**Roger Williams University Law Review**

Volume 21
Issue 2 *Vol. 21: No. 2 (Spring 2016) Symposium on Mass Incarceration*

Article 6

Spring 2016

# A Matter of Balance: Mathews v. Eldridge Provides the Procedural Fairness Rhode Island's Judiciary Desperately Needs

Brett Beaubien
*J.D. Roger Williams University School of Law, 2016*

# Comments

# A Matter of Balance: *Mathews v. Eldridge* Provides the Procedural Fairness Rhode Island's Judiciary Desperately Needs

**Brett V. Beaubien***

It should come as no surprise to members of Rhode Island's bench and bar that our state's incarceration rate (part of the larger phenomenon of mass incarceration in the United States) has been driven, in large part, by probation violations. This issue has attracted the attention of the state's judges, lawyers, and lawmakers, many of whom gathered *en masse* to attend a symposium held at Roger Williams University School of Law last spring, to begin the process of closely examining Rhode Island's criminal justice system. Subsequently, Governor Gina M. Raimondo issued an executive order on July 7, 2015, that established the Justice Reinvestment Working Group ("JRWG").[1] The JRWG includes members from all three branches of state

* Candidate for *Juris Doctor*, 2016, Roger Williams University School of Law. I am beholden to my father, George N. Beaubien, Jr. for the title of this Note, as I am for learning to always seek the truth. I am also indebted to Professor Jared A. Goldstein and Matthew D. Provencher for the superior insight and guidance they provided as I crafted this Note. I could not have done this without either of you. Thank you.

1. Pat Murphy, *Probation Tops Defense Bar's Wish List for Governor's Panel*, R.I. LAW. WKLY., July 20, 2015, at 1, 1.

government, as well as local and federal officials,[2] and is tasked with using a data-driven approach to develop policy that will reduce spending on criminal justice and increase public safety.[3] While the Supreme Court of the United States has not directly provided a solution to Rhode Island's complicated problem, it has provided a mechanism by which our Judiciary can use to begin taking the necessary measures needed to alleviate the burdens of mass incarceration. Through an application of the Due Process balancing test articulated by the Supreme Court in *Mathews v. Eldridge*,[4] this Note will apply that test to this critically important conversation and demonstrate that Rhode Island's probation revocation standard fails to pass constitutional muster, and necessitates reform.

## I. PROCEDURAL DUE PROCESS UNDER *MATHEWS V. ELDRIDGE*

In 1976 the Supreme Court decided *Mathews v. Eldridge*, thus providing a three-factor test that has since been used repeatedly to evaluate the procedural due process employed when the government deprives a person of life, liberty, or property.[5] The dispute in *Mathews* centered around whether the Due Process Clause of the Fifth Amendment required the Social Security Administration ("SSA") to provide a recipient of disability benefits an opportunity for a final evidentiary hearing prior to terminating those benefits.[6] George Eldridge, the respondent, had been receiving SSA payments for four years before he received a letter in the mail informing him that, due to newly acquired medical information, his disability status—and thus, his benefits—would be terminated.[7] The SSA provided notice giving Eldridge an

2. *Id.*

3. The Council of State Gov'ts, Justice Center, *Rhode Island*, https://csgjusticecenter.org/jr/ri/ (last visited Mar. 12, 2016).

4. 424 U.S. 319 (1976).

5. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW, PRINCIPLES AND POLICIES 594 (4th ed. 2011).

6. 424 U.S. 319, 323 (1976). This Note will refer to this balancing test as the "*Mathews*" test, consistent with the practice of the Supreme Court of the United States. However, many lower state and federal courts and secondary sources refer to the balancing test as the "*Eldridge*" test. *See, e.g.*, Cathedral Rock of N. Coll. Hill, Inc. v. Shalala, 223 F.3d 354, 362 (6th Cir. 2000); Penobscot v. Fed. Aviation Admin., 164 F.3d 713, 723 (1st Cir. 1999); *In re* D.C.S.H.C., 733 N.W.2d 902, 907 (N.D. 2007).

