

Criminal Neglect: The failures of Nebraska's correctional system to care for prisoners with disabilities

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Report prepared by ACLU Nebraska
Amy Miller, Legal Director
Patti Osborn, B.S., Volunteer researcher
941 O Street, #706
Lincoln, NE 68508
(402) 476-8091
info@aclunebraska.org
www.aclunebraska.org

Preface

The Nebraska Department of Correctional Services cares for over 4,000 inmates. Most of these inmates are not in prison for life. It is unknown how many additional prisoners are housed in county jails. Whether state or county prisoners, they are released after a few weeks, months, or years. These people will reenter society, and it is important that they receive treatment while in prison so they can get jobs and not cause harm to themselves or others. It's also what the law requires.

The Eighth Amendment of the U.S. Constitution mandates that our government not inflict cruel and unusual punishment. The denial of medical care violates this constitutional requirement. The current health care system in Nebraska's jails and prisons fails to provide adequate measures to treat inmates in need of care. Inmates should not be denied treatment and medication, be it for physical conditions such as heart disease or for mental illness. Good medical and mental health care is not a luxury, but a constitutional necessity.

This report is intended as a first step in seeking immediate attention and remedial efforts by advocacy groups, correctional facilities, and the Unicameral. The intent of this report is to provide some of the human stories behind prison walls, both the tragedies and the nearly fatal stories that had a successful ending upon the work of outside advocates.

The report then outlines some of the reasons why the systems are failing to provide appropriate medical and mental health care. The emphasis in this report is mental health care, because it appears jail and prison officials have the least understanding of or inclination to provide services for people with mental illness. Other forms of disabilities and medical conditions are touched on, but the largest problem at this time appears to be the lack of screening and treatment for prisoners with mental illness. (See Appendix B for more information on the growing problem of mental illness behind bars.) Finally, the report outlines some possible courses of action that could ensure we are providing the sort of care the law and human dignity demands.

ACLU Nebraska is not claiming that the inmate health care system is staffed with uncaring people, or that everything about it is broken. However, the volume of complaints we have received, and the picture that they paint, lead us to believe that this matter is ripe for public discussion, legislative review and action to remedy the problems we have noted.

Background on this report.

Over the past two years, ACLU Nebraska has investigated complaints made by over 100 prisoners with disabilities. There have been recent news reports of inmate deaths related to untreated medical

or mental health conditions. This report sets out the information gathered from the ACLU's advocacy work, the public record, and the studies done by state agencies.

The picture created by this study is a grim one: prisoners with disabilities, at both the county and state level, frequently receive no care or inadequate treatment that threatens their lives and their ability to return to society after serving their time. The lack of care affects both the innocent pre-trial detainees and those adjudicated as guilty.

People who are still innocent but in jail due to their financial inability to post bail, people who have been ordered to serve a short sentence of weeks or days in a county jail for minor offenses, and men and women in state prisons who are facing longer sentences all are in need of health care. Their needs range from simple access to prescriptions such as insulin and nitroglycerin, to mental health medication and counseling, to accommodation of physical disabilities such as hearing impairment or use of a wheelchair.

Stories of Punishment Through Neglect:

The stories of individuals reported here are only a fraction of the problems reported to ACLU Nebraska. Most of the people affected must remain anonymous, either due to their fear of stigma as a person who was incarcerated or because they are still in custody and fear retaliation by officials. There are not simply a few facilities failing in their obligation to provide care for the Nebraskans in their custody--the complaints ACLU Nebraska has handled come from all over the state, from the smallest counties to the largest and most sophisticated state prisons.

- Robert Pantona was an inmate at the Sarpy County Jail. According to news reports, prior to his conviction, he was on the medication Klonopin for an anxiety disorder. However, upon his entry into the correctional system, Mr. Pantona was not given his medication. A protocol for mental health evaluations does not exist at the Sarpy County Jail, and Robert's requests for help were denied. On July 15, 2002, Mr. Pantona committed suicide by hanging himself in his jail cell.
- Jamie White, Jr., was an inmate at the Nebraska State Penitentiary. According to news reports, this 26 year old man had severe asthma throughout his life. The prison knew he was an asthmatic. Asthma medication must be delivered regularly and without interruption to prevent a killing attack, where death is tantamount to drowning and suffocation. With proper medication and oversight, asthma

is usually a medical condition its victims can manage easily. On September 8, 2003, Jamie White, Jr., died at the age of 26 from an asthma attack.

