

LEGISLATIVE BILL 257

Approved by the Governor March 17, 1988

Introduced by Wesely, 26

AN ACT relating to imprisonment; to amend sections 29-2915, 83-1020, 83-1028, 83-1039, and 83-1078, Reissue Revised Statutes of Nebraska, 1943; to provide for the reduction of jail sentences as prescribed; to change placement provisions for mentally ill dangerous persons as prescribed; to provide duties for community mental health centers and the Department of Public Institutions; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 29-2915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2915. If the court determines that: (1) The defendant is a mentally disordered sex offender based on the information and conclusions in the presentence investigation; (2) the disorder is treatable; and (3) such treatment is available in the state, the court shall, after first sentencing the defendant as provided by law for the offense for which he or she has been convicted, commit the defendant for treatment to one of the regional centers until such time as the court determines based on the report filed by the Sentencing Review Committee established under section 29-2916 that the defendant is no longer mentally disordered or until the defendant has received the maximum benefit of treatment, except that no sentence to treatment shall exceed the maximum length of such offender's sentence. If the defendant is sentenced to a county jail as a misdemeanor, he or she shall be entitled to have his or her jail sentence reduced while in the county jail or regional center pursuant to section 47-502. If the defendant is discharged from the regional center prior to the maximum length of such offender's sentence, further disposition shall be consistent with sections 29-2919 and 29-2920.

The entire proceeding to determine whether the defendant is a mentally disordered sex offender and treatable shall be deemed a critical stage of a criminal prosecution at which the defendant shall be accorded all

the rights a defendant has in sentencing proceedings. The court's decision that the defendant is a mentally disordered sex offender and the decision to commit the defendant for treatment may be appealed. On appeal the presentence investigation shall be made part of the record of the court.

Sec. 2. That section 83-1020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1020. (1) Whenever any peace officer believes that any individual is a mentally ill dangerous person and that the harm described by section 83-1009 is likely to occur before mental health board proceedings under ~~this act~~ the Nebraska Mental Health Commitment Act may be invoked to obtain custody of the individual, such peace officer may immediately take such individual into custody, cause him or her to be taken into custody, or continue his or her custody if he or she is already in custody. A physician or psychologist shall have a limited privilege to hold an individual until a peace officer arrives if such physician or psychologist has probable cause to believe such individual is a mentally ill dangerous person. When a mental health center, ~~or~~ a state hospital, or other government or private hospital, has the capability to detain such an individual in the county in which the individual is found, the individual shall be placed in such facility. ~~A county may contract with medical facilities outside the county to provide a place where such individuals may be held.~~ The individual may be placed in a jail only if the individual cannot be adequately protected in other facilities.

(2)(a) Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section may be held. Such individuals in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.

(b) Commencing January 1, 1991, a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section shall be held. Such individuals in such counties shall not be placed in a jail.

(3) Each county other than a county with a city of the first class within its boundaries may

contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section shall be held. When such an individual is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the individual is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.

(4) Community mental health centers shall collect data on all individuals subject to subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.

Sec. 3. That section 83-1028, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1028. (1) 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. When a mental health center, a state hospital, or other government or private hospital has the capability to detain such subject in the county in which the subject is found, the subject shall be placed in such facility, 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 the hearing, and copies of the petition and list of rights provided by sections 83-1047 to 83-1067.

(2)(a) Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where subjects described in

subsection (1) of this section may be held. Such subjects in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.

(b) Commencing January 1, 1991, a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. Such subjects in such counties shall not be placed in a jail.

(3) Each county other than a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. When such a subject is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the subject is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.

(4) Community mental health centers shall collect data on all subjects described in subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.

Sec. 4. That section 83-1039, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1039. (1) Following a subject's mental health board adjudication as a mentally ill dangerous person in need of board-ordered treatment, and pending the entry of an order of final disposition, the mental health board may order the subject retained in custody in a jail, a mental health center, or a state hospital or other custodial facility upon finding that the harm described in section 83-1009 is otherwise likely to occur before the entry of an order of final disposition. In the absence of such finding, the board shall order the subject released from custody on whatever reasonable conditions may be imposed by the board short of total custody which are the least restrictive alternatives required to assure the subject's appearance at a later

disposition hearing and to prevent the harm described by section 83-1009 from occurring before such later hearing. If a subject is to be retained in custody and a mental health center, a state hospital, or other government or private hospital has the capability to detain such subject in the county in which the subject is found, the subject shall be placed in such facility.

(2)(a) Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section may be held. Such subjects in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.

(b) Commencing January 1, 1991, a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. Such subjects in such counties shall not be placed in a jail.

(3) Each county other than a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. When such a subject is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the subject is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.

(4) Community mental health centers shall collect data on all subjects described in subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.

Sec. 5. The Department of Public Institutions shall provide technical assistance to each county or group of counties requesting such assistance to carry out the purposes of sections 83-1020, 83-1028, and 83-1039.

Sec. 6. That section 83-1078, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

83-1078. This act and section 5 of this act shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Sec. 7. That original sections 29-2915, 83-1020, 83-1028, 83-1039, and 83-1078, Reissue Revised Statutes of Nebraska, 1943, are repealed.