7. *Mathews*, 424 U.S. at 324.

opportunity to contest its decision to terminate at an evidentiary hearing before a final decision would be made.[8] However, the SSA nevertheless terminated his benefits *prior* to the final evidentiary hearing.[9] Eldridge challenged the SSA's procedure, arguing that such termination constituted a violation of the Due Process Clause.[10]

To guide its analysis of whether the SSA's procedures satisfied the procedural protections demanded by the Due Process Clause, the Supreme Court stated that due process is not "a technical conception with a fixed content unrelated to time, place and circumstances."[11] Instead, as the Court noted, due process is "flexible and calls for such procedural protections as the particular situation demands."[12] Justice Powell, writing for the majority, provided several factors for lower courts to employ when balancing the competing interests of the government and the individual:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[13]

The test is inherently designed to scrutinize governmental procedure, as courts are tasked with determining whether the competing interests of the individual and the government are in harmony with the protections required by the Constitution. Under the test, the scales tip in favor of requiring greater procedural safeguards because the significance of the private interest at stake and the risk of an erroneous deprivation of that interest are high.

In applying its newly-minted balancing test, the *Mathews* Court ultimately held that the SSA's procedures fully comported

8. *Id.*
9. *Id.*
10. *Id.* at 324–25.
11. *Id.* at 334 (citations omitted).
12. *Id.* (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).
13. *Id.* at 335.

with the Due Process Clause.[14] The Court reasoned as follows: First, the private interest in disability benefits is likely to be less significant than in a case where benefits are based on financial need;[15] second, the decision to terminate benefits was made upon receipt of reliable medical records thus lowering the risk of an erroneous deprivation of benefits;[16] and third, the administrative burden and costs of an evidentiary hearing in all cases prior to terminating disability benefits would be disproportional to any extra benefit conferred upon the recipient.[17]

Although *Mathews* concerned an administrative procedure, three years later the Supreme Court described the balancing test as a "general approach for testing challenged state procedures under a due process claim."[18] In the several decades that have followed, the Supreme Court has applied *Mathews* in a variety of contexts, including habeas corpus proceedings[19] and cases involving prisoner's rights.[20] Through the *Mathews* decision and its resulting jurisprudence, the Supreme Court has provided lower courts with a workable analytic framework from which they can determine the form of procedural due process to which a person is entitled when the state deprives him or her of liberty or property in the civil context.

### A. *Rhode Island's Application of* Mathews v. Eldridge

In 1984, the Rhode Island Supreme Court followed suit, adopting the *Mathews* test to determine whether an

14. *Id.* at 349.
15. *Id.* at 340.
16. *Id.* at 345.
17. See *id.* at 321–23.
18. Parham v. J.R., 442 U.S. 584, 599 (1979).
19. *See, e.g.*, Boumediene v. Bush, 553 U.S. 723, 781 (2008) ("The idea that the necessary scope of habeas review in part depends upon the rigor of any earlier proceedings accords with our [*Mathews*] test for procedural adequacy in the due process context"); Hamdi v. Rumsfeld, 542 U.S. 507, 528–32 (2004) (applying *Mathews* to determine due process required that United States citizen being held as enemy combatant be given meaningful opportunity to contest factual basis for his detention).
20. *See* Wilkinson v. Austin, 545 U.S. 209, 225–31 (2005) (applying *Mathews* when evaluating what level of process is due when a state places a prisoner in a super-max facility); Washington v. Harper, 494 U.S. 210, 229–35 (1990) (applying *Mathews* to evaluate state procedure where prisoner underwent involuntary administration of antipsychotic medications).

administrative procedure involving a workers' compensation claim violated due process.[21] Since then, *Mathews* has been applied in Rhode Island in a variety of civil administrative contexts.[22] Notably, in *Fitzpatrick v. Pare***,** where a plaintiff appealed a decision by the Rhode Island Registry of Motor Vehicles to suspend his drivers license, the Rhode Island Supreme Court applied *Mathews* and held that the procedures employed by the registry presented an unacceptably high risk of an erroneous deprivation of the plaintiff's interest in the continued use of his license pending the outcome of the hearing, despite the state's strong interest in keeping dangerous drivers off the road.[23]

In *State v. Germane*, Thomas Germane challenged a decision of the Sex Offender Board of Review ("Board") on the grounds that the burden of persuasion should have been on the state at all times to prove that the Board's findings of fact were not erroneous.[24] Specifically, the procedure at issue required Germane to overcome a prima facie case by the Board setting his risk level by a preponderance of the evidence.[25] Justice Robinson, for the Court, wrote that "[i]n cases involving procedural due process concerns, we have previously employed the three-part test articulated by the United States Supreme Court in *Mathews v. Eldridge*."[26]

