

# Bedlam in the Heartland

## Interviews With and Correspondence From Inmates in Nebraska's Prison System

September 2014

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*"[W]e're alone in these prisons unless there's a major incident with media coverage; Justice is Just Us!"*

Robert Wilson  
Segregation, Tecumseh

### Introduction

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We do not know if it was caused by overcrowding, some other triggering event, or simply benign neglect. What we do know is that Nebraska prisons have approached—or bypassed—the limits courts place on treatment of inmates. Of particular concern is the degree to which the mentally ill are warehoused in segregation for years at a time without respite, an environment to which they are poorly suited. While in segregation mentally ill inmates receive almost no treatment and suffer punishments that range from pepper spray to the use of five-point restraint beds.

This report collects excerpts from ACLU interviews and correspondence with Nebraska prisoners since early 2013 when our overcrowded prisons reached a crisis point. As of the writing of this report in September 2014, the Nebraska Diagnostic and Evaluation Center is at 268.75% of capacity, the Penitentiary is at 181.48% of capacity, and the Lincoln Correctional Center is at 157.14% of capacity.

We have provided a snapshot of the conditions behind prison walls and an overview of what the courts have to say about conditions such as this. The Eighth Amendment to the US Constitution says, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>1</sup> While the Eighth Amendment may have originally prohibited only actual torture, in the modern world it encompasses “broad and idealistic concepts of dignity, civilized standards, humanity and decency.”<sup>2</sup> This broad conception bars not only punishments that are incompatible with the “evolving standards of decency that mark the progress of a maturing society” but also those that involve the unnecessary and wanton infliction of pain or are grossly disproportionate to the severity of the crime.<sup>3</sup>

It is hoped that these excerpts, which represent only a fraction of the material gathered, will convince our legislature and others that the prison system is a problem that must be dealt with in order to comply with the US Constitution and basic decency.

We cannot vouch for the accuracy of any individual statement given to us by an inmate. Despite this limitation, we are convinced that the large amount of material we have collected, from a huge number of different inmates, paints too consistent a picture to be easily dismissed. Inmate names are pseudonyms to protect the inmates’ privacy.

The following reports come from four Nebraska prisons: the Diagnostic & Evaluation Center, the Lincoln Correctional Center, the Penitentiary and Tecumseh. We note with concern that one inmate in the segregation unit at Tecumseh, where many of these stories were gathered, committed suicide in July.

### **Medical and Mental Health Care**

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Healthcare for inmates will violate the Eighth Amendment if it falls below certain minimum standards. The United States Supreme Court says the legal test is violated if prison officials exhibit “deliberate indifference” to an inmate’s “serious medical needs.”<sup>4</sup> The standard is the same for mental, physical and dental care.<sup>5</sup>

A prison official exhibits deliberate indifference if he or she “knows of and disregards an excessive risk to inmate health or safety.”<sup>6</sup> Prison officials may violate the Eighth Amendment not only where they know of a serious medical need but refuse to provide care, but also where they delay needed care for non-medical reasons.<sup>7</sup> A delay as short as three weeks has been found to violate the Eighth Amendment.<sup>8</sup>

The stories Nebraska inmates tell underline serious problems with delivery of medical services. Inmates across various institutions report waiting for many days or weeks to see a doctor, even after submitting formal written requests for care.

*Medical is the most incompetent part of this prison. Medical comes to your door every morning and asks if you need to see medical. You say yes, tell them what you need, and they leave and you never hear from them again . . . if you are an inmate and are truly sick you will die because in here they take a wait and see attitude.*

Robert Wilson  
Segregation, Tecumseh

Even more concerning than medical delivery problems is the failure to provide appropriate mental health counseling or mental health medication, despite the fact that most government studies estimate the average state prison has at least 56.2% prisoners with a mental health condition confirmed by clinical diagnosis.<sup>9</sup>

*I can't get in to be seen by an actual psychiatrist and have been trying for over eight months. I am told this is due to the extreme overcrowding. I have suffered a mental breakdown in the past.*

Jeff Collins  
Segregation, Tecumseh

*I've been on medication for mental health issues my whole life. For my entire stay in Douglas County my meds worked. Then when I got here they started changing my meds all the time, without consulting my regular doctor. I had negative reactions, not once but twice. The second time was a suicide attempt. I was then removed off all my meds and told I needed to work with mental health without my meds for a while. I did so and I did so, but I continued to request medication but was denied by [mental health staff]. [Mental health staff] wouldn't even see me and almost two years later still refuses to see me . . . This is inhumane and no one cares.*

Charles Walker  
Segregation, Penitentiary

## Solitary Confinement for Inmates with Mental Illness

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In addition to reports that inmates aren't receiving necessary prescriptions to treat and control their mental illness, Nebraska prisons are heavily using one of the most cruel practices disavowed by other states: our state prisons are placing many mentally ill prisoners in solitary confinement.

