

LEGISLATIVE BILL 95

Approved by the Governor May 30, 1981

Introduced by Cullan, 49

AN ACT relating to mental health commitments; to amend sections 83-312, 83-339, 83-340, 83-340.01, 83-1011, 83-1016, 83-1017, 83-1018, 83-1024, 83-1026, 83-1027, 83-1028, 83-1029, 83-1035, 83-1036, 83-1048, 83-1049, 83-1053, 83-1056, 83-1058, 83-1059, and 83-1060, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1037 and 83-1044, Revised Statutes Supplement, 1980; to provide duties; to change procedures; to redefine a term; to provide severability; and to repeal the original sections, and also sections 83-342, 83-1031 to 83-1033, and 83-1063, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1030 and 83-1034, Revised Statutes Supplement, 1980.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 83-312, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-312. The warrant of the mental health board authorizing the admission of any person to a state hospital treatment facility for the mentally ill as a patient shall shield every official and employee of the Department--of--Public--Institutions treatment facility against all liability to prosecution of any kind on account of the reception and detention of such a person, if the detention is otherwise in accordance with the laws law and the rules and regulations of the Division--of Medical-Services treatment facility.

Sec. 2. That section 83-339, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-339. The Director of Medical Services shall adopt and promulgate rules and regulations for the discharge or removal from the state hospitals--for--the mentally-ill regional centers of incurable and harmless patients, except that persons admitted to a regional center pursuant to the Nebraska Mental Health Commitment Act shall be released pursuant to section 26 of this act.

Sec. 3. That section 83-340, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

83-340. Any voluntary patient in a state hospital for the mentally ill who is cured shall be immediately discharged by the superintendent. Upon discharging the such patient or any other patient, the superintendent shall furnish the patient, unless he or she is otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars, which shall be charged to the care of that patient in the hospital. The relatives of any patient not susceptible of to cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove the patient on the consent of the Director of Medical Services.

Sec. 4. That section 83-340.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-340.01. When the superintendent of any state hospital for the mentally ill determines that any nonvoluntary patient in such hospital may be safely and properly discharged or placed on convalescent leave, the superintendent shall immediately notify the county committing board of mental health of the county judicial district in which such patient has legal settlement pursuant to section 26 of this act. ~~Upon receipt of such notice, the county board of mental health shall arrange for any care and maintenance which may be required by such patient. When such arrangements are not made within ten days, and such patient remains in the state hospital, the superintendent shall place such patient in a licensed nursing home and the full cost of caring for such patient shall be charged to the county in which such patient has legal settlement.~~

Sec. 5. That section 83-1011, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1011. Peace officer shall mean a sheriff, constable, coroner, jailer, marshal, police officer, or state highway patrolman, ~~and all other persons with similar authority to make arrests.~~

Sec. 6. That section 83-1016, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1016. The clerk of the district court ~~in which the mental health board is located~~ appointed for that purpose by the district judge or judges of that

judicial district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board affixing thereto his or her seal as clerk of the district court. The clerk shall file and carefully preserve in his or her office all papers connected with any inquest by the board members, and properly belonging to his or her office, together with all notices, reports, and other communications. He or she shall keep separate books in which he or she shall enter the minutes of the proceedings of the board. All notices, reports, and communications required may be sent by mail, unless otherwise provided for in this act. The fact and date that they are sent and that they are received shall be noted on the proper record.

Sec. 7. That section 83-1017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1017. There is hereby created a one or more mental health board boards for each county--in-Nebraska judicial district established pursuant to section 5-105, except that no judicial district shall have more than three mental health boards. The number of boards shall be determined by the district court judge or judges after considering the distribution of the population in that judicial district and the number of qualified persons available for board membership. The board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties.

Sec. 8. That section 83-1018, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1018. (1) The members of the mental health board shall be appointed for a term of two years by the presiding judge of the district court in the district in which the board is located. The board shall consist of a lawyer licensed to practice law in this state, and any two of the following, but not more than one from each class: A physician; a psychologist; a psychiatric social worker; a psychiatric nurse; or a lay person with a demonstrated interest in mental health issues. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. As the terms of the initial appointees to the mental health board expire, succeeding appointees ~~shall have the same qualifications as the appointees' immediate predecessor, and such successors shall be appointed to four-year terms.~~ Members whose terms have expired shall continue to serve

until their successors have been appointed.

(2) The judge shall appoint one alternate for each member of the board. No hearing shall be conducted unless three members or alternates are present and able to vote. Actions taken in a hearing shall be by majority vote. The lawyer shall be the chairperson of the board.

(3) If neither the member nor alternate is available, the judge shall appoint a second alternate.