The Court then applied an in-depth *Mathews* balancing test and found that the procedures utilized by the Board satisfied due process because the appellant was afforded an opportunity to rebut the prima facie classification with an excuse or justification

21. John J. Orr & Sons, Inc. v. Waite, 479 A.2d 721, 722–23 (R.I. 1984).

22. State v. Germane, 971 A.2d 555, 574–82 (R.I. 2009) (applying the *Mathews* test to determine the level of process due in a challenge to a sex offender classification ruling by the Sex Offender Board of Review); Fitzpatrick v. Pare, 568 A.2d 1012, 1014–15 (R.I. 1990) (applying the *Mathews* test to determine the level of process due in a decision to suspend a drivers license by the Rhode Island Registry of Motor Vehicles); Shawmut Bank v. Costello, 643 A.2d 194, 199–202 (R.I. 1994) (applying the *Mathews* test to determine what process is due under statutory procedure for ex parte attachment in equitable actions); *John J. Orr & Sons, Inc.*, 479 A.2d at 722–23 (applying *Mathews* test in an employer's challenge to a worker's compensation claim).

23. *Fitzpatrick*, 568 A.2d at 1014–15.

24. *Germane*, 971 A.2d at 574.

25. *Id.*

26. *Id.* (citation omitted).

under the preponderance of the evidence standard.[27] In its decision, the court looked to the Supreme Court of the United States for guidance as to how to weigh an evidentiary burden: "[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants."[28] The court held that the Board's evidentiary procedure appropriately distributed the risk of error because the preponderance standard, which is lower than that employed in the criminal context, allows the defendant to rebut any evidence of mistaken or unlawful classification by the Board with information that is "peculiarly within [the appellant's] own control and based upon knowledge immediately within his personal reach."[29]

While the *Mathews* test has been most frequently applied in the civil context, the Rhode Island Supreme Court has nevertheless expanded its reach to due process questions in criminal law.[30] In *State v. Oliveira*, for example, a defendant challenged his assault conviction, claiming that the evidence presented at trial was inconsistent with the crimes charged in the indictment and bill of particulars, and therefore, he was denied notice and an opportunity to mount a defense.[31] The court cited the *Mathews* test to determine whether the prosecution had deprived the defendant of due process and ultimately found no violation because the jury was instructed that it could have found Oliveira guilty of assault only if it found him guilty of conspiracy to commit assault, and the evidence to support that charge could also support an inference of assault.[32] Accordingly, the defendant was not deprived of an opportunity to mount a defense, and as

27. *Id.*

28. *Id.* at 581 (alteration in original) (quoting Santosky v. Kramer, 455 U.S. 745, 755 (1982)) (internal quotation marks omitted).

29. *Id.* (alteration in original) (quoting State v. Neary, 409 A.2d 551, 555 (1979)) (internal quotation marks omitted).

30. *See* State v. Oliveira, 774 A.2d 893, 923 (R.I. 2001) (applying the *Mathews* test to determine if defendant's due process rights were violated at trial due to alleged inconsistencies between jury instructions and the indictment).

31. *Id.*

32. *Id.*

such, there was no due process violation.[33]

The Rhode Island Supreme Court's application of *Mathews* illustrates that, in Rhode Island, state governmental proceedings, whether administrative or judicial, both civil and criminal, are subject to the procedural due process analysis of *Mathews*. Yet, while probation revocation hearings fit neatly and naturally into the *Mathews* civil due process framework, the Rhode Island Supreme Court has never subjected the standard of proof in probation revocation hearings to the *Mathews* test.

### B. *How Has Rhode Island's Probation Revocation Standard Evaded* Mathews *Analysis?*

The Rhode Island Supreme Court has established that probation revocation proceedings are civil in nature[34] because they arise *after* conviction and are thus removed from the criminal process.[35] Any doubt about this was firmly resolved in 1998, when the court, in *State v. Smith*, declared that: "[i]t is well established that [a] probation-revocation hearing 'is not a prosecution but is civil in nature.'"[36] Rhode Island's highest court again affirmed its position in this regard in 2008, stating unequivocally that: "A probation-violation hearing is a civil proceeding to determine whether a probationer has kept the peace and been of good behavior . . . ."[37]

The Rhode Island probation revocation standard was announced in 1968 in *Walker v. Langlois*.[38] In *Walker*, the court considered what level of due process was required in probation revocation proceedings under the Fifth and Fourteenth Amendments and held that, because such proceedings are sentencing procedures unrelated to criminal prosecutions, the Due

33. *Id.*

34. *E.g.*, State v. Gautier, 950 A.2d 400, 408 (R.I. 2008) ("A probation-violation hearing is a civil proceeding to determine whether a probationer has kept the peace and been of good behavior, or otherwise violated a condition of probation.").

