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State of Nebraska

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November 19, 2013

MEMORANDUM

To: Senator Brad Ashford, et. al.

From: Marshall Lux, Ombudsman

Re: Nebraska Correctional System - Programming

Approximately one month ago, the Ombudsman's Office received some statistics from the Department of Correctional Services relating to their programming component. These statistics were a "snapshot" of the number of DCS inmates who were in programming as of September 23, 2013. We had asked the Department for this information because of our concerns over the availability of programming in the system, and because we had been hearing complaints from inmates who were parole eligible, but who had not yet received programming that was needed to make them viable parole prospects in the eyes of the Board of Parole. We were also aware that the correctional system has a long waiting list of inmates who need to have programming, but who cannot get access to that programming. (Please see attached chart indicating that as of April 16, 2013, the Department had a total of 708 inmates on their waiting lists for various programming options.)

The programming currently available to inmates in Nebraska's correctional system falls into three general categories: (1) sex offender programming; (2) anger management and/or violence reduction programming; and (3) substance abuse programming. As we examined the statistical information provided by the Department in relation to the current DCS programming structure, there were several issues that were immediately apparent.

- The statistics reflect that 619 of the Department's total inmate population were in some form of programming at the time that the statistics were compiled (September 23, 2013). That would equal only about 13% of the Nebraska correctional population. Furthermore, it appears that of those 619 inmates about 450 are in the Department's substance abuse programs, which means that only about 3.5% of the total corrections population is in something other than substance abuse programming.

- The statistics reflected that 92 inmates were in the out-patient substance abuse program at the Work Ethic Camp, however, there is, in fact, little in the way of programming being offered at that facility, and what is actually happening there in terms of programming is more in the realm of "continuing care." The reference to there being 43 inmates in the out-patient substance abuse program at "State OB" (State Office Building), and to 20 inmates in the out-patient substance abuse programming at "Trabert" are all actually receiving their programming in the community.

- Thus, only 22 inmates were, in fact, receiving in-patient substance abuse programming while incarcerated.

- The *only* programming being offered at the Women's Center is substance abuse programming, so if a female inmate is identified as needing some other form of programming, then that will be unavailable at NCW.

- For reasons that are unclear, only 6 inmates were in the in-patient substance abuse program at LCC.

- The total population at the Nebraska Correctional Youth Facility is 65 inmates, but only 10 of those 65 are receiving programming, yet this is a facility where the average cost per inmate per year is $90,039.

- If we look at the programming statistics and isolate the number of inmates who are involved in the highest risk-related programs (Violence Reduction, In-patient Sex Offender, and Residential Substance Abuse), then the total is 333 inmates in those programs – that 333 inmates represent only about 7% of the total DCS population who are actually receiving the most advanced forms of programming that the agency offers.

It is also important to understand that the rather limited programming opportunities available to DCS inmates is reflected in the long waiting lists for access to programs, particularly in the out-patient sex offender programming and the out-patient substance abuse programming.

One of the more positive things that the Nebraska Department of Correctional Services has done over the last several years was to increase its resource commitment to substance abuse programming. On the other hand, if there have been significant resourcing enhancements in the other DCS programming areas, then we are not familiar with that development. As the Nebraska prison population now stands, we have reached a point where the Nebraska community corrections centers and male prisons are filled to about 150% of their design capacity. Clearly, more inmates necessarily means more programming demands, but as our prison population has gone up over the years, it is very likely that the Nebraska correctional system has not been adequately supplementing its programming resources to deal with the increasing demand. In fact, there are some very important "deficits" in the Department's programming structure, including the following:

- The Department's out-patient sex offender programming, called OHelp, is only offered at OCC and NSP;

- The Department's in-patient sex offender programming, which consists of a programming regimen of from 24 to 36 months in length, is only offered at LCC;

- The Department's Anger Management Program, which involves participation in what amounts to a regimen that consists of twelve session of group therapy, is not offered to inmates who are institutionalized, but is only available to those in community settings (the one exception being the young offenders at the Youth Facility in Omaha);

- The Department's Violence Reduction Program, which involves intensive programming over a period of twelve months, has in the past only been open to twelve inmates per year, and is only offered at NSP (however, the Department has recently indicated that the term of the program is being cut to nine months, with two cohorts running simultaneously, which should increase the number who can be exposed to the programming to more than 12 per year);

- No programming of any significance is being offered to the Department's most troubled, and potentially most dangerous, inmates who are in segregation.