(4) The Department of Public Institutions shall provide appropriate training to the members and alternate members of the board.

Sec. 9. That section 83-1024, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1024. Any person believing that any individual is a mentally ill dangerous person may communicate his or her belief to the county attorney. Should the county attorney concur that the individual is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the county attorney may shall cause a petition to be drafted and acted upon as provided in this act.

Sec. 10. That section 83-1026, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1026. The petition provided for in section 83-1024 shall be verified by the petitioner and approved by the county attorney, who shall state his or her belief whether the immediate custody of the subject of the petition is required to prevent the occurrence of the harm described by section 83-1009 before a summons could be served and the subject required to appear at a ~~preliminary or final~~ hearing under sections 83-1027, ~~83-1034, 83-1032,~~ 83-1035, and 83-1036. If the subject is in emergency protective custody under a certificate filed pursuant to sections 83-1020 to 83-1023 at the time of the filing of a petition, such certificate shall be attached to the petition. The petition and all subsequent pleadings and filings under this act shall be entitled in the interest of, Alleged to be a Mentally Ill Dangerous Person, inserting the subject's name in the blank. The county attorney shall have the

discretion to dismiss the petition at any time prior to the commencement of the final hearing provided by sections 83-1035 and 83-1036, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

Sec. 11. That section 83-1027, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1027. Upon the filing of the petition provided by sections 83-1025 and 83-1026 stating the county attorney's belief that the immediate custody of the subject is not required for the reasons provided by sections 83-1025 and 83-1026, the clerk of the district court shall cause a summons fixing the time and place for a ~~final or preliminary~~ hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject, as well as his or her parent or legal guardian, if he or she is a minor or legally incompetent, the summons and copies of the petition, the list of rights provided by sections 83-1047 to 83-1067, and a notice of the names, addresses, and telephone numbers of the mental health professionals in that locale by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the ~~preliminary~~ hearing within ~~five~~ seven days after the subject has been taken into protective custody, and ~~shall fix the time for the final hearing within fourteen days after the date fixed for the preliminary hearing.~~ Should the subject fail to appear as required after proper service upon him or her of a summons under this section, such failure shall constitute grounds for the issuance of a warrant for his or her custody as provided by section 83-1028.

Sec. 12. That section 83-1028, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1028. Upon the filing of the petition provided by sections 83-1025 and 83-1026 stating the county attorney's belief that the immediate custody of the subject is required for the reasons provided by sections 83-1025 and 83-1026, or if the subject has previously failed to appear as required after proper service upon him or her of a summons under section 83-1027, the mental health board may issue a warrant directing the sheriff to take the subject into custody and place him or her in a jail, mental health center, or government, private, or state hospital where he or she shall be held pending his or her hearing. At the time of execution of the warrant, the sheriff shall personally

serve upon the subject, as well as his or her parent or legal guardian, if he or she is a minor or legally incompetent, a notice of the time and place fixed for a ~~final-or-preliminary~~ the hearing, and copies of the petition and list of rights provided by sections 83-1047 to 83-1067.

Sec. 13. That section 83-1029, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1029. The sheriff or the director of the mental health center or government, private, or state hospital shall have each subject admitted by warrant under section 83-1028 evaluated by a mental health professional as soon as reasonably possible after his or her admission, but in no event later than thirty-six hours following admission, unless the subject was evaluated within the preceding twenty-four hours. The examining mental health professional shall submit to the county attorney a signed statement concerning the subject's mental state. The examining mental health professional may not be a member of the mental health board that will preside over the petition hearing. If, from such evaluation, it is the judgment of the mental health professional that the subject is either not a mentally ill dangerous person, or that the harm described by section 83-1009 is not likely to occur before a ~~final or-preliminary~~ hearing could be held, the sheriff or the director of the mental health center or government, private, or state hospital shall immediately communicate this judgment to the county attorney, the subject, ~~his-or her~~ the subject's counsel, if he or she has counsel, and his or her parent or legal guardian, if he or she is a minor or legally incompetent.

Sec. 14. That section 83-1035, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1035. A ~~final~~ hearing shall be held by the mental health board to determine whether there is clear and convincing proof that the subject of a petition is a mentally ill dangerous person and that neither voluntary hospitalization nor other alternatives less restrictive of his or her liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009. At the commencement of the hearing, ~~if the--subject--has--waived his-or-her-right-to--a--preliminary--hearing,~~ the board shall inquire whether he or she has received the copy of the petition and list of rights accorded him or her by sections 83-1047 to 83-1067, and whether he or she has

read and understood them. If he or she has not, the board shall explain to him or her any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If he or she admits them, the board shall proceed to enter an order of final disposition as provided by section 83-1037.