35. *See* State v. Delarosa, 39 A.3d 1043, 1051 (R.I. 2012); State v. Smith, 721 A.2d 847, 848 (R.I. 1998).

36. *Smith*, 721 A.2d at 848 (second alteration in original) (quoting State v. Hie, 688 A.2d 283, 284 (R.I. 1996)).

37. *Gautier*, 950 A.2d at 408.

38. 243 A.2d 733, 737 (R.I. 1968).

Process Clauses do not require greater levels of protection.[39] Thus, the amorphous "reasonable satisfaction" standard that has significantly contributed to Rhode Island's prison population was spawned.

While it is unclear as to why the Rhode Island Supreme Court has yet to analyze the probation revocation standard under *Mathews*, it is undeniable that in Rhode Island, probation revocation hearings are civil proceedings, and Rhode Island's highest court routinely applies the *Mathews* test to civil proceedings. As such, the Rhode Island Supreme Court should follow its own precedent and evaluate the reasonable satisfaction standard under the *Mathews* three-pronged test.

## II. RHODE ISLAND'S STANDARD FAILS TO SATISFY *MATHEWS V. ELDRIDGE*

Applying the *Mathews* test leaves no doubt that Rhode Island's "reasonable satisfaction" standard of proof does not satisfy procedural due process protections. "Reasonable satisfaction"—what does that even mean? As a legal standard, not only is it incredibly low, it is also exceptionally vague. It places the majority of the burden of proof on the probationer, and risks erroneous incarceration. Simply put, the standard fails to provide the safeguards that the Constitution and *Mathews* demand.

### A. *The Private Interest Affected: The Right to be Free from Physical Constraint*

The *Mathews* test requires a court to consider the factors that were enumerated previously. First, a court must identify "the private interest that will be affected by the official action."[40] In a probation revocation proceeding, the private interest at stake is the constitutional right to liberty, as revocation of probation results in incarceration. As recognized by the United States Supreme Court in *Gagnon*, probationers enjoy the same liberty

39. *See id.*; *see also* State v. Washington, 42 A.3d 1265, 1271 (R.I. 2012). Perhaps the Court has relied on the very nature of its civil characterization of probation violation proceedings as a justification for maintaining a lower standard of proof than that which is required in a criminal proceeding. Such an argument, however, is beyond the scope of this Note.

40. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

interest as parolees.[41] Although this liberty is conditional, it nevertheless includes "many of the core values of unqualified liberty," and constitutes a "grievous loss" on a person when such liberty is revoked.[42] When describing the importance of this liberty interest, Daniel F. Piar wrote in the American Journal of Criminal Law: "the very fact that a convict is on probation indicates a considered judgment by the sentencing court that he is deserving of such valued liberty, whether because of his personal traits, his potential for rehabilitation, the nature of his crime, his criminal record, or some combination of these."[43]

As Justice O'Connor emphasized in *Hamdi v. Rumsfeld*, the *Mathews* scale is not offset against the individual merely because of the circumstances surrounding the allegations against him, for "[i]t is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection . . . ."[44] The hardship of probation revocation is often worsened when a person is pulled away from, and cannot support, his or her family or other loved ones. The probationer lives under a threat of incarceration[45] and must be always on guard to keep himself from being denied the opportunity to maintain a normal, productive life, knowing that his behavior will have profound effects not just on him, but also those who depend on him. These values should not be whisked away on a whim; each is critical to the successful rehabilitation of the probationer.[46] Their guilty status notwithstanding, the interest probationers have in staying out of prison is strong because they have so much to lose if wrongfully incarcerated. Accordingly, under *Mathews*, the probationer has an undeniable liberty interest significantly affected by the official action.

41. Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973).

42. *See* Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

43. Daniel F. Piar, *A Uniform Code of Procedure for Revoking Probation*, 31 AM. J. CRIM. L. 117, 130 (2003).

44. *See* 542 U.S. 507, 531 (2004) (alteration in original) (quoting Jones v. United States, 463 U.S. 354, 361 (1983)) (internal quotation marks omitted).

