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Roger Williams University School of Law

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Newsroom

Horwitz on RI Probation Reform

Assistant Dean for Experiential Education Andy Horwitz on Governor Gina Raimondo's initiative to study and recommend criminal justice reforms.

From Rhode Island Lawyers Weekly: "[Probation tops defense bar's wish list for governor's panel](#)"

by Pat Murphy



July 17, 2015: Defense attorneys are hopeful that an overhaul of the state's probation system will be one of the primary outcomes of a process started earlier this month with Gov. Gina M. Raimondo's formation of a panel to study and recommend criminal justice reforms.

The governor issued an executive order establishing the Justice Reinvestment Working Group on July 7. The panel is tasked with coming up with recommendations to improve the state's criminal justice system "with the overarching goals of protecting public safety, reducing recidivism, analyzing racial disparities, promoting stronger, healthier communities, and reducing costs."

[...] Defense attorneys who spoke with *Lawyers Weekly* agreed that reforming the probation system should top the working group's priority list.

"What you need first and foremost in Rhode Island is a reduction in the periods of probation," said Matthew S. Dawson of Lynch & Pine in Providence. "If you're in court consistently, you see people getting 15, 20, 25 years in suspended sentences and probation all the time."

But while probation is considered a priority, defense attorneys have no shortage of suggestions for other criminal justice reforms, ranging from the expansion of alternative sentencing programs for low-risk defendants, to a practical call for "date certain" scheduling of trials.

'The gift that keeps on giving'



Criminal defense lawyer Andrew Horwitz said Rhode Island is an “extraordinary outlier” in its use of probation, and the statistics bear him out.

In 2013, the state had the third-highest probation rate in the country, with 2,737 people on probation per 100,000 adult residents, compared with the national rate of 1,605 people per 100,000 adult residents. That is according to the Council of State Governments Justice Center, a national nonprofit public policy organization.

The center estimated that at the end of fiscal year 2014, 20,000 people were on probation supervision in Rhode Island, which represents 1 in 44 adult residents.

“When you put that many people on probation, you create a system where probation can’t serve its function,” **said Horwitz, a professor at Roger Williams University School of Law in Bristol and head of the school’s criminal defense clinic.**

[...] **Horwitz expects** the governor’s panel to take a hard look at the fundamental fairness of the system currently in place.

“When you are on probation and accused of a new offense, that new offense is resolved through the back-door mechanism of a probation violation hearing,” **Horwitz said.**

Horwitz explained that a probation violation hearing is conducted without a jury under a relaxed rules of evidence with the standard of proof merely being that the judge needs to be “reasonably satisfied” that the defendant violated the terms of his or her probation.

One reform **Horwitz hopes** the panel recommends is the adoption of a higher burden of proof for probation hearings.

[...] **Horwitz also thinks** the state should adopt the American Bar Association's recommendation that a probation violation hearing be forestalled until any underlying new criminal charge has been resolved.

"So instead of letting the violation process drive the train, we adjudicate the new criminal charge on its own merits, and if there's a finding of guilt, then we deal with the probation violation accordingly," **he said**.