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Newsroom

Dean Horwitz on Overworked Public Defenders

RWU Law Associate Dean Andy Horwitz talked to Rhode Island Lawyers Weekly about a new report finding that the state's public defenders are among the most overworked in the country.

[Rhode Island Lawyers Weekly](#) quoted **Associate Dean of Academic Affairs and Professor Andrew Horwitz** in an article titled, "*Report: public defenders' agency lags in staff but leads in caseload: Budget may force layoffs in FY 2012*" by Christina Pazzanese

Oct. 18 2010: Lawyers in the Rhode Island Public Defender's Office are among the most overworked in the nation, and the situation is not likely to improve anytime soon.

Confirming what those in the office already know firsthand, a study recently released by the Bureau of Justice Statistics found that Rhode Island's public defender program falls outside the mainstream in many key areas including staffing, spending and caseload when compared to the other 21 state-run programs in the nation.

Based on data from 2007, the state's program ranked lowest in the number of full-time attorneys on staff and near the bottom in the percentage of "judiciary and legal funds" spent on public defense.

The state made do that year with only 40 full-time attorneys, just above the staffing levels for Wyoming (38), Vermont (31) and North Dakota (10), and far below the top-ranked Maryland (508), New Jersey (458) and even Massachusetts (197). The median was 163 public defenders per state.

John J. Hardiman, head of the R.I. Public Defender's Office, said he now has a total of 48 attorneys, though not all handle a full caseload because of other supervisory and administrative duties. It is only about two-thirds of the number he estimates is needed to properly manage the growing number of cases the office sees each year.

Click [here](#) to read the full text of the report.

Burnout risk

In 2007, the 40 public defenders saw 18,760 cases, nearly 2,000 more cases than the Massachusetts office handled that year. Nationally, the median was 72,740 cases per state.

The majority — 10,870 — was made up of misdemeanors or violations that carried a jail sentence; 4,770 were non-capital felonies; and 2,310 were juvenile-related. In Massachusetts, meanwhile, 12,380 of the 16,820 public defender cases were non-capital felonies; 3,180 were misdemeanors or other violations carrying a jail sentence; and 490 were juvenile-related.

“We’ve been at our breaking point for a while,” Hardiman said. “The only way to fix it other than refusing to take cases” — a move he said he has “agonized” over because it would only cost the state more money to hire court-appointed private lawyers who do not always deliver the same high level of representation — “is they should give us more lawyers,” he said. “That’s really the only answer.”

Hardiman said he has frequently turned to the governor and the Legislature to explain the dire circumstances the office is in and get more added to the office’s current \$9.5 million budget, but to no avail.

“They understand it, but they just don’t have the money,” he said.



[RWU Law Associate Dean] Andrew Horwitz, president-

elect of the Rhode Island Association of Criminal Defense Lawyers, said the Public Defender’s Office does “excellent work” considering how grossly understaffed it has been historically.

While the state’s budget crisis has not yet forced any job cuts, having a perennially short-handed legal staff that juggles an average of 70 to 80 pending felony cases is unsustainable, he said.

“That is enormous, just way too many,” **Horwitz said**. “It’s almost twice the number you want.”

The heavy workload leaves lawyers little time to spend with clients and pushes many to prepare for trials at night and on weekends, a scenario that contributes significantly to staff burnout and attrition, he said.

Hardiman, who said he was working from his dining room table in order to steal some quiet time to prepare for an upcoming murder trial, said burnout is a problem he monitors regularly. Most challenging for attorneys is simply finding time to sit down with clients since most routinely spend half of each day in court, juggling 30 to 50 clients at once.

The study found that public defenders in Rhode Island carried caseloads far above the recommended limits established by the U.S. Department of Justice’s National Advisory Commission on Criminal Justice Standards and Goals, placing in the top three of all states.

According to the study, the state’s 40 attorneys in 2007 each carried 119 felonies and 272 misdemeanors, the fourth-highest felony and third-highest misdemeanor caseloads. The median caseload was 82 felonies and 217 misdemeanors.

Rhode Island led all 22 states when felony and misdemeanor caseloads were combined.

The NAC guidelines suggest public defenders should carry no more than 75 felonies and 200 misdemeanor cases per year.

Hardiman disputed the study’s figures for felony and misdemeanor caseloads, saying attorneys in Rhode Island are assigned either felony or misdemeanor cases exclusively and rarely handle both. But he noted that his staff absolutely is overburdened.

Those working felony cases carry between 70 and 80 pending cases at a time, he said, while those assigned to misdemeanors each juggle between 180 and 200 pending cases.

“Our misdemeanor numbers are really out of control,” said Hardiman, who notes that the number of cases for charges like prostitution, domestic assault, trespassing and shoplifting has increased by 8 to 9 percent since the economy tanked in the last two years.

The study’s findings show from 1999 to 2007, the office’s criminal caseload climbed 49 percent, while the number of attorneys actually declined by 8 percent.

Bleak financial outlook

Hardiman would like to see caseloads cut in half to levels comparable to what Massachusetts and Connecticut public defenders manage, but that requires hiring another 24 lawyers, something unlikely to happen in the near future given the state's budget difficulties.

The state's spending for public defense also was among the lowest of all the state programs studied. Rhode Island spent about 8.7 percent of the total budget allocated for judicial and legal expenses, a figure comparable to the percentage Kentucky (8.9 percent) and Connecticut (8.4 percent) spent, but only just more than half of the median (14.5 percent) and what Massachusetts spent (15 percent).

Rhode Island was one of only three states that did not require indigent criminal defendants to pay for some of their legal costs. Nineteen other states allowed various administrative and court fees to be collected, ranging from \$10 to \$200 depending on the state and the type of case.

Hardiman said he has talked to officials in Connecticut, a state that does try to recoup some legal costs from defendants, but he has not pursued a similar strategy in Rhode Island because he was warned of constant collection challenges and the likelihood of creating an adversarial relationship with clients, which can lead to distrust of the office.

Besides, he said, any money that is chased down has to go into the state's general fund where revenue from parking tickets and other fines accumulate and cannot be specifically earmarked for office services.

The financial picture does not appear to be improving.

Hardiman said in order to maintain level service in fiscal 2012, he has asked for \$10.3 million. But the Governor's Office has warned that he should prepare a budget that includes a 15 percent cut. It is a proposition that would force the layoff of 25 employees, he said.

"I'm trying to hold off as long as I can," Hardiman said. "I don't know how we're going to avoid it."

To read the full article, click [here](http://rilawyersweekly.com/blog/2010/10/13/report-public-defender%E2%80%99s-office-lags-in-staff-but-leads-in-caseload/). [http://rilawyersweekly.com/blog/2010/10/13/report-public-defender%E2%80%99s-office-lags-in-staff-but-leads-in-caseload/]