45. *See* Timothy Baldwin & Olin Thompson, *More Horse-Hair for the Sword of Damocles? The Rhode Island Probation System and Comparisons to Federal Law*, 21 ROGER WILLIAMS U. L. REV. 244 (2016).

46. *See Gagnon*, 411 U.S. at 782; *Morrissey*, 408 U.S. at 481–82.

B. *The Risk of Erroneous Deprivation is High*

A court must next consider the "risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards . . . ."[47] The procedure here pivots on the standard of proof required to prove a probation violation—"reasonable satisfaction." The Rhode Island Supreme Court has not clearly defined "reasonable satisfaction," although it has provided some hint as to its meaning, explaining that "the state need only show that 'reasonably satisfactory' evidence supports a finding that the defendant has violated his or her probation."[48] Other sources, however, place the standard below preponderance of the evidence, requiring only that a hearing justice or magistrate have a "rational belief" that the evidence of a violation is adequate and sufficient.[49]

The Rhode Island Supreme Court has acknowledged that the principle function of the standard of proof serves to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."[50] Concerning, in particular, evidentiary standards of proof: "in any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects . . . a societal judgment about how the risk of error should be distributed between the litigants."[51] Thus, the court has explained why proof beyond a reasonable doubt is the established standard in criminal trials: The higher burden is on the state to prove the facts as true because a defendant, who is presumably innocent, will suffer the greatest loss of all, his liberty, if convicted. Therefore, almost the entire risk of error would be borne by the state.

The reasonable satisfaction standard in Rhode Island turns

47. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

48. State v. Bouffard, 945 A.2d 305, 310 (R.I. 2008) (citing State v. Forbes, 925 A.2d 929, 934 (R.I. 2004)).

49. *See, e.g.*, 2 NEIL P. COHEN, THE LAW OF PROBATION AND PAROLE, § 26:13, at 26–34 (2d ed. 1999).

50. State v. Germane, 971 A.2d 555, 582 (R.I. 2009) (quoting Addington v. Texas, 441 U.S. 418, 423, (1979)) (internal quotation marks omitted).

51. *Id.* (quoting Santosky v. Kramer, 455 U.S. 745, 755, (1982)) (internal quotation marks omitted).

that risk allocation entirely on its head. It is perhaps the lowest standard of proof available, and therefore places almost the entire risk of error on the probationer. This risk is simply too high to protect against the "grievous loss" that a probationer would suffer in an erroneous probation revocation.[52] Falling below the preponderance standard, it creates a risk that a probationer could be sent back to prison even in situations where it is *more likely than not* that probation was never violated.

The preponderance standard, however, evenly allocates the risk of error between litigants.[53] In the probation context, this would require a magistrate to find sufficient facts to demonstrate that it is at least more likely than not that a probationer violated the terms of his probation. The preponderance standard provides an objective measurement, which would force hearing magistrates to look more closely at the evidence before reaching a decision. No longer would judges be empowered to support probation revocations on a mere "rational belief."

The scales, therefore, tip toward raising the standard of proof under the second prong of *Mathews*, because the reasonable satisfaction standard creates an intolerable risk of erroneous incarceration, and the probable value in raising the standard to the preponderance of the evidence will provide the necessary additional safeguard required by due process.[54]

### C. *The Government's Interests*

The final factor in a *Mathews* analysis requires a court to weigh "the Government's interest," while also considering any "fiscal and administrative burdens that the additional or substitute procedural requirement would entail."[55]

Probation revocation hearings involve interests that "sometimes compet[e] and sometimes coincid[e]."[56] By enabling the probationer to remain connected with society, probation is

52. *See* Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

53. State v. Davis, 641 A.2d 370, 374 (Conn. 1994).

54. For a detailed discussion of the standard of proof for probation revocation proceedings and how Rhode Island's compares to other states, see Lara Montecalvo, Kara Maguire & Angela Yingling, *No Exit, No End: Probation in Rhode Island*, 21 ROGER WILLIAMS U. L. REV. 316 (2016).

55. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

56. *Davis*, 641 A.2d at 376.

rooted in the belief that a probationer will ultimately become a productive member of society by being provided with the opportunity to remain connected with people. The government's interest, however, is rooted in providing public safety.[57] The purpose of probation is ultimately to serve both of these interests.[58] They must both, therefore, be considered when weighing any additional procedural burden that may be placed on this system.