Sec. 15. That section 83-1036, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1036. If the subject denies the allegations of the petition, the mental health board shall proceed with its final hearing on the merits of the petition. If the board concludes from the evidence at the hearing that there is not clear and convincing proof that the subject is a mentally ill dangerous person, it shall enter an order dismissing the petition and unconditionally discharging the subject. If the board concludes that there is clear and convincing proof that the subject is a mentally ill dangerous person, but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available and would suffice to prevent the harm described by section 83-1009, the board may either dismiss the petition and unconditionally discharge the subject, or suspend further proceedings for a period not to exceed ninety days from the date of the final hearing in order to determine the results of voluntary treatment alternatives. At any time during such ninety-day period, the county attorney may file an application with the board to reinstate the proceedings, and after notice to the subject, his or her parent or legal guardian, if he or she is a minor or legally incompetent, and his or her counsel, if he or she has counsel, the board shall hear the application. If no application to reinstate the proceedings is on file and pending at the expiration of ninety days from the initial suspension of proceedings, the board shall enter an order dismissing the petition and unconditionally discharging the subject of such petition.

Sec. 16. That section 83-1037, Revised Statutes Supplement, 1980, be amended to read as follows:

83-1037. If the subject of the petition either admits, or the mental health board concludes from the evidence at the final hearing, that there is clear and convincing proof that the subject is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less

restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of the subject of the petition.

Sec. 17. That section 83-1044, Revised Statutes Supplement, 1980, be amended to read as follows:

83-1044. As part of its order of final disposition under section 83-1037, the mental health board shall designate one of the officials, agencies or other persons who may be requested for predisposition assistance under section 83-1040, or the director or other representative of the treatment program or facility to which the subject is assigned, to be responsible for supervising the preparation and implementation of an individualized treatment plan, recording the subject's progress under the plan, and reporting such progress to the mental health board and other interested parties. The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the subject, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the board's order of final disposition and a description of intermediate and long-range treatment goals, with a projected timetable for their attainment. A copy of such plan shall be completed, filed with the mental health board for review and inclusion in the subject's board file, and served upon the county attorney, the subject, his or her counsel, if he or she has counsel, and his or her parent or legal guardian, if he or she is a minor or legally incompetent, within five working days after the entry of the board's order of final disposition. Treatment under such plan shall be commenced within two working days after the plan is completed. At the request of the mental health board, the treatment facility shall inform the mental health board, in writing, as to all aspects of the treatment and supervision of persons committed to the facility by the mental health board. Such reports shall include information regarding the time and location of periods spent outside of the treatment facility.

Sec. 18. That section 83-1048, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1048. The subject of a petition shall, in advance of the preliminary hearing, ~~when one is held, and the final hearing,~~ be entitled to written notice of the

time and place of such hearings hearing, the reasons alleged for believing that the person is a mentally ill dangerous person requiring mental health board ordered treatment, and all rights which such subject has under this act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the preliminary and final hearings hearing and copies of the petition and list of rights, required by sections 83-1027, and 83-1028, ~~combined with the board's inquiry regarding the subject's understanding of the petition and the subject's rights, and its fixing the time for the final hearing, when a preliminary hearing is held, as required by sections 83-1031, 83-1032, 83-1035, and 83-1036.~~ If the subject of the petition has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder, if true, is such that it is not prudent to disclose the label of the mental disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness including its label. The clerk shall issue the summons by order of the mental health board.

Sec. 19. That section 83-1049, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1049. The subject of a petition shall have the right to be represented by counsel in all proceedings under this act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody under sections 83-1020 to 83-1023, or after the filing of a petition under sections 83-1025 and 83-1026, whichever occurs first, and before a preliminary or final the hearing, the board shall determine whether the subject of the petition is indigent. If the subject is found to be indigent, the board shall forthwith certify that fact to the district or county court by causing to be delivered to the clerk of the district court or the clerk of the county court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency custody or a petition is filed.

Sec. 20. That section 83-1053, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1053. Counsel for a subject shall, upon request made to the county attorney at any time after the subject has been taken into emergency protective custody under sections 83-1020 to 83-1023, or after the filing of a petition under sections 83-1025 and 83-1026, whichever occurs first, have the right to be provided with (1) the names of all witnesses expected to testify in support of the petition, (2) knowledge of the location and access at reasonable times for review or copying of all written documents including reports of peace officers, law enforcement agencies, and mental health professionals, (3) access to all other tangible objects in the possession of the county attorney, or to which the county attorney has access, and (4) written records of any mental health facility, physician, or mental health professional that has at any time treated the subject for a mental disability, which are relevant to the issues of whether the subject is a mentally ill dangerous person and, if so, what treatment disposition should be ordered by the mental health board. The board may order further discovery at its discretion. The county attorney shall have a reciprocal right to discover items and information comparable to those first discovered by the subject. The county and district court shall have the power to rule on objections to discovery in matters which are not self-activating. The right of appeal from denial of discovery shall be at the time of the completion of the final hearing.