- Lonnie Thomas, an inmate charged with writing bad checks and other non-violent offenses, was placed in solitary confinement for over four years due to his HIV+ status. While in solitary, he made repeated requests for mental health counseling to combat depression over his incurable disease and the isolation caused by solitary confinement. The prison refused to allow Mr. Thomas to attend group therapy and refused to provide individual counseling as long as he was in solitary. Mr. Thomas received a response from the prison suggesting he deal with his mental health problems by reading self-help books from the prison library and by practicing yoga.
- A man in a north-eastern Nebraska county jail was serving a six month sentence for a non-violent offense. He had a history of mental health problems and managed his condition with anti-psychotic medications. The jail did no mental health screening upon intake because they did not have a protocol for such screening, and no medical staff to perform it. Nor did the jail seek to verify whether inmates had a prescription needed during the time in jail. After four weeks of un-medicated incarceration, the man was experiencing hallucinations and hearing voices that told him to commit suicide. His wife asked the sheriff in charge of the jail to accept the prescriptions she had or to have her husband evaluated, but nothing was done. When ACLU Nebraska learned of the problem, we made immediate contact with the sheriff and outlined the need to provide care for the inmate both for his own safety and the other inmates and guards who had contact with him. The inmate was given emergency treatment by a local doctor and ultimately transferred to a state prison facility with fulltime medical staff for the remainder of his sentence.
- A man charged with crimes in Lancaster County was deaf and able only to communicate with sign language. He requested an interpreter as required by law so he could attend religious services, mental health counseling, and classes offered in the jail. The jail refused to provide an interpreter except for at disciplinary hearings. The man

spent almost a year isolated without an interpreter since no staff members were certified to sign. After intervention by ACLU Nebraska, the jail agreed to provide a qualified sign interpreter for the rehabilitative programs.

- A man in a south-eastern Nebraska county jail was serving a short sentence for non-violent offenses. He was over 50 and had a past history of heart problems. He was taking cardiac medications at the time of his arrest and required access to nitroglycerin in the event of another heart attack. The jail refused to allow him to use any of the medicines he already had, but also refused to provide him with new medication. The inmate waited for three months without being seen by a doctor, during which time his sole medication was a single aspirin each day. After intervention by the ACLU Nebraska, the jail finally permitted a doctor's examination. The doctor immediately prescribed appropriate medications to prevent a fatal heart attack.
- An inmate at a state prison had a history of strokes and high blood pressure. He began to experience elevated rates of blood pressure, and requested a re-evaluation of his prescriptions. He was not allowed to see a doctor, though the prison assigned a nurse to take his blood pressure daily. The rates remained dangerously elevated at levels where a stroke may occur for almost three weeks, but there was no change in the inmate's medical care or prescriptions. After intervention by ACLU Nebraska, the prison sent the inmate to be evaluated by an outside doctor, who immediately adjusted his prescriptions to avoid a fatal or disabling stroke. The inmate's blood pressure remains within normal parameters with his new regimen.
- A man detained in a central Nebraska county jail noticed symptoms of venereal disease. Concerned he may have HIV or an STD, he requested the jail medical staff to test him. They refused. He then contacted the Nebraska AIDS Project, a non-profit agency that provides free medical screening for anyone in the state, to come and test him. The Nebraska AIDS Project agreed to do the testing free of charge to both the man and the jail, but the county jail administrators refused to allow the test. Medical personnel at the jail suggested to the NAP employee that they didn't want to know whether the man had a medical condition.

