

June 9, 2021

Via mail and email: adedeke@leavenworthcounty.gov

Sheriff Andrew Dedeke
Leavenworth County Sheriff
601 S. Third Street, Suite 2007
Leavenworth, KS 66048-2764

Re: Reports of Inadequate Medical Services at Leavenworth County Jail

Dear Sheriff Dedeke:

I write on behalf of the ACLU of Kansas. Over the past several months, we have received a number of troubling reports from currently or formerly incarcerated persons at your jail. They tell us that Jail officials claim that the Jail does not need to provide mental health treatment because it does not imprison people for long periods of time. We have also heard reports of people in the Jail's custody that were disallowed psychiatric medication because they failed drug tests. Finally, many have reported that their mental health needs (and possibly healthcare needs more generally) are going unaddressed because the Jail charges those in its custody for medical services.

These allegations, if true, indicate that you are denying adequate mental health care services to those incarcerated individuals at your Jail in violation of the Eighth Amendment. It is "the government's obligation to provide medical care for those whom it is punishing by incarceration."¹ Included in this obligation is the duty to "make available to inmates a level of medical care which is reasonably designed to meet the routine and emergency health care needs of inmates. This includes medical treatment for inmates' physical ills, dental care, and *psychological or psychiatric* care."²

¹ *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Also, many of those in your facility's custody are not being "punished by incarceration" since they have not been convicted of any crime. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt."); see *Ingraham v. Wright*, 430 U.S. 651, n.40 (1977) ("[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment.")

² *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980) (internal citations omitted) (emphasis added); see *Langley v. Coughlin*, 888 F.2d 252, 254 (2nd Cir. 1989) ("We think it plain that from the legal standpoint psychiatric or mental health care is an integral part of medical care. It thus falls within the requirement of *Estelle v. Gamble*, *supra*, that it must be provided to prisoners.")



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Caselaw makes clear that denying mental health care to incarcerated individuals—a population with no access to healthcare beyond what your facility provides—runs afoul of the Eighth Amendment. That Amendment “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity, and decency...,’ against which we must evaluate penal measures.”³ And the failure to provide any mental health treatment is “incompatible with ‘the evolving standards of decency that mark the progress of a maturing society.’”⁴

A. Leavenworth County Jail must provide adequate and constitutionally sound mental health treatment to those it incarcerates.

When analyzing whether a jail or prison provides sufficient, and constitutionally sound, mental health treatment for those it is responsible for, Courts have looked to six basic factors.⁵ These components of mental health services at jails are used to determine “whether the mental health care delivery system operated by [the correctional facility] is so deficient that it deprives seriously mentally ill inmates of access to adequate mental health care.”⁶ Those components are:

1. A screening process for evaluating incarcerated persons and determining mental health care needs;
2. A program of care that does more than merely segregate and supervise the people with mental healthcare needs;
3. The employment of an adequate number of trained mental health professionals;
4. The “maintenance of accurate, complete and confidential mental health treatment records;”
5. The use of psychotropic medications when necessary and with the proper supervision and evaluation; and,

³ *Estelle*, 429 U.S. at 102, citing *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968) (ellipses original).

⁴ *Id.* citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

⁵ The protections afforded to people incarcerated in prisons via the Eighth Amendment apply with equal force to those incarcerated pre-trial in jails, such as that in Leavenworth County. *Bell*, 441 U.S. at 535 (people incarcerated pre-trial are protected by the Fourteenth Amendment’s due process clause). The protection of pre-trial detainees’ rights under the due process clause of the Fourteenth Amendment is “at least as great as the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983).

⁶ *Coleman v. Wilson*, 912 F.Supp. 1282, 1298 (E.D.Ca. 1995).

6. A basic program that identifies and treats those at risk of suicide.⁷

Courts have cited these factors for many years and continue to do so.⁸

At least one court has also observed that, though these factors may provide a good *starting point* for consideration, more may now be required:

“Because this framework was first articulated over 35 years ago, and because mental-health care has evolved dramatically since that time, the court considers it to be instructive but not determinative as to the floor below which mental-health care would be grossly inadequate and therefore unconstitutional.”⁹

Based on the reports we have received, Leavenworth County jail does not appear to meet any of these criteria. People currently or formerly in your custody report a total lack of mental health care and services. And while at least one court has observed that “[a]n on-site psychiatrist isn't necessarily required since a jail may reasonably refer detainees to outside facilities for mental health assessment and treatment[,]” we are unaware of any referral service or outside healthcare providers your facility uses.¹⁰

B. Leavenworth County Jail cannot deprive its population of mental health treatment because the Jail houses people temporarily.

