

BARRED FROM HOPE:
A Study of Healthcare in
Nebraska's County Jails

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“The degree of civilization in a society can be judged by entering its prisons.”

Russian author Fyodor Dostoyevsky’s observation from the 19th century is a truth our own country’s founders recognized when they wrote the Bill of Rights. The Eighth Amendment of the US Constitution prohibits cruel and unusual punishment. Courts have long interpreted the amendment to require prisons to provide basic health care for inmates in their custody.

This study began as a result of the many, many complaints ACLU Nebraska receives from pretrial detainees, prisoners, and their families about county jail failures to provide life-sustaining medical and mental health care. When ACLU receives such complaints, we contact county officials to warn of impending liability. ACLU only intervenes in cases involving the most serious cases—we do not immediately act unless we have reason to believe the medical or mental health care is so necessary that the offender’s life could be at stake. Unfortunately, we have to intervene on such serious cases at least a couple dozen times each year.

Our experiences lead us to believe that jail officials only rarely deliberately intend to neglect the individuals in their care. In most instances, the problem arose due to a failure of policy or because the jail simply did not have the training and funding to adequately deal with the situation. However, whether the healthcare problem was created by deliberate neglect or inadvertent conduct, we have realized the problem is widespread, and has a very high human cost.

State and county officials must work to correct the problem before another death occurs. Under Dostoyevsky’s principle, conditions in Nebraska’s county jails are uncivilized. Under the Constitution, these conditions cannot be ignored.

Minor Offenders Facing Major Neglect

Police book fifty to sixty thousand people into a Nebraska jail each year.¹ Since 1 in every 33 Nebraskans could spend a night in jail this year, chances are each of us know someone who has been in a county correctional facility.

Jails are distinct from prisons--the prison system is under the authority of the state, while jails are run by local city or county municipalities and house less serious offenders. Although jail sentences are less than a year, some prisoners spend longer than a year in jail because they are awaiting charges to be filed or cannot post bond during the period

before they go to trial. Jails are primarily facilities for minor offenses, yet some people have life-altering consequences as a result of the poor healthcare available in jail.

Healthcare gaps in county jail range across all types of medical problems. ACLU Nebraska has tracked reports of inmates facing complete deprivation of care for physical ailments such as diabetes, heart disease and asthma. Some inmates in county jail face difficulty over

accommodation of a physical disability, such as inmates who are deaf or who use a wheelchair. Others require care for more serious types of illness, such as inmates with HIV or AIDS. This study describes the problems facing people with such physical conditions, but will particularly describe the plight of individuals with mental health needs.

The largest number of inmates facing lapsed healthcare are the mentally ill, and these individuals are also the most vulnerable prisoners. Nebraska has a large number

50,000 to 60,000 people are booked into Nebraska jails each year.

of mentally ill inmates. A United States Department of Justice study indicates 16.3% of all jail prisoners in the nation are mentally ill.² Nebraska has a higher percentage of mentally ill prisoners than the national figure: 17.5% of people in our jails have a mental illness.³

Despite the fact our jails have a higher percentage of people with a need for mental health care, inmates at a county jail have the least amount of access to resources for their illness of any other type of prisoner. This is because state and federal prisons have on-site medical and mental health staff to diagnose, treat, and monitor prisoners. In contrast, most county jails in Nebraska do not have any on-site health professionals.

Compare the situation for someone in a state prison and someone in a county jail: Nationwide, only 41% of the mentally ill receive some form of treatment while in a county jail.⁴ Of those who do receive treatment, the majority are simply receiving some maintenance by being given their prescribed medication. Only 16% of those treated received actual counseling with a mental health professional. In other words, the majority of jail inmates who are mentally ill receive no care.⁵ In state prison, not all prisoners with mental illness are being treated, but 60% of them are receiving some treatment.⁶

The irony is that serious felons receive better care in prison than minor offenders do in county jails.

These figures represent national averages, as Nebraska does not currently track statistics in state and county correctional facilities.

