of the Eleventh Judicial Circuit in and for Miami-Dade County, the Miami-Dade SAO, the Miami-Dade County Public Defender's Office, the Miami-Dade Clerk of the Courts, and the Florida Department of Corrections.

Additionally, the City Attorney's Office will need to evaluate its staffing needs based upon all of the action items (including this item, the Justice Advocate Program item, etc.) that the Mayor and City Commission may approve. However, this item is anticipated to more than double the existing caseload of the City's municipal prosecution team, so it will entail the City Attorney's Office hiring at least one (1) additional municipal prosecutor in order to properly staff this expanded municipal prosecution program.

The State Attorney communicated her opposition to this item.

4) Community Involvement

(No City legislation currently pending, but the State Attorney communicated her support for this idea)

The commission of criminal offenses is not only potentially damaging to the City's reputation, but also adversely affects the lives of the City's residents and businesses. Therefore, it is important for the members of the community to show interest in what goes on in their neighborhoods and City, and any suspicious and/or out of the ordinary activity should be noted and reported promptly to law enforcement.

Moreover, gathering information that identifies community concerns is necessary so that proper corrective action can be initiated, and appropriate policies may be developed. Fortunately, some City residents and business owners have already taken a keen interest in, and are profoundly concerned about, the progress and outcome of criminal cases as the cases proceed through the court system. As a result, the City Administration was directed to prominently publicize, on the City's Police Department website, all information necessary in order to adequately advise how any member of the public may view or attend criminal court hearings.

Notwithstanding the foregoing, members of the community taking a more active role in the criminal justice system would likely be quite effective in enhancing prosecutorial outcomes. Previously, the Miami Beach Crime Prevention and Awareness Group had a significant presence at criminal court hearings which aided the Court and the Miami-Dade SAO in the prosecution of criminal offenders by displaying the unequivocal interest of City residents in the outcomes of

criminal cases. Reinvigorated community involvement at this level may enhance existing efforts to prosecute crimes committed in the City.

The State Attorney communicated her support for this item.

5) Securing the Sworn Testimony of Miami Beach Crime Victims Who Reside Out-Of-Town

(Item R7 AA – Commissioner Fernandez - Referred to NQLC from 12/8/21 Agenda)

(Item C4 B – Commissioner Meiner - Referred to NQLC from 12/8/21 Agenda)

On December 8, 2021, the Mayor and City Commission adopted a Resolution which directed the City Administration and City Attorney's Office to explore potential options, based upon the needs of the Miami-Dade State Attorney's Office, to more readily and effectively secure the sworn testimony of Miami Beach crime victims who reside out-of-town, in order to further aid in their prosecution of offenders committing crimes in the City of Miami Beach.

Primarily due to the City's heavy influx of tourists and visitors from around the world, many victims of crime taking place within the City (and the witnesses thereto) reside out-of-town. As a result, obtaining the sworn statements and testimony of crime victims (and witnesses) who do not live within the State, or even the Country, has sometimes proven challenging for the Miami-Dade SAO. Assisting the Miami-Dade SAO by securing the sworn statements and testimony of out-of-town crime victims (and witnesses) would aid the Miami-Dade SAO's prosecutorial efforts and further serve to increase accountability amongst those persons committing crimes within the City.

The State Attorney communicated her support for this item.

6) Dedicating Certain County Court Judges to Exclusively Preside Over City Misdemeanor and Municipal Ordinance Violation Cases

(Item R7 AD – Commissioner Fernandez – Referred to NQLC from 12/8/21 Agenda)

There are presently approximately sixteen (16) County Court Criminal Judges who oversee cases in which the defendants are charged with State law misdemeanors and/or the City's municipal ordinance violations. However, assigning certain, dedicated County Court Criminal Judges to preside over all City of Miami Beach misdemeanor and municipal ordinance violation cases would aid in providing such judges a further understanding as to those issues affecting the City's residents and visitors, the history of habitual offenders, and further enable the judges to fashion the appropriate resolution(s) to such cases with regard to the needs of both the offender and the City.

7) Urging the Florida Legislature to Pass House Bill 1143 and Senate Bill 1844, which would Amend the Baker Act and Marchman Act by Expanding the Criteria and Standards for Involuntary Examination, In-Patient Placement, and Admission

(Resolution – Item on 1/20/22 Agenda – sponsored by Commissioner Alex J. Fernandez)

House Bill 1143 (“HB 1143”) and Senate Bill 1844 (“SB 1844”) seek to expand the criteria for involuntary examination, in-patient placement, and admission pursuant to the Baker Act and Marchman Act. The Baker Act and Marchman Act are similar; however, they’re utilized in two (2) different situations. Specifically, the Baker Act is utilized for mental health issues, and the Marchman Act is used for those individuals struggling with substance abuse issues.

Both the Baker and Marchman Acts authorize law enforcement to step in and get Florida citizens to a mental health facility if they might be of harm to themselves or others. Such a person can be held for up to 72 hours for an involuntary assessment (and treatment, if deemed necessary) for mental health or substance abuse issues. Significantly, HB 1143 and SB 1844 represent the first comprehensive modernizations of Florida’s civil commitment system for mental health and substance abuse treatment since the Baker and Marchman Acts were promulgated.

This legislation is important because the City of Miami Beach continually seeks to provide assistance and social services to those in need, which will also help in remediating crime within the City.

The State Attorney communicated her support for this item.

8) Supporting the 11th Judicial Circuit Court’s Criminal Mental Health Project and the New Mental Health Facility

(No City legislation currently pending, but the State Attorney communicated her support for this idea)

The Eleventh Judicial Circuit Court Criminal Mental Health Program (“CMHP”) was established to divert nonviolent misdemeanor defendants (and certain felony defendants) with serious mental illness, or co-occurring serious mental illness and substance abuse disorders, from the criminal justice system into community-based treatment and support services. Presently, approximately 70% of persons living with serious mental illness or substance abuse disorder are not receiving treatment for their mental health and/or substance abuse issue(s).

The CMHP has two (2) components: a pre-booking diversion consisting of crisis intervention training for law enforcement officers and post-booking diversion that would serve persons booked into the Miami-Dade County jail and awaiting disposition of their case. On any given day, the Miami-Dade County jail houses about 2,400 persons receiving psychotherapeutic medications, and costs taxpayers roughly \$232 million annually, or \$636,000 per day. Additional costs to the County and its municipalities (including the City of Miami Beach) result from crime and associated threats to public safety, along with injuries to law enforcement officers and ballooning court caseloads.

CMHP would allow, either before or after booking an individual into jail, the ability to place a willing offender into the new, 200-bed, mental health facility (which is located near Camillus House in the City of Miami) created for CMHP. The idea of CMHP is not to create new services, but to merge and blend existing services in a way that is more efficient and continuous across the criminal justice system. CMHP works by eliminating gaps in services and by forging productive and innovative relationships among all stakeholders who have an interest in the welfare and safety of one of our community’s most vulnerable populations.

It is believed that both Miami-Dade County and the City of Miami have allocated funding towards the CMHP. The City would also be requested to allocate funding for the CMHP and the new 200-bed mental health facility.

The State Attorney communicated her support for this item.