

Rethinking Criminal Justice in Maine: An Interview with Commissioner Joseph Lehman

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Relative to other states, Maine enjoys low crime rates. Yet crime, and the fear of random, violent crimes are of concern for many Mainers. Lehman addresses these concerns and articulates a new vision for Maine's criminal justice system based on prevention and the principles of restorative justice.

Since February 1995, Joseph Lehman has served as commissioner of the Maine Department of Corrections. Prior to coming to Maine, Commissioner Lehman was secretary of the Pennsylvania Department of Corrections where he was responsible for several major reform initiatives. His accomplishments there led to his being honored with the 1993 "Excellence in Government Award for Corrections" from the national publication, City & State, as well as with the "Michael Francke Award for Excellence" in 1994 from the Association of State Correctional Administrators. Prior to working in Pennsylvania, Lehman spent more than 21 years with the Washington State Department of Corrections. Currently, Commissioner Lehman chairs the National Steering Committee of the Campaign for an Effective Crime Policy as well as the American Correctional Association's Standards Committee.

Maine Policy Review (MPR): There seems to be a great deal of fear and public misconception about crime and the criminal justice system's responses to crime. What's your perspective?

Commissioner Lehman: I'm concerned that the dissonance between reality and perception is getting worse. Crime is an emotional issue. Most of the public's experiences relative to crime are either personal, in which case it is a traumatic and emotional event, or vicarious, in which case it is predominantly through the media's portrayal of crime. I attribute the public's misperceptions in terms of the frequencies of crime largely to the media.

The media industry is becoming much more competitive and focused on controversy and sensationalism. I am aware through national research that the frequency with which crime is reported in the electronic media extends well beyond the frequency of the crime itself. For example, at a time when crime nationally was declining in America, both the national and local electronic media increased their reporting four-fold. Recently, I broached this subject during a meeting with correctional administrators and media representatives. Interestingly enough, the media representatives responded by saying that sensationalism sells. "In the electronic media," one reporter said, "if it bleeds, it leads. We recognize the distortion but it's part of the business."

I also believe there is a heightened sense of public fear that goes beyond what can be attributed to the media. I think this fear is directly proportional to the degree of randomness associated with particular crime events. It seems easier for individuals to deal with things that can be explained in situational terms, such as crimes that grow out of a relationship. But this notion that younger and younger people are just out there wreaking havoc upon one other for no apparent reason is

much more frightening. As a result, many people find the seemingly random incidence of drive-by shootings, of which we have very few in Maine, much more alarming than cases of domestic violence. While one can understand their concern, this is unfortunate given the fact that violence within the family is a much bigger problem in Maine.

MPR: The criminal justice system takes a lot of heat anytime a major crime occurs, especially when it involves someone who was in the criminal justice system. Can you talk about that?

Lehman: Part of the problem, in terms of the tendency to blame the criminal justice system, stems from a failure to understand and have a realistic sense of the capacity of that system. The criminal justice system is an after-the-fact response to tragic instances that occur in people's lives and has little capacity to influence behavior in its totality.

As an example: For every 1,000 serious felonies reported in national victim crime surveys, only 500 are reported by victims. Of those 500 reported to the police, only 100 result in arrest because of the inability to prove the case or catch the suspect. If you consider those 100 in terms of the adult system and look at the decisions of whether to prosecute, go to trial, plead, etc., only thirty actually go to court and only twenty-seven result in convictions. Of the twenty-seven convictions, eighteen go to prison. So the criminal justice system ends up punishing twenty-seven offenders. Yet we have deluded ourselves into believing--out of desperation, I suppose--that getting tougher with them somehow will significantly affect the behavior of those criminals responsible for the 1,000 serious criminal events reported by the victims. I ask you, is this a realistic expectation?

I recently attended a prosecutors' forum focusing on juvenile issues, and we were discussing the related issue of deterrence. One of the prosecutors in the audience was saying, "We've just got to get tougher." In response, a panelist pointed to research that clearly shows that deterrence is not really an operating, viable principle, particularly within the juvenile system. Yet the prosecutor responded by saying, "Now, wait a second. That's not true. Are you a parent? Do you have children?" The implication was that we should be thinking about our response to juvenile crime in the same way parents, within the context of a family, respond to children and punish them for misbehavior. The assumption was that the criminal justice system has the capacity to do the same. If the criminal justice system could detect such misbehavior as early and as frequently as a good parent does, and respond consistently, the system would work. But the truth is the criminal justice system simply can't do what we want it to do. In fact, if you were a parent who detected your child misbehaving with the same frequency as that of the criminal justice system, you would be a terrible parent. That's the reality.