The irony is that state prisons house convicted felons who have been sentenced to a longer time due to the seriousness of their crimes, while county jails are populated by pre-trial

detainees, first-time offenders, and people convicted of less serious crimes and misdemeanors.

Yet the Nebraskans who will be quickly returned to our communities are the ones who face serious disruptions and setbacks to their mental health care.

People who are released from jail after incarceration disrupting their mental health care are often returning to very dire circumstances which are aggravated by the jail's failure to provide care. Prior to being arrested, almost a third of mentally ill people were homeless.⁷ 47% were unemployed prior to their arrest, 38% have a history of alcoholism, and 65% were using drugs and/or alcohol at the time of their arrest.⁸ These people often were victimized by sexual or physical abuse in their earlier lives, as well: 31% of the men and 73% of the women are survivors of abuse.⁹

Finally, an individual with mental illness who enters the criminal justice system is very

likely to be re-incarcerated: approximately 8 out of 10 mentally ill prisoners currently in jail have prior convictions, and are statistically likely to be in jail again.¹⁰ All of these figures reflecting the obstacles that mentally ill prisoners face are significantly lower for prisoners without mental illness.

ACLU Nebraska intends this study to raise awareness of the problems faced by prisoners in our county jail system and suggest some initial steps to bring about change.

ENDNOTES:

1. Jail Profile Report 1995-2003. Nebraska Crime Commission Statistical Analysis Center. March 29, 2005.
2. Ditton, Paula M. Mental Health and Treatment of Inmates and Probationers. US Dept of Justice, Bureau of Justice Special Report NJS 174453, July 1999. Online at: www.ojp.usdoj.gov/bjs/pdf/mhtip/pdf
3. Neb.Leg.Res. 191, 99th Leg. 1st Reg.Sess. May 18, 2005.
4. Ditton at 174463.
5. Id.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.

Stories of Neglect from Nebraska County Jails

These stories are just a fraction of the cases reported to ACLU Nebraska each year. Most people affected by jail healthcare problems want to stay anonymous due to fear of retaliation or stigma. The counties described are not alone in their failure to provide care. Rather, ACLU has identified a systemic problem in all county facilities.

Un-medicated Inmate Commits Suicide

Prior to going to jail, Robert Pantona was under doctor orders to take medication for his anxiety disorder. While held in the Sarpy County Correctional Center, news reports indicate Robert did not get his prescription at all, despite his repeated requests for help. On July 15, 2002, Robert Pantona hung himself in his jail cell. (*Omaha World Herald, July 19, 2002.*)

Deaf Inmate Denied Sign Interpretation

A pre-trial detainee in a large urban county was deaf and communicated solely through sign language. He asked the jail for an interpreter to allow him to participate in the services offered to other inmates, including AA meetings, church services and mental health counseling. The jail refused to provide interpreters, even though the detainee's ability to communicate in writing was very limited. The man spent a

year almost entirely isolated from contact with others. After ACLU intervened, the jail agreed to provide sign interpreters for rehabilitation programs.

Three Months Without Heart Medication

In a southeastern county jail in Nebraska, a man was sentenced to a short sentence for non-violent offenses. He was over 50 years old and had a history of heart problems. He needed daily cardiac medications as well as immediate access to nitroglycerin in case of a heart attack, but the jail refused to provide him any of his prescriptions at all. For three months, the man was on a waiting list to see a doctor--during this time, his only medication was an aspirin each day. After ACLU intervened, the man was immediately evaluated by a doctor and appropriate medications were restored.

No Meds Result in Hallucinations and Suicidal Impulses

In a northeastern county jail in Nebraska, a man was serving 6 months for a non-violent offense. He had a history of mental illness and managed his condition through an anti-psychotic prescription. The inmate reported the jail

asked him no questions about his medical or mental health condition upon his intake, and that there was no process to apply for his prescriptions to be transferred to the jail. This jail was small and there was no medical or mental health staff at all. Despite requests from the man and his wife, he spent 4 weeks without any medication. He began hallucinating and hearing voices that told him to commit suicide. ACLU intervention resulted in the man being taken to a doctor in the community, who recognized the serious need for treatment.