Considering all of the points raised by the statistics from DCS for late September of 2013, we would suggest that the whole situation relating to DCS's programming availability and resources needs to be examined, in detail, to determine whether the Department's programming resources are sufficient to meet the current needs.

The standard practice in DCS at the present time is to have inmates fully programmed by the time that they reach a point where they are two years away from their Tentative Release Date. At one point very recently, we were told that DCS had over 1,000 inmates in the system who are eligible for parole, but who are still occupying DCS beds. Presumably, many of these 1,000 inmates are among those who are more than two years away from their Tentative Release Date, and have not yet received their needed programming. In fact, State statute (**Neb. Rev. Stat.** §83-110.01) provides that:

> The department shall provide substance abuse therapy required by section 28-416 *prior to the first parole eligibility date* of the committed person. Based on the recommendations, if any, regarding psychological treatment of the committed person pursuant to section 83-179, the department shall provide the person with adequate access or availability to mental health therapy *prior to the first parole eligibility date* of the committed person.

So the expectation of State policy is that inmates will have their programming completed by the time that their parole eligibility dates arrive. In fact, this is a goal that the Department is not meeting, and when they are asked about it, (as we have done many times), the agency's only answer is, in effect, "well, the Board of Parole could go ahead and parole them anyway." Clearly, this is not realistic. The fundamental principle involved here is this: If we want the Board of Parole to maximize the number of inmates that it can reasonably parole, then DCS needs to optimize its programming, and maximize the number of parole-worthy inmates it brings to the Board, and do so as quickly as possible (i.e., by the time that the inmate is legally eligible for parole). That is certainly not what is happening now.

When DCS is pressed on this issue, their response is based on the proposition that the Board of Parole will not parole offenders who are further than two years away from their Tentative Release Date. But

there are several things wrong with that assumption. First of all, it is the Board of Parole, and not DCS, that is supposed to decide when the inmates are at a point where they have "a realistic opportunity for parole." The Board of Parole could very easily decide to change its approach to the timing of paroles, in particular if the Board starts to see more inmates who have completed their programming earlier in their sentences, at a point more than two years away from their Tentative Release Date. Secondly, the idea that the Board of Parole is only going to parole inmates who are at the point of being two years away from their Tentative Release Date may be one of those "self-fulfilling" propositions - if the Board is doing things that way now, then it may be because DCS is only bringing fully programmed inmates to them who are at the two years away from Tentative Release Date threshold. Third, an inmate who is eligible for parole is...well, eligible for parole, and it is unrealistic (and unfair to the Board) to assume that the Board of Parole would not parole anybody who is only a few weeks or a few months beyond his/her Parole Eligibility Date. I believe that the Board of Parole is more responsible than that, and that the Board would parole more people, if it were given more thoroughly programmed inmates who were decent candidates for a parole at an earlier point in their sentences.

The fundamental point in all of this is that if the Nebraska corrections system has a over-population issue, then part of the reason is likely to be a shortage of programming resources in the system. There are, in fact, probably a number of back-end-of-the-system factors contributing to our population issue, but one of them is that there are many inmates in the system who simply have not gotten their needed programming, and therefore are not being paroled at the optimal time. At the very least, I would say that this "programming-resources" issue is something that needs to be investigated, as the State looks for factors contributing to our prison population difficulty.