The preponderance standard is unlikely to overburden the state's interest in maintaining public safety and, perhaps, would better serve its interest in producing successful rehabilitative outcomes.[59] While a higher standard of proof would add to the state's burden in its attempt to prove a violation, this cannot—and should not—be characterized as "unfair." In fact, the Rhode Island Traffic Tribunal employs a higher "clear and convincing evidence" standard[60] and nonetheless manages to obtain justice in traffic violations, an area where the public safety is also at stake, such as driving while under the influence of alcohol (refusal to submit to chemical test cases), speeding, and text messaging while driving.[61]

Clear and convincing evidence means that the judge or magistrate must believe that the "truth of the facts asserted by the proponent is highly probable."[62] By way of comparison, the preponderance of the evidence is lower, meaning only that it is

57. *See* Murphy, *supra* note 1, at 1.

58. *See id.*

59. *See Davis*, 641 A.2d at 375 (reasoning that a more reliable probation revocation procedure will reduce prison commitments based on erroneous revocation decisions, thereby allowing probationers to stay out of prison and become rehabilitated).

60. See R.I. TRAFFIC TRIB. R.P. 17.

61. Town of Glocester v. Mata, C.A. No. T14-0045 (R.I. Traffic Trib. April 3, 2015) (per curiam) (appeal of trial magistrate's decision to sustain violation of section 31-14-2 of the Rhode Island General Laws (prima facie limits)); State v. Kilsey, C.A. No. T13-0056 (R.I. Traffic Trib. March 3, 2014) (per curiam) (appeal of decision by trial judge to sustain violation of section 31-22-30 of Rhode Island's General Laws, titled "Text Messaging While Operating a Motor Vehicle"); Sarhan v. Rhode Island, A.A. No. 12-094 (R.I. Dist. Ct. October 10, 2012) (per curiam) (appeal from Appeals Panel decision sustaining the violation of section 31-27-2.1 of the Rhode Island General Laws for refusing to submit to a chemical test).

62. State v. Fuller-Balletta, 996 A.2d 133, 142 (R.I. 2010).

more likely than not that the facts asserted are true.[63] The administrative magistrates presiding over traffic violations routinely work under a higher burden to evaluate charges threatening the public safety and are presumably still able to serve that interest, otherwise it is likely that the Traffic Tribunal would amend its procedures. The liberty interests at stake in traffic offenses are incomparable to those that are at stake in probation revocation hearings.[64] Accordingly, Rhode Island's district and superior court judges are more than capable of efficiently integrating the preponderance standard into the probation revocation process while maintaining the state's public safety interests.

When evaluating the state's interest in successful rehabilitative outcomes, it is important to bear in mind the chronic nature of probation-based commitments in Rhode Island.[65] A reliable probation revocation process is one key factor that puts the state in the position to reach its goal of successful rehabilitation, and puts probationers in position to become rehabilitated. A failed system, on the other hand, undermines the system and inhibits its effectiveness. Through the imposition of such a low standard, probationers are incentivized to admit to a violation as part of a plea on new charges, even if no violation has occurred.[66] Not only does this undermine the state's interest in seeing probationers successfully complete their term of probation, it also contributes inherently to our overcrowded prisons. A higher standard of proof, therefore, is likely to further serve the state's interest by increasing rehabilitative outcomes and decreasing recidivism.

A *Mathews* balancing analysis reveals that the risk of

63. *Id.*

64. Town of Middletown v. Semenova, C.A. No. T11-0049 (R.I. Traffic Trib. March 26, 2012) (dismissing a laned roadway charge, holding the state failed to meet its burden because the officer only testified that he observed the defendant "swerve" into the breakdown lane and back into the lane of travel and did not testify as to whether the defendant performed the maneuver in a unsafe manner).

65. COUNCIL ST. GOV'TS: JUST. CTR., RHODE ISLAND JUSTICE REINVESTMENT WORKING GROUP: THIRD MEETING 13 (Oct. 27, 2015) [hereinafter THIRD MEETING], https://csgjusticecenter.org/wp-content/uploads/2015/11/RhodeIslandWorkingGroup3.pdf.