- A Nebraska woman had received treatment for mental illness, including anti-psychotic medications and anti-depressants. She also had a substance addiction and upon arrest began going through withdrawal. While in the county jail before her conviction, no medication was provided to ease the withdrawal, nor was she screened for mental health care. Upon being sent to the York prison, she experienced uncontrollable rages and suicidal urges. She attempted suicide on several occasions. She attacked guards on numerous occasions, and injured several during these episodes. Whenever she was calmer, she made repeated requests for examination and medication. Despite her history of prescribed medication, the York prison psychologist refused to provide care. The inmate reports the psychologist told her during counseling sessions that the inmate was going to hell, and that she was just bad, not mentally ill. Then, because she was in solitary confinement to control her behavior, counseling ceased entirely because the psychologist refused to meet with her in person. Solitary confinement for this woman consisted of a room without furniture, possessions, or clothing: during visits from ACLU Nebraska, she was only wearing panties. The inmate was kept in these conditions for at least six months. When the Ombudsman's office and ACLU Nebraska separately investigated the situation, the prison agreed to have the woman evaluated again. She was then diagnosed as needing medication, which the prison has now provided. She still is not receiving supplemental counseling despite requests. Although the prescription medication has made it possible for the inmate to gain back many of her privileges and she has had no serious misconduct incidents for over a year, the period where she was not medicated left a serious impact on her life. As a result of the assaults she committed in her un-medicated rages, she has had several decades added to her sentence.

Nebraska Jails and Prisons: A Neglected Care System

The medical and mental health care system in Nebraska jails and prisons must be reformed. There are several important problems that need to be addressed in order to create a system that meets the needs of inmates. If health care is not improved, the correctional system will continue to fail inmates and ultimately fail society.

What follows is an explanation of different medical and mental health care issues in Nebraska jails and prisons and suggestions for how

the system can be improved.

1. Inmate Intake/Screening

The intake period in prisons and jails is a key time to find out if people have mental illnesses or a physical disability. If detainees are identified as having mental illnesses at the time they enter the correctional system, the correctional staff can be aware of potential problems, provide appropriate treatment, put inmates on suicide watch if necessary, and place them in the type of housing that would best suit their needs. Inmates with a medical condition or disability must be identified in order that appropriate accommodation be made or continuity of medicine be provided.

The need is particularly acute for individuals with mental illness, and the recommendations of this report focus on this issue because it appears to be the area of greatest unmet need in Nebraska at this time. People with mental illnesses are at a greater risk for committing suicide in correctional facilities. Most of these suicides take place within the first twenty-four hours,¹ making the intake screening process a critical component of suicide prevention.

When people first enter correctional facilities in Nebraska, they are given only an abbreviated form of medical screening. All county jails use (or are supposed to use) a standardized medical questionnaire that includes only three questions specific to mental illness. The questionnaire asks about current treatment for mental health problems, the presence of suicidal thoughts and depression, and whether or not the person has ever tried to kill him or herself.

The questionnaire fails to ask if the inmates have ever been treated for mental illness in the past, if they have ever been in a psychiatric hospital, and whether or not the person has anxiety problems. These questions should be added to the survey to make it less likely that potential mental health problems will be missed. Information about past mental health treatment is essential because even if the people are not being treated currently, the conditions in jails and prisons could cause a relapse.

The state prisons in Nebraska do not use one standard mental health screening form. Inmates are sent to the Diagnostic and Evaluation Center upon conviction, but it is not clear how many questions about mental health are asked and when the inmates are seen by mental health counselors.

Correctional facilities in other states have developed screening procedures that are more thorough than Nebraska's and therefore more effective. In the state of New York, the Commission of Correction and the

¹ L.M. Hayes, Prison Suicide: An Overview and Guide to Prevention, National Institute of Corrections, 1995. Available at: www.nicic.org/pubs/1995/012475.pdf

Office of Mental Health collaborated on and developed a standardized mental health screening form that all jails and prisons in the state use. This form has been tested and proven to be effective.² Nebraska should adopt a similar program and require that all prisons and county jails use one form so there is uniformity across the state.