Courts have repeatedly found that housing inmates with mental illness in segregation violates the Eighth Amendment.<sup>10</sup> While an inmate may be subjected to punishment, the state may not create new or exacerbate existing mental health problems.<sup>11</sup>

*I'm surrounded by yelling and screaming and it's always cold. What happens to me when I start having mental health problems from being locked in a cell 23 hours a day with no mental health treatment?*

William Huber  
Segregation, Tecumseh

*I was placed in segregation at the Lincoln Correctional Center for 10 days. The cell next to me was occupied by an inmate who screamed and pounded at the wall all day and night. The ventilation system [between cells] is adjoining so it's like being in the same cell. I could not sleep. In the ten days I was there I got my psych meds maybe two or three times. Staff was aware of all of this and did nothing.*

Joaquin King  
Lincoln Correctional Center

Numerous studies have established that isolation and segregation-like environments are harmful to inmates and are likely to cause serious health problems.<sup>12</sup> The psychological effects of isolation include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.<sup>13</sup> The psychological effects are especially significant for inmates with serious mental illness who experience psychotic symptoms and/or functional impairments.<sup>14</sup> After reviewing over two decades of studies on the effects of segregation, Craig (2003) noted:

There is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects. The damaging effects ranged in severity and included such clinically significant

symptoms as hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior.<sup>15</sup>

In light of the substantial research confirming the harmful effects of segregation, the American Psychological Association recently took the position that “prolonged segregation of adult inmates with serious mental illness, with rare exception, should be avoided due the potential for harm to such inmates.”<sup>16</sup>

At some point in its history, the Nebraska Department of Corrections began to rely on hiding away mentally ill inmates in segregation rather than providing mental health counseling. This has turned into a human rights crisis that is affecting both the sane inmates briefly locked down and those locked up for years away from normal human contact. This area alone is likely to be reviewed with great concern by any court.

## Restraints

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Nebraska inmates repeatedly describe mentally ill prisoners being placed into restraints for days at a time. While prison officials certainly may need to periodically resort to restraints to stop suicidal prisoners from harming themselves, over-use of restraints can rise to the level of an Eighth Amendment violation.

Federal guidelines limit restraints of this sort to 24 hours and recommends “Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.”<sup>17</sup> Nebraska’s current policies apparently do not prevent inmates from being left strapped to a bed or table-like device for days upon days. Some inmates are placed in “five point restraint,” which involves tying down the arms and legs plus a strap across the chest and across the forehead. While this technique ensures the inmate cannot hurt himself, the immobility also can cause physical or psychological trauma and requires constant monitoring.

*The tables that inmates are strapped down to are metal and they strap you down if they put you on five point which is where you are spread out and each arm, leg and a strap across your stomach. Your legs and arms are also strapped. I have had that done to me [during] my first stay at Tecumseh. They [also] have them at DEC.*

Alexander Ramirez  
Lincoln Correctional Center

*John reports he was placed in the restraint table in the observation room at least twenty times at Tecumseh. John spent a lot of time in the observation room, sometimes in five point restraints and sometimes not. When he was restrained it was for between 24 and 48 hours, except for the last three or four times that lasted four days each. Prison staff are supposed to check on the inmate to make sure they haven't choked or hurt themselves fighting the restraints, but John says sometimes it would go as long as four hours between visits. In those situations, he would yell for help when he needed to use the toilet, but he would scream without eliciting response. On those occasions, he ended up urinating on himself.*

## Safety

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Inmate safety is one of the core issues in prison cases and is frequently described as a basic human need.<sup>18</sup> As the US Supreme Court has said, being violently assaulted in prison is “not one of the penalties that criminal offenders pay for their offenses against society.”<sup>19</sup> Prison officials have a duty to protect inmates from violence committed by other inmates.<sup>20</sup>

The risk of harm that inmates pose to each other can be either general or specific. For example, an overcrowded sleeping barracks in which violent incidents frequently occur can present a sufficiently serious risk of harm to invoke the Eighth Amendment, even though the risk is not specific to any particular inmate.<sup>21</sup> A serious risk can also be specific, as when there is known bad blood between two inmates, an inmate is known to be particularly dangerous or known to have violent tendencies.<sup>22</sup>

The overcrowding in Nebraska prisons has an inevitable result: frayed tempers as too many people attempt to share space, leading to assaults and fights.

