



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

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I.2.

1/25/2022

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**Subject:**

Housing Assistance Eligibility Modification

**Fiscal Impact:**

N/A

**Dept/Office:**

District 3

**Requested Action:**

Discussion and Motion

**Summary Explanation and Background:**

Modification of Housing Assistance Eligibility Program to mirror the language of other Federal Assistance Programs.

**Clerk to the Board Instructions:**

**Modification to Rental Assistance Program Eligibility:**

~~Exclude from the rental assistance program those individuals who are actively engaged in litigation against Brevard County, as well as those who have sent a formal demand letter and/or notice of intent to file suit against the County since the enacting of our local state of emergency, which took place on or about March 15, 2020" (See Minutes from September 21<sup>st</sup>, 2021, BOCC Final Budget Hearing- F.4 Line 17-20).~~

Exclude from the rental assistance program those individuals who are currently under investigation for fraud or have pled or have been found guilty of fraud regarding a federal program



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January 26, 2022

**MEMORANDUM**

TO: Ian Golden, Housing and Human Services Director

RE: Item I.2., Housing Assistance Eligibility Modification

The Board of County Commissioners, in regular session on January 25, 2022, approved modifying the Housing Assistance Eligibility Program by the following:

- striking the language, exclude from rental assistance the individuals who are actively engaged in litigation against Brevard County, as well as those who have sent a formal demand letter and/or Notice of Intent to file against the County since the enacting of the local State of Emergency;
- inserting the language, suspending the application for rental assistance from those individuals who are currently under investigation by a law enforcement agency for fraud, theft, or any similar crime regarding a government program;
- inserting the language, suspending the rental assistance application from those individuals who have been referred by a law enforcement agency, for prosecution, subject to any relevant Statute of Limitations provisions, for fraud, theft, or any similar crime regarding a government program; and
- inserting the language, excluding from the rental assistance program those individuals who have pled either "no contest" or guilty to fraud, theft, or any similar crime regarding a government program or have been found guilty or had adjudication of guilt withheld for fraud, theft, or any similar crime regarding a government program.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".  
Kimberly Powell, Clerk to the Board

cc: Each Commissioner



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January 20, 2022

*\* Via Electronic Mail \**

**Memo Discussing Issue Coming before BoCC on Tuesday, January 25, 2022**

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the **Tuesday, January 25, 2021** BoCC meeting. Please see the previously provided County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

This memo pertains to Item "I.2. Housing Assistance Eligibility Modification" as listed in the agenda. The proposed language for this item reads as follows:

"Exclude from the rental assistance program those individuals who are currently under investigation for fraud or have pled or have been found guilty of fraud regarding a federal program"

While this may sound palatable, this creates a massive loophole. To understand the issue, one must have a degree of familiarity with how investigations progress into criminal charges and, ultimately, to convictions. The typical manner in which this occurs, within the 18th Judicial Circuit (comprised of Seminole and Brevard Counties), is as follows.

When a financial crime is reported to a law enforcement agency ("LEA"), a law enforcement officer ("LEO") begins an investigation to determine whether **probable cause** exists in order to support the arrest of one or more suspects. An arrest cannot take place absent probable cause to effectuate it.

If, during the course of the investigation, probable cause is not found to exist, no referral is made to a prosecuting agency with a recommendation to file charges. The matter is simply closed within the LEA.

In many instances, the law enforcement agency will not effectuate an arrest even when probable cause exists if they are not certain the case will be prosecuted as prosecutors may decline to file charges on any matter even if there exists far more than probable

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cause. For criminal violations of state statute, this prosecuting agency is nearly always the State Attorney's Office ("SAO").

Once at the SAO, depending on whether the matter is initially identified, by the investigating agency, as a misdemeanor, felony, or juvenile delinquency, the investigative package is initially assigned to an intake attorney to make a filing determination. The intake attorney may file exactly as law enforcement requests. Alternatively, they may file more charges, more serious charges, less charges, less serious charges, or no charges at all.

It is not uncommon for a report of "fraud" to be prosecuted (and/or resolved) as some form of theft, exploitation, or something else entirely.

This process may and oftentimes does take weeks to months to occur. The more complex the fact pattern, the longer this takes. It is not unusual for investigative packages to be sent from a LEA to the SAO and take two or more months for a filing decision to be made.

However, if one were to apply for rental assistance prior to a filing decision having been made, the way the agenda item presently reads, the applicant would be entitled to payment as the investigation would have technically ended and there would not yet be a guilty verdict (or a withhold of adjudication as is available in this state for crimes of this nature).

It would not matter that the charges will eventually be filed as, at the moment the application is filed & reviewed, an investigative packet could well be in the hands of the SAO with a recommendation from the investigating agency to file charges. There would be no pending law enforcement investigation and it would be far too early for there to have been a guilty (or no contest plea) or, for that matter, a guilty verdict (or a withhold of adjudication).

Moreover, the proposed text also introduces an issue as the argument could be made that the rental assistance program is not a "federal" program as, despite using federal funding, it is administered by Brevard County, not the federal government.

If the BOCC is inclined to support language of the sort proposed in the agenda item, I would strongly recommend that these loopholes be closed. The following wording could be used to better ensure that the apparent goal of the modification is met without making the process an easily exploitable joke.

THIS SPACE INTENTIONALLY LEFT BLANK.

"Exclude from the rental assistance program those individuals who are currently under investigation for fraud, theft, or any similar crime regarding a government program. Exclude from the rental assistance program those individuals who have been referred, by a law enforcement agency, for prosecution (subject to any relevant statute of limitations provisions) for fraud, theft, or any similar crime regarding a government program. Exclude from the rental assistance program those individuals who ~~or~~ have pled either "no contest" or guilty to fraud, theft, or any similar crime regarding a government program or have been found guilty or had adjudication of guilt withheld ~~of~~ for fraud, theft, or any similar crime regarding a federal government program."

The language in red reflects my initial draft as sent to both the County Attorney and my Chief of Staff, Robert "Fritz" VanVolkenburgh, for review. Both Ms. Jorandby and Mr. VanVolkenburgh have prior experience working as prosecutors in the State of Florida. The language in green reflects recommended edits by the County Attorney. The language in blue reflects recommended edits by Mr. VanVolkenburgh. Both sets of suggestions appear sensible to incorporate.

The revised language fixes the following issues:

- (1) It allows for "fraud" to be filed as theft which often happens;
- (2) It does not allow someone to be paid because they are, chronologically, at the stage where a prosecution is recommended by a law enforcement agency but the prosecuting authority has not yet made a filing decision as this may take months to occur;
- (3) It treats those who enter a plea of "no contest" to a relevant crime identically to those who enter a plea of guilty;
- (4) It treats those who have had adjudication withheld (which only ever happens in exchange for a plea of "no contest" or guilty or after losing at trial) identically to those who are found guilty; and
- (5) It changes the word "federal" to government so as to certainly include Brevard County's rental assistance program.

I encourage you to discuss with the County Attorney and/or with the Sheriff the loopholes which would exist were the language included in the agenda item not be modified. To say it would invite issues would amount to a profound understatement.

Remember, it is incredibly unlikely (e.g., lottery odds) the BOCC will ever see a penny of restitution from folks who are willing to lie on their assistance application. Once the money is paid, assume it has vanished because, for all intents and purposes, it has.

Every dollar squandered from this program is one less dollar which will be used to help folks who are truly at risk of homelessness. **This is not a victimless crime.**