In Nebraska, inmates are given medical screening, but that screening does not necessarily mean that a person with a mental illness will be seen by a mental health professional for further evaluation. There need to be procedures in place in all jails and prisons that ensure someone with a mental illness will be seen by a counselor or psychiatrist soon after they are booked, preferably within twenty-four hours. The jail in Summit County, Ohio has a three-tiered screening process that could be implemented in Nebraska. This process includes initial screening at the time of intake, a cognitive function exam by a mental health worker soon after intake for people identified with mental illnesses, and an evaluation by a clinical psychologist.³

Obviously, smaller jails may have a harder time implementing a system like the one at the Summit County Jail. Limited resources may mean that inmates do not have immediate access to mental health professionals because the people they employ may have to rotate to different facilities. One possible solution would have jails make agreements with nearby colleges and universities that would allow medical students to intern in correctional facilities. This would give students valuable experience while providing inmates with better, cost-effective mental health care.

In some circumstances, inmates with acute mental health needs have been transferred from a county jail to a state prison. A uniform system should be implemented where the state and county correctional facilities can work cooperatively in this manner to deliver the best quality care to inmates at risk.

Inmates are also transferred from county jails to the state prisons when their sentences are more substantial. In these situations, the jail should be required by law to inform the prison if the inmate was receiving mental health services or medication; this will save time in the intake process and ensure that people who were receiving services will continue to get them.

2. Psychiatrist and Counseling Availability

Inmate access to psychiatrists and mental health professionals is an important part of any mental health care system. In Nebraska correctional facilities, there are several barriers to that access.

² Council of State Governments, *Criminal Justice and Mental Health Consensus Project*, June 2002. www.consesusproject.org.

³ *Criminal Justice and Mental Health Consensus Project*, Id., 103.

First, there is only one fulltime psychiatrist employed by the Department of Corrections, meaning it is difficult for prisoners to be able to talk to one. Also, the psychiatrist at the Department of Corrections is not part of the Office of Mental Health, meaning that professional does not have ultimate authority over an inmate's mental health care. (See Appendix A for a brief overview of the DCS mental health services.)

The prisons have other mental health staff that work in the institutions, but the inmates do not always feel comfortable talking to these people. Some mental health personnel have worked their way up through the prison system and may not actually have a background in counseling. Because of this, the staff too often have a "corrections mentality" when dealing with inmates. They talk in threatening ways to the prisoners and use punitive measures to "treat" them. Obviously, if the inmates feel threatened or think that they will be punished for their mental illnesses, they will not confide in the mental health staff and consequently, will not get the help they need.

Additionally, even when patients are able to get counseling, it is focused on group therapy rather than on individual treatment. Group therapy may not be effective for someone who has a serious mental illness, and some people may feel uncomfortable disclosing information in those settings.

The Nebraska state prisons use the GOLF system in group therapy sessions. The GOLF program is aimed at changing individuals' criminal thinking rather than treating mental illnesses. This program may help rehabilitate some people, but it is not necessarily effective for improving people's mental health. The GOLF program should either be eliminated or, at minimum, should not take the place of individualized treatment.

Inmates may have mental illnesses that were not identified in the initial screening process or they may develop one once they have been in the facility for awhile. These people need to see a mental health professional, but unless personnel refer them for evaluation, the inmate will not receive treatment. An inmate in the Nebraska penal system cannot simply ask to be evaluated for a mental illness; that is a decision made by the jail or prison staff. This is problematic because other staff may miss the presence of mental illnesses, and they will go untreated. The procedures in jails and prisons should be changed to allow inmates to refer themselves for mental health evaluation.

3. Continuity of Care

Continuity of care is another key aspect of mental health treatment. Once a person is diagnosed with a mental illness or a serious medical condition, it is important that they receive consistent care. When people enter the Nebraska correctional system, their treatment is often disrupted because jails and prisons do not know what kinds of treatments were being used. Additionally, inmates who were taking

medication before they were convicted may not receive it once they are in jail or may end up having to take a different prescription. This interruption in care will often cause an inmate's condition to worsen, meaning they could potentially commit suicide or act out.