*I am writing out of concern for . . . the deteriorating prison conditions resulting from prison overcrowding. I have spent approximately 34 years of my adult life incarcerated, so I believe I qualify as an expert of sorts on prison conditions. As a result of the current capacity of the Nebraska prisons being at 158%, I'm witnessing more cell-mate on cell-mate violence here at Tecumseh.*

*Steven Thomas  
General Population, Tecumseh.*

*We are being forced to endure the overcrowding and the prison is not being maintained in a safe and secure manner. An inmate was knocked out in plain view of staff and now has to undergo reconstructive surgery. Many inmates such as myself tend to mind our own business and just want to do our time and go home.*

*Jonathan Moore  
General Population, Penitentiary*

### **Excessive Force and Pepper Spray**

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When prison officials are accused of using excessive force against disruptive inmates, courts consider whether the force used was an “unnecessary and wanton infliction of pain.”<sup>23</sup> This in turn is determined by whether “force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm.”<sup>24</sup>

Federal courts have recognized mentally ill inmates who bang, scream or otherwise act out lack the capacity to conform their behavior to the standards expected of them. When they are sprayed with pepper chemicals for actions that they cannot control, the result is an infliction of pain with no penological justification.<sup>25</sup>

While prison officials may have to periodically use physical force to obtain control of a situation, Nebraska has a disturbing trend of using force and pepper spray on inmates who are mentally ill and not capable of making rational decisions. The department should review current best practices and consider abandoning or severely limiting the use of pepper spray.

*I've seen chemicals used over 100 times in here on inmates. There are too many inmates to name. Sometimes it's done in a spray form; other times its done with a paint ball gun. Sometimes they refuse to shut off the air systems so the OC spray goes into all of the cells. Hank Jansen, Segregation, Tecumseh*

## Noise

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Noise levels can become cruel and unusual in three different ways. First, noise can prevent sleep. Second, noise levels can be high enough to result in hearing loss. Third, noise can violate the Constitution where the noise stems from the screaming or other activities of mentally ill inmates and is experienced by mentally sound inmates.

Courts have held inmates should be kept in an environment “reasonably free of excessive noise.”<sup>26</sup> Nebraska’s written policy follows the American Correctional Association (ACA) standard and limits the noise level in the inmate occupied areas of a prison to 70 decibels.<sup>27</sup> Yet the conditions in our overcrowded facilities where men are kept in close proximity most of the day has led to repeated reports that the decibel level has risen far beyond that permitted by state regulation.

*“We Petitioners at the NSP dormitories respectfully declare we are being subjected to cruel and unusual punishment by overcrowding and noise.” Petition Signed by 483 inmates in Penitentiary minimum security on February 27, 2014*

*Noise levels here can be very obnoxious and annoying. I know many who are mentally ill and the longer they are in segregation the worse they get . . . the staff treat us like we are the scum of the earth, we are animals, they are better than us and we have no rights. The mentally ill are treated worse because they are mentally ill. Steve Larson, Segregation, Tecumseh*



## Conclusion

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Nebraska's prison system is at 156% capacity as a whole, with some institutions much higher.<sup>28</sup> Overcrowding has led to the deteriorating conditions described above. The problem can be solved in one of two ways. First and preferably, the legislature and the prison system can act to address the substandard areas described above. The alternative would be a class action lawsuit to ask a court to evaluate prison conditions with all the costs of litigation.

Nebraska should act now, both because it is the right thing to do and because it is mandated by the Constitution.

<sup>1</sup> U.S. Const. amend VIII.

<sup>2</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

<sup>3</sup> *Id.* at 102-103.

<sup>4</sup> *Id.*

<sup>5</sup> While there are many, many cases interpreting the Eighth Amendment standard for medical and mental health care, two recent Eighth Circuit cases are enough to illustrate the test. See *Bell v. Stigers*, 937 F.2d 1340 (8th Cir. 1991) and *Olson v. Bloomberg*, 339 F.3d 730, 735 (8th Cir. 2003).