66. *See* Murphy, *supra* note 1, at 16.

erroneous incarceration is intolerably high when probation revocation proceedings are conducted under the reasonable satisfaction standard. That standard is ambiguously low and, because it is a lower standard than a preponderance of the evidence, improperly assigns a majority of the risk to the probationer.[67] The preponderance of the evidence, in contrast, is the standard of proof that appropriately spreads the risk of error equally among the state and the probationer, as is custom for a civil proceeding. Furthermore, the preponderance standard better serves the state's interest in seeking successful rehabilitation outcomes because it will produce a more reliable revocation proceeding.[68] Finally, the preponderance standard will not unfairly burden the state's ability to adjudicate probation violations because the courts are more than capable of adapting to this well-known and widely-used standard.

## CONCLUSION

Rhode Island's criminal justice system is currently battling mass incarceration and ineffective rehabilitation outcomes. The JRWG is studying three areas that it has identified as being contributors to the unnecessarily high incarceration rates and increased costs: pretrial procedures, sentenced admissions, and probation.[69] With an alarming 61% of commitments in Rhode Island prisons resulting from probation violations, probation is perhaps the most troubling of these categories.[70] Despite its comparatively low incarceration rate,[71] Rhode Island ranks third in the nation for the number of probationers per 100,000 residents.[72] Current predictions, however, suggest that Rhode Island's prisoner population will increase by 11% by the year 2025.[73] Governor Raimondo's JRWG has identified a high number

67. *See* COHEN, *supra* note 49, § 26:13, at 26–34; *cf.* State v. Forbes, 925 A.2d 929, 934 (R.I. 2007); State v. Sparks, 667 A.2d 1250, 1252 (R.I. 1995).

68. *See, e.g.*, Montecalvo et al., *supra* note 54.

69. COUNCIL OF ST. GOV'TS: JUST. CTR., JUSTICE REINVESTMENT WORKING GROUP: FIRST MEETING *slide* 23 (July 7, 2015), https://csgjusticecenter.org/wp-content/uploads/2015/07/RIWG1handout.pdf.

70. THIRD MEETING, *supra* note 65, at 13.

71. In 2013, Rhode Island's incarceration rate per 100,000 residents was 194, compared to the U.S. average of 478. *See id.* at 30.

72. *Id.* at 31.

73. *Id.* at 18.

of probation-violation based commitments, which are due in part to the low standard of proof by which a magistrate can revoke a defendant's probation.[74]

The "reasonable satisfaction" standard requires only that a fact-finder have a rational belief that the evidence is adequate to prove a probationer has violated the terms of his probation or has otherwise failed to "keep the peace and be on good behavior."[75] On March 16, 2016, the presiding Justice of the Rhode Island Superior Court submitted changes to Rule 32(f) of the Rhode Island Superior Court Rules of Criminal Procedure, among others, to elevate the revocation standard to a "fair preponderance of the evidence" to the Rhode Island Supreme Court for consideration.[76]

The Rhode Island Supreme Court should approve the Superior Court's proposal because probation revocation, as a civil proceeding, must comport with the procedural requirements of the Fourteenth Amendment. These requirements can be determined by applying *Mathews*, and that application requires holding the reasonable satisfaction standard inadequate to meet constitutional minimums. In so doing, many of the issues arising out of excessive probation will be mitigated. The Rhode Island standard for probation violations is constitutionally insufficient, and this ready alternative is fully adequate to satisfy the needs of both the government and the Constitution.

74. COUNCIL OF ST. GOV'TS: JUST. CTR., JUSTICE REINVESTMENT WORKING GROUP: SECOND MEETING 47 (Sept. 10, 2015), https://csgjusticecenter.org/wp-content/uploads/2015/09/RhodeIslandWorkingGroup2.pdf.

75. State v. Hazard, 68 A.3d 479, 499 (R.I. 2013); State v. Gromkiewicz, 43 A.3d 45, 48 (R.I. 2012); State v. Waite, 813 A.2d 982, 985 (R.I. 2003); State v. Pinney, 672 A.2d 870, 871 (R.I. 1996)).

76. Order Soliciting Comments on Proposed Amendments to the Rhode Island Superior Court Rules of Criminal Procedure and Superior Court Sentencing Benchmarks (Mar. 16, 2016), https://www.courts.ri.gov/Courts/SupremeCourt/SupremeMiscOrders/Order-ProposedAmendmentsSuperior CourtRulesofCriminalProcedure-SentencingBenchmarks3-16-16.pdf.