As graphically demonstrated by the incident at York [page 6], when people with mental illnesses commit infractions, it may be due to lack of treatment for their conditions. These inmates are then punished or given longer sentences for committing an offense that could have been prevented with adequate care.

One major problem with ensuring that inmates receive continuous care is that when they enter the correctional system, the jails and prisons do not know what kind of treatment they were receiving in the community. Other states have resolved this problem for inmates with mental health needs; for example, some correctional facilities exchange information with community mental health providers. The Cook County jail in Illinois has an electronic system that transfers inmate names to community mental health clinics. The personnel at the clinics check the list of names to identify any people they were treating. If they see a name on the list they recognize, the mental health clinics can then inform the jail and treatment information can be shared.⁴ Another option, used by the Montgomery County Detention Center in Maryland, has correctional facilities post the name of detainees each day and make sure that community mental health providers get copies of the posting.⁵ The more informed the correctional facilities are about the inmates' condition, the more likely it is that person will get appropriate care and not act out or become suicidal.

Another barrier to continuous care is the limited availability of prescriptions in a correctional facility's list of approved medications. Prison and jail pharmacies only carry certain types of medications, often times the older and less expensive ones. If inmates were receiving medication before they were put in jail or prison, they might find that their prescription is changed once they are incarcerated. This change in medication is problematic because it may cause unexpected side effects or may not be as effective as the original prescriptions they were on before entering jail. Correctional facility doctors should be able to put in special requests for any medication that is not on the existing list if they have deemed that prescription would be the most effective in treating the inmate.⁶

4. Solitary Confinement/Punishment

People in penal institutions sometimes commit infractions because

⁴ *Criminal Justice and Mental Health Consensus Project*, 106.

⁵ *Criminal Justice and Mental Health Consensus Project*, 106.

⁶ *Criminal Justice and Mental Health Consensus Project*, 136.

they are acting out as a result of a mental illness. These inmates are too often punished but not treated for the condition that caused the problem. Nebraska prisons use solitary confinement as a punitive measure, but the solitary confinement environment only worsens the person's condition.

Writing about the use of solitary confinement in New York state prisons, Gregory Warner states that "the extreme conditions of disciplinary confinement can...destabilize even healthy individuals, and drive a mentally ill person to total breakdown. Some floridly psychotic inmates have been locked up in the segregated housing unit (SHU) for years, suffering paranoia and hallucinations, self-mutilating, even eating their own feces."⁷

The use of solitary confinement may seem to make sense when people with mental illnesses are being violent towards themselves or others, but it is better to treat their illnesses than to lock them up for twenty-three hours in a small, isolated room that will only make it more likely that they will commit suicide. Alternatives to solitary confinement should be explored, and prison officials should look to the standard of care used in hospitals when attempting to bring psychotic prisoners under control. Isolation may or may not be appropriate, but solitary confinement should be a medical decision and not a punitive matter, and should last only as long as is medically necessary.

An additional problem is that the Nebraska state prisons do not allow any inmate in solitary confinement to have access to the group therapy sessions at all. Inmates in segregation for protection or for disciplinary reasons are not eligible for one-on-one counseling unless they are threatening to kill themselves or harm another. Other than this emergency intervention, an inmate in solitary--where the pressures of untreated mental health issues may be most acute and exacerbated by the conditions--has only periodic checkups by a mental health professional for a few minutes at a time.

5. Inmate release from custody

Even when detainees do receive adequate medical and mental health care in Nebraska jails and prisons, they do not necessarily get treatment once they leave the correctional system. This is can be a particularly acute problem for inmates with mental illness. "Individuals with mental illnesses leaving prison without sufficient supplies of medication, connections to mental health and other support services, and housing are almost certain to decompensate, which in turn will likely result in behavior that constitutes a technical violation of release conditions or a new crime."⁸ Correctional facilities need to plan for an

⁷ Gregory Warner, *Mentally Ill Don't Belong in the Box*, Albany Times Union, April 26, 2002.

⁸ *Criminal Justice and Mental Health Consensus Project*, 162.

inmate's release to ensure that once people with disabilities return to the community, they are able to get mental health treatment and/or needed prescription medication.