The Jail has an obligation to provide health care to those in its custody. There is no mental health exception to the government’s obligation to provide healthcare for incarcerated individuals for those who are only at a facility for a short period of time. Put another way, the time someone spends in custody does not affect their Eighth Amendment or Fourteenth Amendment right to adequate healthcare

⁷ *Id.* at fn. 10, citing *Balla v. Idaho State Bd. of Corrections*, 595 F.Supp. 1558, 1577 (D. Idaho 1984), overruled on other grounds by *Balla v. Idaho State Bd. of Corrections*, 869 F.2d 461 (9th Cir. 1989).

⁸ These considerations were first identified in *Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980), *aff'd in part, rev'd in part on other grounds*, 679 F.2d 1115 (5th Cir. 1982), *opinion amended in part and vacated in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042, 103 S. Ct. 1438, 75 L. Ed. 2d 795 (1983). Since then, courts have continued to rely on them when analyzing the constitutionality of mental health care in jails and prisons. *E.g. Dunn v. Dunn*, 219 F.Supp.3d 1100, n.37 (M.D. Ala. 2016); *Coleman v. Brown*, 938 F.Supp.2d 955, n.24 (E.D.Ca. 2013); *Perry v. Coughlin*, 90-CV-1160, 1999 U.S. Dist. LEXIS 20320 at *19-20 (N.D.N.Y. June 11, 1999); *Goff v. Harper*, 4-90-CV-50365, 1997 U.S. Dist. LEXIS 24186, *121-122 (S.D. Iowa June 5, 1997).

⁹ *Dunn*, 219 F.3d at n.37.

¹⁰ *Minix v. Canarecci*, 3:05-CV-144, 2007 U.S. Dist. LEXIS 48655, *47 (N.D.Ind. July 3, 2007).



while incarcerated.¹¹ Jails housing people temporarily or awaiting trial have been the subject of fierce and long-fought litigation.¹²

So even if it were true that the Leavenworth County Jail only housed people temporarily, adequate mental health care must be available.¹³ This is especially pressing, given that many in your custody arrive with mental health needs and in the middle of active treatments. The Jail cannot deny treatment to individuals who need it simply because they may move through your facility quickly. Denying needed treatment, including medication or other psychiatric treatment—even temporarily—could seriously impact patients.¹⁴

C. Leavenworth County Jail cannot deprive people of medical care because of the results of drug tests or for other non-medical reasons.

Jail administrators and non-medical staff cannot make healthcare decisions for those in their custody. In *Bowring v. Godwin*, the Court wrote, “We disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment.”¹⁵ If a doctor has prescribed medication to someone in the Jail’s custody, then it is the Jail’s responsibility to ensure those medications are available.

“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain,’ proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.”¹⁶

¹¹ It is also simply inaccurate to describe those in the Jail’s custody as being there temporarily. Searching the Jail’s online roster from oldest to newest reveals people incarcerated since as far back as April 2018. <https://www.lvsheriff.org/roster.php?sort=1>

¹² See, e.g. *Jones v. Gusman*, No. 12-cv-0859, 2020 U.S. Dist. LEXIS 250140 (E.D. La. Dec. 7, 2020).

¹³ See, e.g., *Gray v. County of Riverside*, EDCV 13-004444-VAP, 2014 U.S. Dist. LEXIS 150884 (C.D. Cal. Sept. 2, 2014) (describing claims, denying motion to dismiss, and certifying class action against Riverside County, California; plaintiffs alleged systematic inadequacies in mental health care and health care more generally).

¹⁴ *Norris v. Frame*, 585 F.2d 1183, 1189 (3d Cir. 1978) (finding that under the circumstances, the pretrial detainee’s methadone treatment should have continued); *Cudnik v. Kreiger*, 392 F. Supp. 305, 311–312 (N.D. Ohio 1974) (holding that it violates due process to deny incarcerated person the right to continue methadone treatment); see generally *Bell*, 441 U.S. at 535 (applying the Due Process Clause to assess pretrial detainees’ conditions of confinement claims).

¹⁵ 551 F.2d 44, 47–48 (4th Cir. 1977)

¹⁶ *Estelle*, 429 U.S. at 104, citing *Gregg v. Georgia*, 428 U.S. 153, 173 (1976).