ATTACHMENT 1 - Inmates Currently Awaiting Treatment/Programming
4/16/2013

Table A:
Total Number of Inmates Awaiting Treatment/Programming by Facility

	Anger/Violence Reduction					Sex Offender Treatment				Substance Abuse		
Facility	Anger	Anger with Review	ART at NCYF	CVORT Other	VRP	bHeLP	CC	lHeLP	oHeLP	Residential	Non-Residential	Total
CCL	11			6		1	5			2	103	128
CCO	3	4		1		1					66	75
DEC	4	3					1				3	11
LCC	4	1	6	1	5	2	1	12	12	16	1	61
NCW									2		2	4
NCY	6		9									15
NSP	31	21	5	13	17	11	1	8	51	45		203
OCC	11	1	2	3	4	15	3	2	23	10	4	78
TSC	22	23	6	12	22	6		10	10	20		131
WEC		1								1		2
Total	92	54	28	36	48	36	11	32	98	94	179	708

Table B:
Subset of Inmates within 2 years of Tentative Release Date*

	Anger/Violence Reduction					Sex Offender Treatment				Substance Abuse		
Facility	Anger	Anger with Review	ART at NCYF	CVORT Other	VRP	bHeLP	CC	lHeLP	oHeLP	Residential	Non-Residential	Total
CCL	4			2								6
CCO		1				1					6	8
DEC	2	2					2					6
LCC					4			1	1	1		7
NCW												0
NCY												0
NSP	7	7			2	2		2	5			25
OCC	4		1			2	3		8			18
TSC	1	2			5			4	3			15
WEC		1										1
Total	18	13	1	2	11	5	5	7	17	1	6	86

**Note: Includes inmates who have been on a waiting list for longer than six months or whose substance abuse treatment was recommended more than 6 months ago.*

'ce: NDCS Inmate Mental Health Records (4/12/2013)

By T. Hank Robinson and Abby L. Vandenberg

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES
Michael L. Kenney
Director

DATE: October 15, 2013

Dave Heineman
Governor

TO: James Davis, Deputy Ombudsman for Corrections
Ombudsman's Office

FROM: Dawn-Renee Smith, Legislative and Public Information Coordinator
Nebraska Department of Correctional Services

RE: Your Request for Information

According to Steve King, you requested information on available mental health and substance abuse programming, screening of inmates prior to their parole eligibility date (PED), and the number of inmates who are parole pending. I will respond to your request below.

- Please see the attached sheet entitled, "Attachment 2 – Recommended Treatment/Program Descriptions 9/25/2013" for a listing of each program and its corresponding description. Each description includes the length of the program. Please note the Violence Reduction Program (VRP) is changing from a one-year program to a 9-month program and will run two "staggered" cohorts at all times. Also, continuing care for sex offenders has no set number of sessions – participants attend as long as is needed. Anger Replacement Training (ART) consists of groups three times per week for 10 weeks.
- The attached spreadsheet entitled, "Behavioral Health Positions by Institution and Area 9-27-13" will identify the positions at each facility. Some staff have multiple assignments and work in more than one program, so this is the best way to identify the behavioral health staff and generally where they are located.
- The number of treatment slots is only set for inpatient programs. Residential substance abuse has 316 slots, VRP has 12 slots at present (two groups of 12 will be in place in January 2014 for a total of 24 slots) and the inpatient Healthy Lives Program (iHELP) has 52 slots. Please see the attached sheet entitled, "Number of Inmates in Treatment as of 09/23/2013" for numbers in each program.
- With regard to screening inmates prior to their parole eligibility date (PED), all inmates are screened for substance abuse and mental health issues within the first 14 days of arriving at NDCS. The Clinical Sex Offender Review Team (CSORT) is currently reviewing cases with PEDs of November and December 2015. The Clinical Violent Offender Review Team (CVORT) is screening most cases prior to PED. Inmates with very short sentences impact the ability to screen others prior to their PED.

- As of September 30, 2013, there were 114 inmates who were parole pending. The breakdown is as follows:
    - 19 pending programming completion (typically WEC or RTC)
    - 16 pending Interstate Transfer
    - 5 pending rescission hearings
    - 3 pending ICE or other detainer
    - 39 pending residence verification (most commonly this is because the original residence submitted was denied – they are continuing to look for new residences)
    - 4 pending bed space (typically some sort of halfway house or transitional living environment in the community)
    - 28 have been paroled effective upon their future PED

I believe this should address the concerns you raised to Mr. King. If you need further information, please do not hesitate to contact me.