The man was ultimately transferred to another, larger facility where his medications were provided.

The stories of neglect are not limited to a few counties. We have a statewide problem.

HIV Test Denied

A pre-trial detainee in a central Nebraska county jail noticed symptoms that concerned him. He believed he had a sexually transmitted disease or HIV, so he asked for a screening test from the jail. This jail did have on-site medical staff, but they refused to test him. The man contacted the Nebraska AIDS Project, a non-profit agency that provides free medical screening. Nebraska AIDS Project agreed to come and do the test at no charge to the man or the jail, but the jail

continued to refuse the test. The man alleges the staff said they did not want to know whether the man had a medical condition, because that would oblige them to provide treatment.

Prison-Ordered Meds Cut Off by County Jail

A state inmate with anxiety disorder had been evaluated by the state prison psychiatrist and prescribed anti-anxiety medication. Without the medication, this woman could not sleep or function normally. During her incarceration, the inmate was sexually assaulted, which required her to be briefly transferred to a large urban county jail to testify against her assailant. The county jail medical staff immediately discontinued her medication--they asserted it was their policy with any new prisoner. While that policy might make sense for someone coming in off the street, this inmate had already been evaluated by a professional from a correctional center. The strain of confronting her perpetrator in court while deprived of her medication caused the inmate's anxiety disorder to re-occur. ACLU intervened with the help of the prosecutor's office to have her returned to the York for treatment. The prosecutor agreed to work with the jail so future court appearances would not interrupt her treatment.

(“Stories of Neglect from Nebraska County Jails” continued on page 10)

SYSTEMIC PROBLEMS

Nebraska county jails have five primary areas that can contribute to the personal tragedies described above: inadequate funding, loss of Medicaid eligibility, the need for improved mandated standards, inadequate other facilities, and the need for a watchdog.

■ **Funding Needs:** Most funding for county jails comes from the county in which the jail is housed. Although most Nebraska jails provide sufficient basic care of inmates, medical and mental health care is very expensive. Some jails may be attempting to reduce expenses by limiting the care provided to inmates, but many jails appear to simply not have the funding to provide the care needed by inmates with physical or mental health problems.

One example of the problem faced by jail administrators is the high cost of prescription medications. Any prisoner who was receiving medication at the time of their arrest is entitled to have that medication continued if it is actually necessary for a serious medical or mental health condition. Many prisoners may have been receiving their prescriptions through state or federal social assistance programs prior to incarceration, but most of those programs cut off eligibility upon incarceration. (This issue is discussed in detail below.) Given the obvious security concerns, the jail cannot just ask the inmate's family to bring in their prescription for fear of contraband being passed into the jail. This unfortunately creates an incentive for county jails to not inquire about prescription medication needs and to delay medical evaluation requests: if officials don't know about the problem, then they don't have to buy the prescription.

The gap between urban and rural jails is also a funding problem. In the larger urban areas, county jails often have on-site medical staff to do some screening and care of inmates. In smaller rural jails or in impoverished counties, the jail staff does not usually include a medical professional. Instead, the county must pay to have the inmate transported to a medical provider in the community and then pay the costs for care. This inequity between counties can mean two inmates with identical medical needs can have very different experiences in jail: one may be seen by a doctor upon intake and be given their prescription medication, while the other inmate will remain in a jail cell without ever being seen by a medical professional or receiving any medical attention.

Increasing funding to county jails is an essential component so the jail administrators no longer have to wonder where they will find the funding to prevent a death in their jail.

■ **Medicaid Eligibility:** Incarceration immediately results in termination of Medicaid, making the jail solely responsible for paying for the prisoner's health care. This shifts cost from the state to local county budgets while simultaneously endangering the health of those in jail.