As an after-the-fact industry, our primary and most important task is "risk management." Practitioners within the criminal justice system, including corrections, make judgments on a daily basis about the amount of control needed to reduce the likelihood that an individual offender will commit a crime again. That is their very important piece of ensuring the public's safety. They deal with the more difficult and persistent offender when they are caught, and in doing so they provide a vital and important service to their communities. Their work needs to be valued more than it is now. But to suggest they can ensure your safety is not fair to them and is not being truthful with the public they serve.

MPR: There is research that suggests that rehabilitation doesn't work well with more violent criminals. What's your perspective?

Lehman: During the 1970s a gentleman by the name of Martinson popularized some research that examined rehabilitation outcomes with adult and juvenile offenders. Martinson concluded that nothing works, and his findings quickly became popular, not only with the public but also within the criminal justice system. Martinson later admitted his findings were not entirely inaccurate, that he had drawn a set of oversimplified conclusions from a highly complex set of variables. However, the notion that nothing works continues to be popular.

What we now know is that rehabilitation works if the treatment interventions are targeted appropriately to the dynamic characteristics of the individual and his or her circumstances that are correlated with criminal behavior. When we target appropriately and provide quality implementation, we can reduce the rate at which individuals recidivate. In Maine we call this risk-focused intervention. For example, one classic area in which rehabilitation does work is substance abuse. The research is clear that there is a correlation between the length of stay in treatment and subsequent reductions in criminal behavior and substance abuse. Another area in which the research supports treatment is with certain groups of sex offenders. Even though sex offenders understandably make people nervous, they cannot be lumped into one general category. I know there are people who don't want to hear this. These are the most offensive sort of crimes, and they make me angry. But treatment, from my perspective, is not something we should give to the offender because he deserves it. Rather, if I think there is a chance treatment will work on some of them, I want to provide it as a means of reducing any potential for further victimization. The fact is there are differences among sex offenders. Some are treatable; some aren't.

Another flaw in the conclusion that rehabilitation doesn't work is that the treatment models that were evaluated were strictly offender-focused. The historic assumption has been that we can take an individual and somehow tinker with him or her within artificial environments, and that by dealing with the individual's problem characteristics we can reduce the likelihood of a repeat offense. We know from the research that this is not true.

If you consider prevention research, intervention research, and even community policing and law enforcement research, the findings are clear. You simply cannot focus solely on the individual. You have to focus on the relational context of the behavior and on the normative environment in which the problem behaviors occur.

Unfortunately, everyone is still searching for simple answers--"silver bullets" if you like. The latest fad is boot camps, which are an excellent illustration of what I'm talking about. I ran a boot camp during my prior life in Pennsylvania. Hearing the testimonies of young men and women at graduation from boot camp would convince anyone that boot camps are the answer. They say things like, "I am changed." "I have never had better control of my life." "I have never felt better." "I will never do it again."

But we know from the national research at both the juvenile and adult levels that collectively those people are going to re-offend at the same level as if they went through prison. The immediate conclusion everybody wants to draw is that boot camps don't work.

The problem is not that boot camps are a failed notion; they are just an incomplete solution. As currently constructed, they rest on the underlying assumption that all we need to do is tinker with the individual. They ignore the fact we're returning that individual to the same lifestyle, the same relationships, and the same opportunities he or she had before. The real failure with boot camps rests in our inability to recognize that we've got to deal not only with the individual's characteristics, but also that individual's relational context and normative environment. When I bring this up in discussions with the public, invariably there is someone who has been in the military who wants to challenge this conclusion. Their testimony that "it changed their life" is visceral. However, the truth of the matter is that an individual who successfully completes military boot camp is assigned to a unit that reinforces the very culture and norms taught at boot camp. Then he or she is sent to school, trained, and given a job. If we did that in corrections, we'd be fine, but that's not what we're doing.

MPR: What is your vision for Maine's criminal justice system?

Lehman: We just went through a strategic planning process, and one thing we're advocating is a move to restorative justice as the operating principle for the system. If you look at the current paradigm or model of justice we operate under, it's a retributive justice system. The task of the retributive system is to assign blame and then impose a punishment commensurate with the seriousness of the crime. The problem with this system is that it's offender-focused. From my perspective, it does not place the harm done to the victim or the community at the center of the system's response, which we believe restorative justice does.

The whole concept of justice concerns "right relationships", which simply means not ignoring the impact of the event but as a society being obliged to respond. In particular, we have an obligation to hold offenders accountable, either literally or symbolically, for the harm they've done. I think that fits with the public's gut sense of what's wrong with the system. Undoubtedly the public wants violent people contained, and that goes back to the risk-management task of the criminal justice system, imposing external coercive controls over the offender. That must be the first task of the system.