More specifically, a person’s failure to pass a drug test cannot be the basis for withholding medical care. The Jail cannot end medical care and deny needed psychotropic or other medications to those in its custody. Nor can it deny medication as part of any “detox” program or because of a failed drug screenings.¹⁷

Similarly, the Jail cannot rely on any other, non-medical considerations in providing (or failing to provide) needed medical care.¹⁸ Budgetary and staffing restrictions are no excuse for a Jail’s failure to provided adequate and necessary care.¹⁹

D. Leavenworth County Jail must provide healthcare to those in its care regardless of a person’s ability to pay.

Finally, your policy of charging individuals for medical care in your jail, regardless of their ability to pay, raises serious constitutional concerns. Many jails and prisons do charge small fees to those in custody for necessities and medical care.²⁰ However, depending on the contours of the requirement, requiring fees in all circumstances may be unconstitutional.²¹ But even if a fee is permissible, Courts have been clear that jails and prisons cannot deny necessary healthcare to those who cannot pay. Doing so could constitute an Eighth Amendment violation.²² “A prison official who withholds necessary medical care, for want of payment, from an inmate who could not pay would violate the inmate’s constitutional rights if the inmate’s medical needs were serious, because refusal to act pending the impossible is no different from refusing without qualification.”²³

¹⁷ See *Hernandez v. County of Monterey*, 305 F.R.D. 132, 144-145 (N.D. Cal 2015) (certifying class action alleging, *inter alia*, that prison denied psychotropic medications as part of “detoxification treatment”).

¹⁸ See *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004) (finding that withholding a dental referral for incarcerated person’s behavioral problems could be deliberate indifference); *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (finding prison’s refusal to provide treatment without a court order was deliberate indifference).

¹⁹ *Casey v. Lewis*, 834 F. Supp. 1477, 1547–1548 (D. Ariz. 1993) (finding that a lack of staff to “diagnose and treat the serious mental health needs” of an incarcerated person constituted deliberate indifference).

²⁰ See *White v. Corr. Med. Servs.*, 94 Fed.Appx. 262, 264 (6th Cir. 2004).

²¹ See *Collins v. Romer*, 962 F.2d 1508, 1513 (10th Cir. 1992) (describing District Court’s finding that former Colorado statute authorizing a \$3.00 co-pay for all healthcare visits in state penitentiaries would have been unconstitutional).

²² *Hodge v. Grayson County*, 4:07CV-P60-M, 2008 U.S. Dist. LEXIS , *10 (W.D. Ky. April 18, 2008) (“A violation of the Eighth Amendment only occurs if the prison or jail conditions the right to receive necessary care or necessities on the payment of such fees.”).

²³ *Martin v. DeBruyn*, 880 F.Supp. 610, 615 (N.D. Ind. 1995) (“[a] prison official violates the Eighth Amendment by refusing to provide [over-the-counter] medicine for a



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This failure would be concerning no matter the person’s needs, but some of those reporting Leavenworth County Jail’s inadequate care also report that they struggle with diagnosed and severe illness. “The Eighth Amendment bars prison officials from acting with ‘deliberate indifference to serious medical needs of prisoners.’”²⁴ If a medical provider has diagnosed someone in your custody with an illness, or knows the person was diagnosed previously, and the Jail ignores or disregards that diagnosis, the Jail is likely “deliberately indifferent” and violating the Eighth Amendment.²⁵

E. The Jail can take steps to resolve these issues and we are willing to work with you.

As a first step, we ask you to confirm the mental health resources that the Leavenworth County Jail makes available to those in its custody. To that end, please provide us with the following information:

- Is there a screening process that identifies people in need of mental health services?
- Whether there is a screening process or not, what is done to provide care for individuals with mental health needs?
- How do those in the Jail’s custody request mental health care treatment? Does the process differ in any way from requesting other medical treatment?
- Does the Jail have dedicated mental health professionals? If so, how many and what are their qualifications?
- If the Jail does not have its own mental health staff, how are mental health services provided to those who need it?
- Are people in the Jail’s custody provided prescribed medication?
- Are people in the Jail’s custody ever denied medication as part of a “detoxification” or other program or as a result of drug tests?

serious medical need only if the inmate lacks sufficient resources to pay for the medicine. If the inmate can afford the medicine but chooses to apply his resources elsewhere, it is the inmate, and not the prison official, who is indifferent to serious medical needs.”).

²⁴ *Templeton v. Anderson*, 607 Fed.Appx. 784, 786 (10th Cir. 2015), citing *Estelle*, 429 U.S. at 104.

²⁵ *See Sealock v. Colorado*, 218 F.3d 1205, 1209 (10th Cir. 2000).



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- Do doctors and medical professionals make health care decisions with those in your custody or do prison administrators and non-medical staff have a say in treatment or denial of treatment?
- Does the Jail charge for healthcare treatment or prescriptions? If so, what are the procedures in place to ensure that those who cannot pay still receive necessary and needed care?

After you and your staff have reviewed this letter, we would welcome the opportunity to discuss these issues with you. Please let us know and we would be happy to arrange a call or video conference.

Thank you for your attention to these issues. We look forward to hearing from you.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Pierson".

Josh Pierson, Senior Staff Attorney

A handwritten signature in black ink, appearing to read "Sharon Brett".

Sharon Brett, Legal Director