Sec. 21. That section 83-1056, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1056. The subject of a petition shall appear personally and be afforded the opportunity to testify in his or her own behalf and to present witnesses and tangible evidence in defending against the petition at the ~~preliminary-and-final-hearings~~ hearing.

Sec. 22. That section 83-1058, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1058. The subject of a petition shall have the right at ~~the-preliminary-and-final-hearings~~ a hearing held under this act to confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the Constitution of the United States, and Article I, section 11 of the Constitution of Nebraska.

Sec. 23. That section 83-1059, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

83-1059. The rules of evidence applicable in civil proceedings shall be followed at all preliminary, final, and other judicial hearings held under this act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Sec. 24. That section 83-1060, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1060. The subject of a petition shall be entitled to written statements by the mental health board as to the evidence relied on and reasons for finding ~~probable cause at the preliminary hearing and~~ clear and convincing proof at the subject's final hearing that he or she is a mentally ill dangerous person, that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a board ordered treatment disposition are available or would suffice to prevent the harm described by section 83-1009, and for choosing the particular treatment specified by its order of final disposition. The board shall make similar written findings when it orders a subject held in custody rather than released on conditions pending hearings to determine whether he or she is a mentally ill dangerous person in need of board ordered treatment or pending the entry of an order of final disposition.

Sec. 25. Upon the discharge from a treatment facility, an indigent person who has received mental health board ordered treatment may file an affidavit with the Department of Institutions or the mental health board requesting that prescription medicine which the regional center treating psychiatrist or the patient's treating physician has prescribed as necessary for the patient's mental health treatment be provided to him or her. Such affidavit shall include the following: (1) That the patient qualifies as an indigent person who is unable to pay under the same standards of ability to pay as set forth in sections 83-363 to 83-380; and (2) that such prescription medicine has been prescribed by the regional center's treatment psychiatrist or the patient's treating physician as necessary for the patient's mental health treatment. The mental health board shall refer such requests it receives to the Department of Public Institutions and the department shall provide such prescription medicine as may be necessary for such former patient's mental health treatment so long as he or she remains an outpatient and his or her treating physician continues to prescribe and certify that such prescription

medicine is necessary for the patient's mental health treatment and he or she continues to be an indigent person as determined under the same standards of ability to pay as set forth in sections 83-363 to 83-380. The Department of Public Institutions may promulgate rules and regulations to carry out the provisions of this section in accordance with Chapter 84, article 9 including but not limited to hearings necessary to determine whether such person is qualified to receive such medications and whether such medication is necessary for the patient's mental health treatment.

Sec. 26. A mental health board shall be notified in writing at least seven days in advance of the release by the treatment facility of any individual committed by the mental health board. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a mentally ill dangerous person, as defined by the Nebraska Mental Health Commitment Act, and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for a hearing in this act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the Nebraska Mental Health Commitment Act. If the board determines that an individual is still mentally ill and dangerous, that individual shall not be released from the treatment facility.

Sec. 27. The mental health board shall, upon the motion of the county attorney, or may upon its own motion hold a hearing to determine whether a person who has received mental health board ordered treatment is adhering to the conditions of his or her release from treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject pursuant to the Nebraska Mental Health Commitment Act and such hearing shall apply the standards used in all other hearings held pursuant to the Nebraska Mental Health Commitment Act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing proof that the subject is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person.

Sec. 28. When the mental health board holds a hearing pursuant to section 29-2920 (3), the mental health board shall be provided, upon request to the sentencing court, with all reports of the Sentencing Review Committee developed pursuant to section 29-2918. Such report shall include all data, including test results.

Sec. 29. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 30. That original sections 83-312, 83-339, 83-340, 83-340.01, 83-1011, 83-1016, 83-1017, 83-1018, 83-1024, 83-1026, 83-1027, 83-1028, 83-1029, 83-1035, 83-1036, 83-1048, 83-1049, 83-1053, 83-1056, 83-1058, 83-1059, and 83-1060, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1037 and 83-1044, Revised Statutes Supplement, 1980, and also sections 83-342, 83-1031 to 83-1033, and 83-1063, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1030 and 83-1034, Revised Statutes Supplement, 1980, are repealed.