However, once that's done, the public says, "Hey! We want some sanction that has some meaning to what went on." The public doesn't see value in a non-violent offender sitting around in a jail, watching television, and playing cards--and neither do I. Thus, we are proposing incremental changes to the criminal justice system with the goal being a restorative justice model in which the harm done to the victim and the community is central to justice's response. As an initial step, we're going to be looking at two specific programs for Maine.

For the adult system, we are discussing with a variety of people the possibility of implementing a system of reparative boards. Reparative boards would consist of community volunteers throughout the state, trained and coordinated by the department. Once you make the risk-management decision that the offender doesn't need to be contained within an institutional

environment, then the issue is, "What's the appropriate sanction?" Many non-violent offenders will go through a reparative board. The reparative board will have an obligation to give the victim or the victim's representative an opportunity to sit before the offender and say, "John, this is what you did to me. This is how you hurt me. It wasn't simply that you took this piece of property. As a result, I couldn't get my wife to the doctor. I couldn't do this. . . . You need to hear in a very visual way about the harm you did." We're going to create the opportunity for that victim or victim representative to confront the offender directly if they so choose. Then the reparative board must look at how, in either a literal or symbolic sense, that offender can pay back, or right the harm that was done, in a meaningful way. That ought to be done at the community level because we're talking about relationships within that context. Non-violent offenders are going to be part of that community and should be held accountable for the harm they have done. In many respects, what we do now is simply allow the offender to avoid responsibility. I don't think that's justice.

On the juvenile level, we're going to conduct family group conferencing, using a conflict resolution model that has been implemented by law enforcement around the country. New Zealand uses it for its juvenile justice system; most of the youths who are adjudicated for delinquent and criminal behavior there actually go through family group conferencing rather than go to court.

We'll probably create a pilot program of family group conferencing, conducting it as pre-adjudication in some cases. For example, a juvenile offender assigned to a family group conference would meet with his or her family and extended family, important significant others, law enforcement, the victim, and a facilitator. The process begins with the victim or victim's representative confronting the juvenile about his or her actions and their impact. This is done in the presence of the entire circle of family and significant others.

Then, the family and the youth talk about how to rectify the situation, how they can repair to the extent that they can, either literally or symbolically, the harm done. Next, the entire group must agree on a resolution. In both contexts, what's important is that the victim gets to ask his or her questions, to understand why the incident occurred.

Once those questions are answered, you'd be surprised how many times victims then turn to the offender and say, "What are you going to do about yourself so you don't do this to somebody else?" It's the victim who asks the question, not the system. For my money, this arrangement has a much more powerful impact than the impersonal criminal justice system.

MPR: Juvenile crime is receiving a great deal of attention in the media and from policy makers. How come?

Lehman: Part of this attention stems from the fact that historically we haven't paid much attention to juvenile justice. Now that we're talking about it, the problem suddenly seems bigger and our system appears more visibly inadequate. When I came to Maine, my sense was that the only option available for responding to juvenile behavior essentially was to place them on probation--repeatedly if need be--until the youth earned his or her way to the Maine Youth Center.

This state has relied on the Maine Youth Center as its primary vehicle for deterring youth crime. What I also noticed was that the average length of stay there was six months. You can't convince me, based on my experience and the research, that simply placing a juvenile in detention for six months is going to be very effective.

We need to develop a continuum of services and sanctions that hold youths accountable in real ways much earlier on in their misbehaving, and then graduate that accountability to the point at which real containment within the Maine Youth Center is required. That's why we're reconfiguring the juvenile system so the Maine Youth Center is what we call a "deep-end facility" equipped to handle the more problematic and out-of-control youths from a public safety perspective. We then need to build local capacity to hold juveniles accountable in a meaningful way while responding to their needs at the same time. This is where a restorative justice approach comes in to play.

MPR: Earlier you mentioned that you were considering a system of reparative boards for the adult system. What relationship would these boards have to our current legal system--going to trial, pleading or being found guilty, and being sentenced?

Lehman: The reparative board would be post- adjudication. You'd have to have a system of due process in which the offender either would be found guilty or would plead guilty prior to going to the reparative board. The reparative board is a part of the sentencing phase.

MPR: Do we have enough experience with reparative boards to know whether they work, meaning that they accomplish the goals of a restorative justice model?