<sup>6</sup> *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

<sup>7</sup> *Estelle*, 429 U.S. at 97, 104-105.

<sup>8</sup> See, e.g., *Fincher v. Singleton*, 2013 U.S. Dist. LEXIS 42599, at \*\*13-14 (8th Cir. Mar. 26, 2013) (Eighth Circuit has consistently held that three week delay for obviously sick inmate was too long).

<sup>9</sup> The National Institute of Mental Health, citing Department of Justice Survey of Inmates. Available online at <http://www.nimh.nih.gov/statistics/1DOJ.shtml>

<sup>10</sup> See *Austin v. Wilkinson*, 189 F. Supp. 2d 719, 723 (N.D. Ohio 2002).

<sup>11</sup> *Madrid v. Gomez*, 889 F. Supp. 1146, 1261 (N.D. Cal. 1995); *Jones 'El v. Berge*, 164 F. Supp. 2d 1096, 1123-1124, 1126 (W.D. Wis. 2001).

<sup>12</sup> Peter Scharff Smith, *The effects of solitary confinement on prison inmates: A brief history and review of the literature*, 34.1 CRIME & JUST. 441-528 (2006); Stanley Brodsky & Forrest Scogin, *Inmates in protective custody: First data on emotional effects*, FORENSIC REP. (1988); Stuart Grassian, *Psychopathological effects of solitary confinement*, 140.11 AM. J. PSYCHIATRY 1450-1454 (1983); Jesenia Pizarro & Vanja MK Stenius, *Supermax prisons: Their rise, current practices, and effect on inmates*, 84.2 PRISON J. 248-264 (2004); Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, (2012).

<sup>13</sup> Peter Scharff Smith, *The effects of solitary confinement on prison inmates: A brief history and review of the literature*, 34.1 CRIME AND JUST. 441-528 (2006).

<sup>14</sup> Jeffrey Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in US Prisons: A Challenge for Medical Ethics*, 38.1 J. AM. ACAD. PSYCHIATRY & L. ONLINE 104-108 (2010) (Stress, decreased social contacts, and lack of structured days can exacerbate the symptoms of mental illness); Sasha Abramsky & Jamie Fellner, *Ill-equipped: US prisons and offenders with mental illness*. HUM. RTS. WATCH, 2003.

<sup>15</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 30:1 CRIME AND DELINQ., 124-156 (2003).

<sup>16</sup> Am. Psychol. Ass'n, Position Statement on Segregation of Prisoners with Mental Illness, (Dec. 2012).

<sup>17</sup> 42 CFR 482.13

<sup>18</sup> *Cody v. Hillard*, 830 F.2d 912, 913-914 (8th Cir. 1987).

<sup>19</sup> *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

<sup>20</sup> *Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

<sup>21</sup> *Farmer*, 511 U.S. at 843 (knowledge of specific danger irrelevant where inmate rape was “common and uncontrolled.”)

<sup>22</sup> *Hall v. Phillips*, 2005 U.S. Dist. LEXIS 40844, at \*34 (W.D. Ark. Nov. 22, 2005).

<sup>23</sup> *Whitley v. Albers*, 475 U.S. 312, 319 (1985).

<sup>24</sup> *Id.*, at 320.

<sup>25</sup> *Coleman v. Brown*, 2014 U.S. Dist. LEXIS 50878, at \*41 (E.D. Cal. Apr. 10, 2014) and *Thomas v. McNeil*, 2009 U.S. Dist. LEXIS 1208, at \*\*91-115 (M.D. Fla. Jan. 9, 2009)

<sup>26</sup> *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996) (citing *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1397 (N.D. Cal. 1984)).

<sup>27</sup> 81 Neb. Admin. Code, ch. 15, § 006.03, available at [http://www.ncc.ne.gov/pdf/jail\\_standards/jail\\_rules\\_and\\_reg/CHAPTR15.pdf](http://www.ncc.ne.gov/pdf/jail_standards/jail_rules_and_reg/CHAPTR15.pdf).

<sup>28</sup> Nebraska Department of Corrections datasheet for inmate population, July 31, 2014. Available online: <http://www.corrections.state.ne.us/pdf/datasheets/datasheetJul14.pdf>