

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 350

Introduced by Cavanaugh, J., 9; Fredrickson, 20.

Read first time January 16, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to mental health; to amend sections 71-931,
2 71-932, 71-933, 71-1215, 71-1216, and 71-1217, Reissue Revised
3 Statutes of Nebraska, and sections 29-1823, 71-919, 71-937, 71-1204,
4 and 71-1221, Revised Statutes Cumulative Supplement, 2024; to change
5 provisions relating to commitment for competency restoration; to
6 require certain documents under the Nebraska Mental Health
7 Commitment Act and Sex Offender Commitment Act to be filed with the
8 court, tribal court, or appropriate tribal official; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 29-1823, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 29-1823 (1) If at any time prior to or during trial it appears that
4 the defendant has become mentally incompetent to stand trial, such
5 disability may be called to the attention of the district or county court
6 by the county attorney or city attorney, by the defendant, or by any
7 person for the defendant. The judge of the district or county court of
8 the county where the defendant is to be tried shall have the authority to
9 determine whether or not the defendant is competent to stand trial. The
10 judge may also cause such medical, psychiatric, or psychological
11 examination of the defendant to be made as he or she deems warranted and
12 hold such hearing as he or she deems necessary. The cost of the
13 examination, when ordered by the court, shall be the expense of the
14 county in which the crime is charged. The judge may allow any physician,
15 psychiatrist, or psychologist a reasonable fee for his or her services,
16 which amount, when determined by the judge, shall be certified to the
17 county board which shall cause payment to be made. Should the judge
18 determine after a hearing that the defendant is mentally incompetent to
19 stand trial and that there is a substantial probability that the
20 defendant will become competent within the reasonably foreseeable future,
21 the judge shall order the defendant to be committed to the Department of
22 Health and Human Services to provide appropriate treatment to restore
23 competency. This may include commitment to a state hospital for the
24 mentally ill, another appropriate state-owned or state-operated facility,
25 or a contract facility or provider pursuant to an alternative treatment
26 plan proposed by the department and approved by the court under
27 subsection (2) of this section until such time as the disability may be
28 removed.

29 (2) ~~(2)(a)~~ If the department determines that treatment by a contract
30 facility or provider is appropriate, the department shall file a report
31 outlining its determination and such alternative treatment plan with the

1 court. Within five ~~twenty-one~~ days after the filing of such report, the
2 court shall hold a hearing to determine whether such treatment is
3 appropriate. The court may approve or deny such alternative treatment
4 plan.

5 ~~(b) A defendant shall not be eligible for treatment by a contract~~
6 ~~facility or provider under this subsection if the judge determines that~~
7 ~~the public's safety would be at risk.~~

8 (3) Within five ~~sixty~~ days after entry of the order committing the
9 defendant to the department, and every sixty days thereafter until either
10 the disability is removed or other disposition of the defendant has been
11 made, the court shall hold a hearing to determine (a) whether the
12 defendant is competent to stand trial or (b) whether or not there is a
13 substantial probability that the defendant will become competent within
14 the reasonably foreseeable future.

15 (4) If it is determined that there is not a substantial probability
16 that the defendant will become competent within the reasonably
17 foreseeable future, then the state shall either (a) commence the
18 applicable civil commitment proceeding that would be required to commit
19 any other person for an indefinite period of time or (b) release the
20 defendant. If during the period of time between the ~~sixty-day~~ review
21 hearings set forth in subsection (3) of this section it is the opinion of
22 the department that the defendant is competent to stand trial, the
23 department shall file a report outlining its opinion with the court and
24 within seven days after such report being filed the court shall hold a
25 hearing to determine whether or not the defendant is competent to stand
26 trial. The state shall pay the cost of maintenance and care of the
27 defendant during the period of time ordered by the court for treatment to
28 remove the disability.

29 (5) The defendant, by and through counsel, may move to be discharged
30 from the offenses charged in the complaint or information for the reason
31 that there is not a substantial probability that the defendant will

1 become competent within the reasonably foreseeable future.

2 (6) In determining whether there is a substantial probability that a
3 defendant will become competent in the reasonably foreseeable future, the
4 court shall take into consideration the likely length of any sentence
5 that would be imposed upon the defendant. If the court discharges the
6 defendant, the court shall state whether such discharge is with or
7 without prejudice.

8 (7)(a) If a judge orders a defendant to be committed to the
9 Department of Health and Human Services to receive treatment to restore
10 competency and such defendant remains lodged in the county jail, the
11 department shall reimburse the county for lodging the defendant.

12 (b) Costs of lodging the defendant shall include the daily rate of
13 lodging the defendant, food, medical services, transportation, and any
14 other necessary costs incurred by the county to lodge the defendant.