Cc: Mike Kenney, Director, NDCS
Marshall Lux, Ombudsman
File

Total Number of Inmates in Treatment as of 09/23/2013

Facility	Anger/Violence Reduction					Sex Offender Treatment				Substance Abuse		Total
	Anger	Anger with Review	ART at NCYF	VRP	CVORT Other	bHELP	CC	iHELP	oHELP	Residential	Non-Residential	
CCL											22	22
CCO							3		3			6
DEC												0
LCC							2	51		6		59
NCW										50		50
NCY	3		7									10
NSP				10					17	96		123
OCC							6		29	72		107
TSC										48		48
Trabert	10					12			5		20	
State O B	12										43	
WEC											92	92
Total	25	0	7	10	0	12	11	51	54	272	177	619

Behavioral Health Positions by Institution and Area 9-27-13

CCC-O	SA	CDC	
CO	ADMIN	BEHAVIORAL HEALTH ADMINISTRATOR	
CO	ADMIN	SECRETARY II	
DEC	MH	CLINICAL PSYCHOLOGIST	
DEC	MH	MHP II	
DEC	MH	MHP II	
DEC	MH	PSYCHOLOGIST I	
DEC	MH	PSYCHOLOGIST I	
DEC	MH	PSYCHOLOGIST I	
DEC	MH	SECRETARY II	
DEC	PSYCHIATRY	NURSE PRACTITIONER	VACANT
DEC NRTS	SA	CDC	
DEC/LCC	PSYCHIATRY	PHYSICIAN ASSISTANT	
DEC/LCC	SA	CDC	
LCC	MH	CLINICAL PROGRAM MANAGER	
LCC	MH	CLINICAL PSYCHOLOGIST	
LCC	MH	CLINICAL PSYCHOLOGIST	VACANT
LCC	MH	Mental Health Nurse II	
LCC	MH	Mental Health Nurse II	
LCC	MH	MENTAL HEALTH SECURITY SPECIALIST	
LCC	MH	MENTAL HEALTH SECURITY SPECIALIST	
LCC	MH	MHP II	
LCC	MH	MHP II	
LCC	MH	MHP II	
LCC	MH	MHP II	
LCC	MH	MHP SUPERVISOR	
LCC	MH	NURSE SUPERVISOR	
LCC	MH	SECRETARY II	VACANT
LCC	MH	STAFF ASSISTANT I	
LCC	PSYCHIATRY	PHYSICIAN ASSISTANT/NP	
LCC	SA	PSYCHIATRIST	
LCC	SOS	CLINICAL PSYCHOLOGIST	
LCC	SOS	MHP I	
LCC	SOS	MHP II	
LCC	SOS	MHP SUPERVISOR	
LCC	SOS	MHPII	
LCC	SW	MASTER SOCIAL WORKER	
LCC	SW	MASTER SOCIAL WORKER	VACANT
Lincoln	SW	MASTER SOCIAL WORKER	VACANT
Lincoln	SW	MASTER SOCIAL WORKER	VACANT
NCCW	MH	CLINCIAL PSYCHOLOGIST	
NCCW	MH	CLINICAL PSYCHOLOGIST	
NCCW	MH	MHP II	
NCCW	MH	MHP II	
NCCW	MH	MHP II	VACANT