One reason why inmates do not receive adequate medical or mental health services once they leave prison is that they cannot afford it. These people often qualify for SSI, SSDI, or Medicaid, but they do not know how to apply for the programs. Jails and prisons should provide information about these programs and help inmates apply to the services before they are released. The processing takes a while, so if the paperwork is not completed while an inmate is in a correctional facility, then they will not be able to get immediate treatment once they leave jail. Penal institutions should have pre-release agreements with local social security offices in which the jail agrees to notify the social security offices thirty days before detainees who qualify for services are released. This pre-release agreement could also allow for staff from these agencies to visit the correctional facilities and help inmates apply for federal entitlements.⁹

Many people with disabilities or mental illnesses are on Medicaid when they are arrested, but once they have been put in jail, they can no longer receive Medicaid benefits. The federal government requires states to suspend Medicaid benefits during this time, but it does not require states to terminate people from the program entirely. Unfortunately, most states, including Nebraska, do end Medicaid eligibility once someone is in the correctional system. This creates a problem because instead of just having benefits restored to inmates once they are released, they have to reapply, which takes more time and leads to a disruption in the provision of medical or mental health care. In order to remedy this situation, Nebraska should only suspend Medicaid eligibility when someone is in jail, not terminate it completely.

One reason that inmates' conditions deteriorate once they leave jail or prison is that they are not given an adequate supply of medication to last until they are able to make an appointment with a doctor. Nebraska jails and prisons sometimes give inmates supplies of medications upon release, but sometimes they do not. There is no written protocol that stipulates every inmate should get medication upon release, and no written protocol stipulating the amount of medication that should be given.

Another reason why people with mental illnesses do not get mental health care once their sentences are over is because they do not know where to go. This is why all jails and prisons should have contracts with local community mental health clinics to provide treatment and to perform mental health evaluations on inmates so when the person is released, they already have relationships with people at the centers.

⁹ Bazelon Center for Mental Health Law, *For People with Serious Mental Illnesses: Finding the key to successful transition from jail to community*, March 2001

Also, information about different counseling and treatment options could be given to the inmates before they are released so they know where to go to get help.

If jails and prisons do not plan adequately for inmates' discharge, they will be unlikely to get mental health treatment, meaning their conditions will deteriorate once they leave the correctional system, increasing the likelihood that they will commit another crime and be back in the penal system again.

6. Oversight and Enforcement of Inmates' Rights

Inmates are usually isolated from being able to seek outside help if they are experiencing a lack of medical or mental health care. Many inmates are without the financial resources to hire a private attorney to advocate for them, and a public defender is only able to provide criminal representation rather than continuing assistance with all problems associated with incarceration. Currently, ACLU Nebraska responds to complaints made by inmates or their families, but our organization has a very small staff and only has one office in Lincoln. Inmates in greater Nebraska may not be aware of the ACLU as a resource, or may not be given access to communicate their needs to ACLU.

At the state level, there is an Ombudsman office which investigates and responds to complaints of inmates at state prisons. Their expert staff has the qualifications and familiarity with these issues to review medical and mental health needs and takes action when the inmate's complaint merits intervention. The Ombudsman's office is without enforcement powers, however; if the Ombudsman recommends action and the prison official refuses to agree, the Ombudsman's office is without authority to mandate change or directly enforce the inmate's rights. Enforcement authority for the Ombudsman or another state entity would provide the necessary "teeth" to this resource for inmates facing a life-threatening medical situation. The Ombudsman cannot assist inmates at county facilities at this time.

At the county level, there is a County Jail Standards Board that reviews inmate complaints. The Board meets only four times a year, and does not have a phone number that inmates may call. In practical terms, this means a person held at a county jail with an emergency, such as needing heart medication or anti-psychotic prescriptions, has no recourse through the Board. No other agency is empowered to review the actions of county jail officials. Without a true, responsive agency to address emergency issues for inmates, people who are pre-trial detainees or serving short sentences are very vulnerable.