Lehman: What we do know is that Vermont has extensive experience with reparative boards. They have some very good data regarding recidivism that suggests there are fewer repeat offenders among people who go through the board than otherwise. When you think about this finding--that recidivism rates go down--it makes sense. Right now, the offender goes before a judge, spends five minutes getting sentenced and walks away. With a reparative board, the offender might sit there for an hour and a half with people from his or her own community and is confronted with what he or she did. That's a much more meaningful event in that person's life than what's happening right now.

MPR: It seems the success of such a program really depends on quality implementation. How will you make it work?

Lehman: We know one of the very important elements in terms of any program is the quality of its implementation. What we must do in our creation of these programs, as we move to more performance-based budgeting, is consider process measures as well as outcome measures, because process measures assess the quality of the implementation. Additionally, training for staff and the reparative board members, ongoing coordination, and the development of policies and protocols all are important ingredients toward ensuring quality implementation. When you think about it, coming up with the initiative is the easy part, implementing it and making it work is the harder thing to do.

MPR: Programs like community policing and reparative boards take the solutions down to the community level, and there's an awful lot of support for that trend in many different policy areas, such as mental health, education, and the environment. Yet this trend toward federalism, especially fiscal devolution, often requires new resources at the local level. Does Maine have the resources necessary to implement these kinds of local solutions and make them work?

Lehman: I've got mixed feelings about the whole issue. I've got some concerns about the federal government, particularly within the criminal justice arena. There is talk about giving up federal control of issues to the state and local levels, but it's not being done in the criminal justice area. The federal government still is attempting to tie those strings to federal dollars. There's inconsistency in what's happening.

What also scares me is the problem we have with the disconnects between our fiscal policies and our programmatic policies. We often find ourselves tied to programs and policies more defined by fiscal realities than by the needs of the population we're attempting to serve. It's difficult to determine the right thing to do and how to do it.

A classic example of this problem at the state and local levels rests in the area of juvenile detention. Right now, it is the county's responsibility to pay for juvenile detention--even if the juvenile is placed in a state facility. The state actually decides if any detention is needed, but it is up to the local sheriff to decide the nature of the detention. When he or she makes that decision, it may mean sending some kids to the state system. At that point, the county has to pay. However, current law states that with the opening of the Northern Maine Detention Center, the state will assume fiscal responsibility for detentions. The flaw, from my perspective, is that decisions about who needs to be detained in the state's facilities will continue to be made by the county, which ostensibly could be making its decisions in order to avoid the cost of dealing with the youth.

My position on this issue is simple. We can't open the Northern Maine Detention Center until we solve the policy/fiscal disconnect that would occur under the new law. That's an example in which we just can't allow fiscal realities to decide what happens. What we need to do is create a system where the risk to public safety and the needs of the youth are the defining criteria of what should happen, not fiscal reality. Yet in many systems, fiscal realities have become the defining elements.

MPR: What are the two or three priority issues for Maine's criminal justice system right now?

Lehman: One of those issues, and I'm talking about broad-brush criminal justice, although it certainly has implications for corrections, is the mentally ill offender. This is a very difficult and complex area. The issue is how to separate the risk for criminal activity from the notion of mental illness. My concern stems from tragic incidences such as happened in Waterville, and the fact that the public may develop the misperception that there's a correlation between mental illness and criminal activity, which there is not. While there are increasing numbers of offenders with mental illnesses, this trend says more about how our current system responds.

The corrections system has increasing numbers of mentally ill offenders, yet is without a treatment capacity to respond to their mental illnesses. We need to work on that. We're looking at the possibility of a stabilization unit for the chronically mentally ill so we can separate them from the general inmate population and provide treatment. We're looking at some partnerships with the state's mental health department for intensive case management of people leaving the corrections system, which is critically important for people who might, within the context of criminal justice, serve their time and leave without the system having any more jurisdiction over them. We have some agreements with the Department of Mental Health in terms of their case management. It's in place and working.

The other issue is sex offenders. We need a better capacity to sort sex offenders relative to their risk to the public. We need a better capacity to contain those who are predatory violent sex offenders. We need a better and more sophisticated way to monitor them in the community. We're working on that with a federal grant, and we're going to be developing a relapse prevention supervision model for supervising them more effectively in the community.

As for substance abuse treatment, we may be able to do some limited things with federal dollars, but clearly we're not doing what the research says we should be doing. We need to make improvements in this area within the context of the state's resource constraints. This will be an incremental process.

Related to our treatment of all these offender groups, we continually are challenged by the public's notion that nothing works. Getting people to recognize that what we call risk-focused intervention is good public policy and worth a prudent expenditure of funds is not going to be an easy task. We also will need to address the overall system's capacity. We have had a change in "good-time" laws, which means the population will be growing, and that will result in increased costs associated with locking people up.