Different counties are paying different amounts for Medicaid-eligible prisoners: some jails have contracts with local health providers that allow the jail to pay the Medicaid rate, some jails actually pay up to 10% below the Medicaid rate, and still other counties are paying the full rate without any discount. In other words, there is no standard rate of pay for health services between county jails and some counties who lack negotiation power are being charged more than the state would be charged for caring for the same individual.

There is no standardized rate for health care services: some counties are paying more than the Medicaid rate.

The cessation of Medicaid during incarceration presents problems for the individual upon release as well, since benefits are not automatically reinstated upon the inmate's return to freedom. Instead, the person must re-apply for Medicaid and the approval process can take many months--the shortest period for approval is one month, and most cases take longer for final decision.¹ During this waiting period, the former inmate must attempt to find housing and employment while rebuilding their life. When facing these

obstacles without medication for a physical ailment or mental health condition and with no counseling or other services, former inmates face difficult or even impossible circumstances. Problems quickly compound, and it is very difficult for many of these individuals to avoid a quick return to jail for another offense.

A recent study from the University of North Carolina-Chapel Hill concluded that inmates who were allowed to remain on Medicaid had quicker access to services upon release which assisted them to connect back to the community.² This is particularly important for inmates with mental illness, because those who are on Medicaid are more likely to remain stable, while those without services are more likely to re-offend with even more serious crimes in the future.³

Changing Medicaid eligibility requirements would both aid individuals with serious medical needs and assist economically distressed counties.

■ **Mandated Standards Change:** The Jail Standards Board is the state agency that creates the requirements by which all county jails must abide. The Board has 11 members: the State Fire Marshal, the Director of the Department of Correctional Services, and 9 members appointed by the Governor for three-year terms. The work is supported by staff employed under the Crime Commission's Jail Standards Division.⁴ The standards currently in place can be found at Title 81 of the Nebraska Rules and Regulations.⁵ These standards are currently inadequate because they fail to address any mental health issues. Nebraska has not revised the medical sections of Title 81 in over a decade, even though amendments have been recommended by the Jail Standards Board. The Board submitted revisions in 2001 to change seriously needed medical and mental health provisions, but the state has never approved the provisions as required by the Administrative Procedures Act. The amendments remain in limbo. The Jail Standards Board is currently working on revising the standards again and resubmitting them.⁶

The suggested changes from 2001 included requiring a complete medical and mental health screening upon admission into any jail. Such screening would allow jail officials to identify health care needs of new inmates promptly. The revisions also would have required that any person presenting a serious risk to themselves or others (as defined by the Nebraska Mental Health Commitment Act) would be taken to a different facility rather than being put in a jail. Only individuals who appeared to be a serious risk but who had been cleared by a licensed medical or

mental health authority would be allowed into a jail.

Some jails in Nebraska have already adopted their own mental health policies, but there is no uniformity across the state. Approval of the recommended amendments would provide uniformity and minimum protections for new detainees in jails, and would be a necessary step to reformation of our county jail system.

In addition to the amendments which the Jail Standards Board has already developed that await approval, ACLU Nebraska believes additional changes to the minimum jail standards are needed. Our state already has a complete model ready for adoption: the standards for juvenile detention facilities offer a comprehensive model that ought to be adopted for adult facilities as well.⁷ Juvenile detention facilities have a very thorough screening process to identify all current illnesses or health problems, medications, special health needs, and current or past mental illness. The juvenile standards include ongoing observation of the inmate's condition, a protocol for emergency treatment, and management of prescription needs.

Model healthcare standards already exist. Adult facilities should adopt the Nebraska juvenile facilities standards.

■ **Inadequate Facilities for Mental Health Care:** The Nebraska Behavioral Health Services Act of 2004 authorized the closure of the regional mental health centers in favor of opening community-based services. Community services would of course be a tremendous benefit--if they existed in every community. Unfortunately, many cities lack any community based mental health services. The transition away from the regional center system is merely shifting people who are mentally ill to jails and the criminal justice system.