Behavioral Health Positions by Institution and Area 9-27-13

NCCW	MH	SECRETARY II	VACANT
NCCW	SA	MHP I	
NCCW	SA	SECRETARY II	
NCCW	SA	CDC	
NCCW (NRTS)	SA	CDC	
NCCW (SAU)	SA	CDC	
NCCW (SAU)	SA	CDC	
NCCW (SAU)	SA	CDC	
NCCW (SAU)	SA	CDCS	
NCCW (SAU)	SA	CDCS	
NCYF	MH	CLINICAL PSYCHOLOGIST	
NCYF	MH	MHP II	
NCYF	MH	MHP SUPERVISOR	
NCYF (SATOP)	SA	CDC	
NSP	MH	ADMINISTRATIVE ASSISTANT III (MH))	
NSP	MH	BH ASST. ADMIN. FOR MH	
NSP	MH	CLINICAL PSYCHOLOGIST	
NSP	MH	MHP II	
NSP	MH	MHP II	
NSP	MH	MHP SUPERVISOR	
NSP	MH	PSYCHOLOGIST I	
NSP	MH	SECRETARY II	VACANT
NSP	PSYCHIATRY	PSYCHIATRIST	
NSP	SA	CDCS	
NSP	SOS	BH ASST. ADMIN. FOR SO SERVICES	
NSP	SOS	CLINICAL PSYCHOLOGIST	
NSP	SOS	CLINICAL PSYCHOLOGIST	
NSP	SOS	STAFF ASSISTANT I	
NSP	SW	MASTER SOCIAL WORKER	
NSP (NRTS)	SA	CDC	
OCC	MH	CLINCIAL PSYCHOLOGIST	
OCC	MH	MHP II	
OCC	MH	MHP II	
OCC	MH	MHP SUPERVISOR	
OCC	MH	PSYCHOLOGIST I	
OCC	MH	SECRETARY II	
OCC	SA	CDC	
OCC	SOS	CLINICAL PROGRAM MANAGER	
OCC	SW	MASTER SOCIAL WORKER	VACANT
OCC (RSAT)	SA	CDC	
OCC (RSAT)	SA	CDC	
OCC (RSAT)	SA	CDC	VACANT
OCC (RSAT)	SA	CDC	
OCC (RSAT)	SA	CDC	
OCC (RSAT)	SA	CDC	VACANT
OCC (RSAT)	SA	CDCS	
OCC (RSAT)	SA	MHP II	

Behavioral Health Positions by Institution and Area 9-27-13

PO/SW	SW	MASTER SOCIAL WORKER	
PO/SW	SW	MASTER SOCIAL WORKER	VACANT
RTC	SA	AABH/SA	
RTC	SA	ADM. SEC.	
RTC	SA	ADMINISTRATIVE ASSISTANT II (SA)	
RTC	SA	CDC	VACANT (ON HOLD)
RTC	SA	CDC	
RTC	SA	CDC	
RTC	SA	CDC	
RTC	SA	CDC	
RTC	SA	CDC	VACANT
RTC	SA	CDC	VACANT
RTC	SA	CDC	
RTC	SA	CDC	
RTC	SA	CDCS	
RTC	SA	CDCS	
RTC	SA	CDCS	
RTC	SA	CDTS	
RTC	SA	CDTS	
RTC	SA	CLINICAL PSYCHOLOGIST	
RTC	SA	MHP II	
RTC	SA	SECRETARY II	VACANT
RTC	SA	STAFF ASST. I	
RTC	SA	STAFF ASST. I	
RTC	SW	Director of Social Work	
RTC	SW	MASTER SOCIAL WORKER	
SOB - Omaha	DUAL	MHP II	
SOB - Omaha	SA	CDC	
SOB - Omaha	SA	CDC	
Trabert Hall	DUAL	CDC	
Trabert Hall	SA	CDC	
Trabert Hall	SA	CDC	VACANT
Trabert Hall	SA	CDTS	
TRABERT HALL	SOS	MHP II	
TSCI	MH	CLINICAL PSYCHOLOGIST	
TSCI	MH	CLINICAL PSYCHOLOGIST	
TSCI	MH	MHP II	
TSCI	MH	MHP II	
TSCI	MH	MHP SUPERVISOR	
TSCI	MH	Staff Assistant I	
TSCI	SA	CDC	
TSCI	SA	CDC	
TSCI	SA	CDC	
TSCI	SA	CDC	VACANT
TSCI	SA	CDC	
TSCI	SA	CDCS	
TSCI	SA	SECRETARY II	

Behavioral Health Positions by Institution and Area 9-27-13

WEC	SA	CDTS	
WEC	SA	CDTS	VACANT
WEC	SA	CDC	
WEC	SA	CDC	
WEC	SA	CDC	
WEC	SA	CDCS	
WEC	SA	CDTS	
WEC	SA	CDTS	
WEC	SA	CDTS	VACANT
WEC	SA	CDTS	VACANT