Finally, the most important issue, and the one most near and dear to my heart, is prevention. We need people to recognize that prevention is not some amorphous top-down government program. Prevention works, and it functions within the context of community relationships, be they family, school, church, or neighborhood. We've just got to make prevention a viable agenda item.

MPR: There's a lot of evidence that suggests that prevention at the early ages makes all the sense in the world. But does that idea run head-on into fiscal constraints?

Lehman: Fiscal constraints are a real problem, but our inability to do prevention goes beyond dollars.

MPR: You mean it's philosophical?

Lehman: Yes, if you talk to most elected officials about prevention, their eyes glaze over. It's as if they envision a government, top-down program, when we're talking about building local capacity. We've got to get policy makers to think differently about the problem. Although the phrase is overused, it really does take a village to raise a child.

MPR: Where does community policing fit in?

Lehman: Community policing is an extremely important component of an effective prevention system. I take my hat off to law enforcement in this country for being among the first to recognize that simply sitting around and waiting for crimes to occur and then mopping up the blood afterward is not effective. Law enforcement rightly has recognized that if you don't get immersed in community relationships and become a partner with its members to define what's wrong, how to respond, and how to prevent, then it won't work.

Research clearly indicates the factors that put children at risk for becoming involved in serious health and behavioral problems, whether it's violence, substance abuse, or teenage pregnancy. We know how to protect children from these risks, but we have become so preoccupied with the concept of individualism that we've developed only the capacity to deal with problems and solutions that target individuals. This is a large impediment to the reality that we collectively are responsible for children. We've got to move beyond our individualistic tendencies to focus on communities.

MPR: What's the role of technology in the future criminal justice system? How is Maine responding to such innovations as electronic tracking, remote arraignments, published sentencing, and other trends created by new technologies?

Lehman: There is a definite consensus within the criminal justice system that one area we should focus on is technology. We have a long way to go. Everyone in the system realizes it, but this state has suffered fiscally. When federal revenue is given out on a formula basis and is based on experience with crime, we don't get much.

Despite the state's fiscal challenges, the role of technology is critical. In order to conduct effective risk management, which really is what our business is all about, sharing information about the offender is paramount. With a rural population, it's critical that all parts of the criminal justice system are on the same page. If I've got a probationer living some place, ideally we would have an electronic system in place so local law enforcement understands the conditions of that probation. Then, if they find that offender out at 3 a.m., they can make a determination in a moment's notice about whether that offender should be there. That kind of information sharing will make the system more effective. The Automated Fingerprint Information System and DNA also will make the system more effective. All those things are extremely important. Maine is behind, but not because of a lack of recognition or commitment to its importance.

I've already begun talking to my probation officers about how technology will impact their jobs. Part of their current role is monitoring, supervision, and surveillance, but it won't be long before technology takes over those tasks. For example, if we had the money, we could have a system in place that tracked offenders' locations almost moment by moment and simultaneously tested them for substance abuse. With technology performing many of the current roles of the probation officers, their time instead could be devoted to conducting more thorough assessments of risk and need, as well as brokering or actually doing risk- focused intervention and community work in relation to relapse prevention supervision of offenders. There is a lot we can and should be doing.

MPR: How does Maine compare to other states?

Lehman: Maine is blessed. We need to celebrate the fact we have low crime rates. Despite the fact Maine is rural and poor, there is a strong sense of community. Maine hasn't experienced the urban plight so prevalent in other parts of the country. Although there is a fear about things becoming as bad as they are in the rest of the world, there's still that element of hope that we aren't like the rest of the world, that we still have the capacity to do something about our problems. These are definite pluses.

From my perspective, I have a closer working relationship with the other criminal justice agencies here than has been my experience in other jurisdictions. Sadly, many other jurisdictions are so overwhelmed and beleaguered that not only does it become very difficult to ease that burden, but also to even imagine being innovative and collaborative with other agencies. Here, if I've got an issue, I might call the chief justice or the chief of police, who might respond by saying, "Hey, Joe, let's have a meeting and talk about it." One example of this: We have a Children's Cabinet that's working on children's issues in terms of prevention. We're actually working together. We really have something to look forward to.

My biggest fear for Maine is that the growing sense of fear on the part of the public will lead this state to choose policy options that aren't effective and that won't recognize Maine's strengths. We need to recognize that Maine's low crime rates are not attributable to the criminal justice system, but to other quality-of-life elements. If we are to keep our crime rates low, then that's where we have to focus our attention--on ensuring that our children have opportunities and that our communities are strong. If we begin to have a gang problem, let's not respond like other states. Let's figure out what has worked in other places, but then let's respond within the context of Maine, because this state is different. That's the simple reality.



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