Jails are trained to not accept seriously mentally ill people if they are a hazard to themselves or others. These people are to be placed in emergency protective custody and then taken to a hospital or other facility. Yet most Nebraska communities do not have a psychiatric ward even in their hospitals, and are unable to properly care for individuals who have had contact with law enforcement. Recent news reports indicate some hospitals are filled to capacity with people with medical problems, leaving no beds available for psychiatric patients.⁸

County jails currently do no discharge planning--they are not required to do so by the jail standards. Individuals who are discharged from jail do not receive any information about social services, community-based mental health care, or how to apply (or reapply) for Medicaid for medical needs. This disrupts their care and can result in re-offending. More crime in the community and more incarceration harms both the public and the individual. We need to expand community based services AND provide information about same to released inmates.

Until true community-based services are available statewide, the closing of the regional centers is compounding problems for local hospitals and county jails who are left to care for prisoners with mental illness.

■ **Watchdog for Jail Complaints:** Each county jail has an internal grievance process for inmates to express concerns or request additional services. Although each jail can create its own process, most consist of a written form for inmates to submit with a description of the complaint. There are no statewide standards about how the complaints are then handled. Some jails have on-duty staff address the complaint. Some jails submit the complaint to one administrator, which can delay review and response based on individual schedules. An inmate may not receive a reply for days, weeks or even months. If the complaint is not satisfactorily dealt with, jails usually have an appeal process to take the matter to a higher-ranking jail official, but this takes significant time. Obviously, this complaint process is not satisfactory for emergency medical and mental health needs.

An inmate who needs his heart medication could be forced to wait weeks.

The Jail Standards Board is the state agency that creates the minimum standards for county jails. In addition to creating the standards, the Board reviews complaints about county jails. The Board accepts complaints on an emergency basis, but ACLU Nebraska's experience is that few individuals who are experiencing a healthcare problem have ever heard of the Board and are unaware of its ability to intervene with jail staff. Further, the Board is extremely limited in its ability to effectuate change: the staff may contact a jail about an emergency problem, but has no immediate enforcement ability if the jail refuses to correct the problem. The only power the Board has is to find a jail out of compliance with the standards. This remedy is rarely used, and offers cold comfort to someone experiencing serious health problems.

Increasing public awareness about the Jail Standards Board as a resource and increasing the ability of the Board or another entity to have stronger enforcement powers would assist regulating those few county jails that are willfully not providing appropriate care to prisoners.

ENDNOTES:

1. Interview with Ann Schultz of Nebraska Health and Human Services, July 20, 2005.
2. Gary S. Cuddeback et al, Preventing Jail Detentions: The Role of Health Insurance, Seriousness of Offense, and Use of Community Mental Health Services. APHA Conference, Washington DC.
3. Id.
4. Nebraska Crime Commission, Jail Standards Board Overview. Online at: www.ncc.state.ne.us/crime_commission/membership/committees/jsb.htm
5. Adult standards are found at Title 81 of the Nebraska Rules and Regulations. Online at: www.ncc.state.ne.us/documents/jail_standards/jsd_min_rules.htm
6. Interview with Denny Macomber, Jail Standards Division Executive Director, July 7, 2005.
7. Juvenile standards are found at Title 83, Chapter 11 of the Nebraska Rules and Regulations. Online at: www.ncc.state.ne.us/pdf/jail_standards/jail_rules_and_reg/TITLE83CHAPTER11.pdf

SUMMARY OF RECOMMENDATIONS:

It is in the best interest of all to properly care for Nebraskans who are briefly incarcerated in a county jail. Preventing a health condition from disintegrating with medication, offering ADA accommodations to people with physical disabilities, and providing a system of care for the mentally ill are the right thing to do, but also benefit our communities as a whole by preventing wrongful death, litigation and recidivism. This is particularly true for the mentally ill who need a continuity of services both in jail and upon release. The recommendations the ACLU has include the following measures:

- 1. Increase funding and reform Medicaid eligibility.** At minimum, county jails should not be paying more than the rates charged for Medicaid patients. Increased funding as well as Medicaid reform will insure all Nebraskans can receive needed medication and will remove the

dis-incentive for jails to ignore serious medical needs. While prescription medications for medical and mental health needs appear to be the primary gap in county jail healthcare, we also need to explore providing better mental health counseling in county jails.