What is Necessary to Solve this Problem?

It will take action on many different levels in order to improve

medical and mental health care in Nebraska jails and prisons. ACLU Nebraska recommends the following steps be taken to insure that inmates receives a constitutionally acceptable level of health care.

Prisons and Jails

1. Train jail and prison staff on how to use the medical screening form more effectively in order to identify mental illnesses and prescription/medical needs.
2. Use a three-tiered screening process when evaluating prisoners for mental illness.
3. Make agreements with local colleges and universities to allow medical/psychology students to do rotations in jails and prisons so access to mental health care can be improved with reduced or no cost.
4. Give individualized counseling to people with mental illnesses.
5. Give mental health evaluations to inmates who request them.
6. Communicate with local community health providers so they know when one of their patients enters jail/prison and treatment information can be shared.
7. Allow doctors to order medications that are not on the formulary.
8. Use solitary confinement as a treatment tool consistent with mental health standards of care. It should not be used to punish people who cannot control their behaviors because of untreated or inadequately treated mental illness.
9. Work with local social welfare agencies offices to inform them of inmates' release dates so they can apply for federal entitlements before they leave jail/prison.

Nebraska Unicameral

1. Pass legislation requiring prisons and jails in Nebraska to use the same medical screening form; ensure that the form includes more questions about mental illnesses.
2. Pass legislation requiring correctional facilities to inform each other when a person with a mental illness is being transferred between facilities.
3. Pass legislation stipulating that Medicaid eligibility only be suspended while people are in jail, not terminated entirely
4. Pass legislation requiring jails and prisons to make pre-release agreements with social security offices.
5. Pass legislation giving the Ombudsman's office or similar agency greater powers, including authority over county jails and enforcement powers.
6. Pass legislation with mandated uniform minimum standards of care for county jails.

Department of Corrections/Jail Standards Board

1. Develop a medical screening form that includes more and better questions about mental illnesses.
2. Require jails and prisons to use a three-tiered screening process.
3. Require jails and prisons to inform community mental health providers when inmates are put in correctional facilities.
4. Require that jails and prisons comply with inmate requests for mental health evaluations and medical evaluation/testing.
5. Require jails and prisons to use more individualized counseling.
6. Train prison and jail mental health personnel to conform to APA (American Psychological Association) guidelines when interacting with/treating people with mental illnesses.
7. Develop a written protocol that stipulates all inmates should receive a certain amount of medication upon release from state or county facilities.

Conclusion

The medical and mental health system in Nebraska's correctional facilities needs to be examined more closely and changes must be made. It will take the cooperation of both the Legislature and Executive Branch agencies to create these changes and insure that inmates in both jails and prisons can receive the level of health care needed to satisfy the constitutional requirement that punishment not include cruel and unusual attributes.

Government officials, the Department of Corrections, the Jail Standards Board, advocacy organizations, and correctional facilities all need to be involved in fixing the delivery of medical and mental health care to inmates in Nebraska. Improving mental health care in correctional facilities will require money, but cost-effective solutions can be implemented.

Many small steps can be taken that will make the system more effective. Though there may be expenditures at the outset, the state will save money in the long-term: if inmates receive better mental health care, they are less likely to require hospitalization for mental illnesses in state facilities or end up in jail again. Better preventative medical care will also reduce the chance of expensive surgery.

Finally, at some point, the system may collapse under its own inefficiencies if action is not taken. This will result in even greater tax expenditures to defend lawsuits. The time to act is now, and not when yet another tragic loss of life or sanity occurs.

Appendix A: Outline of mental health services in the Nebraska state prison system

Most county jails have no staff with mental health staff. Currently the makeup of the mental health department of Nebraska Department of Corrections for state prisons is as follows:

- 7 psychologists, 25 masters level practitioners, and 6 clerical support staff serve 10 Nebraska institutions
- Mental health staff serve 60% of institution's inmates per month
- Services available to inmates approved upon request, via staff referral, or because of personalized plans

I. Services Available at all State Prison Institutions

A. Generic Out-Patient Levels Format (GOLF)

- Encourages inmates to identify and change basic components of their anti-social thinking and behavior
- 4 levels that encourage inmates to use corrective strategies, develop self-monitoring skills, and includes intervention strategies
- Levels 1, 2, 3: 12 two-hour sessions
- Level 4: Ongoing, for those interested

B. Psychiatric Services

- All adult institutions have access to the on-staff psychiatrist or to consulting psychiatrists who can prescribe and manage medications
- Inmates with frequent psychiatric needs are transferred to an institution that provides more services

C. Psychological Services

- Psychological evaluations are scheduled only at the request of the Parole Board or Housing Unit staff for consideration of custody promotions and parole. Evaluations AREN'T made upon inmate request
- Mental status evaluations are conducted within the first thirty days in segregated confinement status and each ninety days thereafter.

II. Specialized programs only available at certain institutions

Lincoln Correctional Center (LCC)

- In-Patient Mental Health Program (IMHP) and Socially and Developmentally Impaired Program (SDI)
- Provide services to people with chronic mental health issues
- Program goals: learning to understand and manage mental illness, criminal thinking/behavior, improving coping and/or social skills; goal is often integration into regular prison population

Appendix B: The growing problem of mental illness in correctional facilities

The prevalence of mental illness is a growing problem across the US, and is especially profound in the jail and prison population. According to a Bureau of Justice report, 16% of state prisoners are classified as having a mental illness.¹⁰ Upon booking, seven percent of jail detainees have serious mental illnesses and 50% are diagnosed with other mental health problems, including anxiety and antisocial personality disorders.¹¹

Proportionately, there are more people with mental illnesses in jails and prisons than in the population at large. In many cases, these people are serving sentences for crimes committed during a mental illness episode. “Often the event precipitating their arrest is directly linked to both their lack of income and their unmet need for services, such as mental health and addiction treatment, and supports, such as housing and employment that are essential if they are to maintain themselves in the community.”¹²

Once people with mental illnesses enter the penal system, their illnesses are exacerbated by the conditions in jails and prisons. The close quarters and overcrowding, lack of effective mental health care, and disciplinary measures all contribute to the increasing problems with mental illness in the inmate population. Inmates with mental illnesses have a higher risk for suicide, and also have the potential to be violent towards others.

A majority of the people who are in the correctional system will reenter society at some point; many of them have served short sentences or are out early on parole.¹³ It is essential that inmates receive quality mental health care in prisons and jails so that they are able to function once they are released. Inadequate mental health programs have a harmful effect on inmates with mental illnesses and society as a whole. The stories related at the beginning of this report include a story the ACLU Nebraska hears all too often: a Nebraskan sentenced to a short period in jail (between 30 days and 6 months) frequently faces an under-funded county system with no screening for mental health issues. County officials often resist providing prescription medication, even if it's

¹⁰ Paula M. Ditton, *Mental Health Treatment of Inmates and Probationers*, Bureau of Justice Statistics, U.S. Department of Justice, July 1999.

¹¹ The Gains Center for Policy Research, Inc., *The Prevalence of Co-Occurring Mental and Substance Abuse Disorders in the Criminal Justice System*, 1997. Available at: <http://mimh200.mimh.edu/edu/PieDb/00690.htm>

¹² Bazelon Center for Mental Health Law, *For People with Serious Mental Illnesses: Finding the key to successful transition from jail to community*, March 2001.

¹³ According to the Nebraska Department of Corrections website, the average stay of a state prisoner is only 25 months. County prisoners' time in custody is generally much shorter. www.corrections.state.ne.us

already prescribed through outside doctors.

Without mental health care during incarceration and without a system to provide transitional prescriptions upon release, people with mental illnesses are likely to leave the correctional system, only to return after committing another crime while unmedicated. As described in the stories above, untreated mental health problems may also result in additional crimes in prison and lead to longer sentences. This is a danger to our public employees in jails and prisons. The danger of an inmate killing themselves, a guard, or another inmate is imminent. Screening and care is necessary to avoid tragedies such as Robert Pantona's.