2. Create stronger minimum jail standard policies. The recommended changes to the Jail Standards--and the upcoming recommendations being developed by the Jail Standards Board--must be passed to strengthen a statewide uniformity of policies. Ideally, though, we must bring our adult facilities up to the standards in place for juvenile facilities. Our out of date current policies must be revised and approved to guarantee every Nebraskan, regardless of the county of incarceration, is receiving appropriate care.

3. Mandated intake screening and follow-up care. Each county jail should be required to do detailed screening of each person booked into custody in order to identify medical conditions, mental health history, and prescription needs. Beyond identifying needs of each new inmate, the jails should do further follow-up contact with the individual's community health providers before making any decisions about changing or cutting off medications.

4. Develop appropriate facilities for people who are mentally ill. Community-based mental health facilities must be in place before we completely close the regional centers. Otherwise, jails and hospitals will become the new housing for people with serious mental illnesses. Anecdotal reports from county jails already indicate their populations have increased with people who should be in a facility trained to deal with their illnesses. We also need to make discharge planning a mandate for jails so people who are released are given information about community based services to prevent recidivism.

5. Improve watchdogs for inmate grievances. The minimum jail standards should improve the internal grievance process so serious medical issues can be addressed without delay. Improving public awareness of the Jail Standards Board as a resource--or developing a new watchdog entity--would ensure meritorious complaints result in action against jails who are not complying with the law.

CONCLUSION:

The problem is a palpably serious one: we know there are many people with medical and mental health needs in our county jails, and we know the counties cannot meet all those needs under the current system. Ironically, the people in county jail are the least serious offenders but are also the most neglected prisoners. The proposals outlined above will begin to ensure we have fewer deaths, fewer serious health problems, and fewer re-offending criminals in our communities. If we don't address the local needs, our already overcrowded state prison population will continue to grow as we create more criminals.

People who are injured or killed while in jail due to negligence have the ability to bring a civil rights lawsuit. This sort of after-the-fact remedy is not the solution for Nebraska, though. A large damages award entered against a small county could bankrupt the system, and it will never make the grieving family whole. Instead, we need to avoid tragedy by taking appropriate steps to improve our county jail system. The issue must be studied and then dealt with both by local county officials and by state legislators.

Stories of Neglect (continued): A Letter from Jail

A typical letter received from county jail inmates includes this one written to ACLU in September, 2004: "I am under the care of a psychiatrist at the Community Mental Health Center. I take four different medications: an anti-depressant I am supposed to take every day, an anti-anxiety drug, a sleep aid and a prescription for migraines to take as needed. But I am unable to get these medications so far in jail, even though I have been here for many weeks. At first I was told that the jail staff would have to contact my psychiatrist. Then I was told my doctor hadn't faxed the information yet. When I continued to ask for my meds, I finally was told that yes, the doctor faxed the information, but that I would have to wait another week until the jail hired a doctor to see me and THAT doctor would decide whether I would receive any medication. All these decisions are being made by the county Sheriff who runs this jail. How can a non-medical person like the Sheriff control medication that a licensed physician already decided was medically necessary for me?!? I have been suffering bouts of serious depression and anxiety...what would happen if someone became suicidal after a Sheriff decided to stop their medication?"

(ACLU intervention resulted in this inmate being given all his medications within 24 hours of receiving his letter, but not every inmate knows how to contact the ACLU, and not every jail is willing to respond to complaints so promptly. The inmate's question about non-medical personnel having the authority to ignore medically-ordered care will continue to be a problem for every person with a medical or mental health problem in Nebraska jails unless we mandate new standards and change our existing jail systems.)

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