15 (c) The daily rate of lodging the defendant shall be one hundred
16 dollars per day for each day or portion thereof after the first thirty
17 days that the defendant is lodged in the county jail after a
18 determination by a judge that the defendant is required to be restored to
19 competency. On July 1, 2023, and each July 1 thereafter, the department
20 shall adjust the amount to be reimbursed to the county jails by an amount
21 equal to the percentage increase, if any, in the Consumer Price Index for
22 All Urban Consumers, as published by the United States Department of
23 Labor, Bureau of Labor Statistics, for the twelve months ending on June
24 30 of such year.

25 (d) For purposes of this section, medical services has the same
26 meaning as provided in subsection (2) of section 47-701.

27 **Sec. 2.** Section 71-919, Revised Statutes Cumulative Supplement,
28 2024, is amended to read:

29 71-919 (1)(a) A law enforcement officer may take a person into
30 emergency protective custody, cause him or her to be taken into emergency
31 protective custody, or continue his or her custody if he or she is

1 already in custody if the officer has probable cause to believe:

2 (i) Such person is mentally ill and dangerous or a dangerous sex
3 offender and that the harm described in section 71-908 or subdivision (1)
4 of section 83-174.01 is likely to occur before mental health board
5 proceedings under the Nebraska Mental Health Commitment Act or the Sex
6 Offender Commitment Act may be initiated to obtain custody of the person;
7 or

8 (ii) For a person domiciled within Indian country in Nebraska, that
9 such person is mentally ill and dangerous or a dangerous sex offender
10 under tribal law and that harm comparable to that described in section
11 71-908 or subdivision (1) of section 83-174.01 or the equivalent under
12 tribal law is likely to occur before mental health proceedings under
13 tribal law may be initiated to obtain custody of the person.

14 (b) Such person shall be admitted to an appropriate and available
15 medical facility, jail, or Department of Correctional Services facility
16 as provided in subsection (2) of this section.

17 (c)(i) Except as provided in subdivision (1)(c)(ii) of this section,
18 each county shall make arrangements with appropriate facilities inside or
19 outside the county for such purpose and shall pay the cost of the
20 emergency protective custody of persons from such county in such
21 facilities.

22 (ii) For a subject domiciled within Indian country in Nebraska for
23 whom emergency protective custody is initiated under tribal law, the
24 tribe shall make arrangements with appropriate facilities inside or
25 outside the tribe for such purpose and shall make arrangements for
26 payment of the cost of the emergency protective custody of persons from
27 such tribe in such facilities.

28 (d) A mental health professional who has probable cause to believe
29 that a person is mentally ill and dangerous or a dangerous sex offender
30 may cause such person to be taken into custody and shall have a limited
31 privilege to hold such person until a law enforcement officer or other

1 authorized person arrives to take custody of such person.

2 (2)(a) A person taken into emergency protective custody under this
3 section shall be admitted to an appropriate and available medical
4 facility unless such person has a prior conviction for a sex offense
5 listed in section 29-4003.

6 (b) A person taken into emergency protective custody under this
7 section who has a prior conviction for a sex offense listed in section
8 29-4003 shall be admitted to a jail or Department of Correctional
9 Services facility unless a medical or psychiatric emergency exists for
10 which treatment at a medical facility is required. The person in
11 emergency protective custody shall remain at the medical facility until
12 the medical or psychiatric emergency has passed and it is safe to
13 transport such person, at which time the person shall be transferred to
14 an available jail or Department of Correctional Services facility.

15 (3)(a) Except as provided in subdivision (3)(b) of this section,
16 upon admission to a facility of a person taken into emergency protective
17 custody by a law enforcement officer under this section, such officer
18 shall execute a written certificate prescribed and provided by the
19 Department of Health and Human Services. The certificate shall allege the
20 officer's belief that the person in custody is mentally ill and dangerous
21 or a dangerous sex offender and shall contain a summary of the person's
22 behavior supporting such allegations. A copy of such certificate shall be
23 immediately forwarded to the county attorney, who shall file it with the
24 court.

25 (b) In the case of a subject domiciled within Indian country who is
26 taken into emergency protective custody by a law enforcement officer
27 under tribal law, upon admission to a facility, such officer shall
28 execute written documentation in a format provided by the tribe. At a
29 minimum, such documentation shall clearly identify the subject, identify
30 the relevant tribe, allege the officer's belief that the person in
31 custody is mentally ill and dangerous or a dangerous sex offender under

1 tribal law, and contain a summary of the subject's behavior supporting
2 such allegations. A copy of such documentation shall be immediately
3 forwarded to the appropriate tribal prosecutor or tribal official, who
4 shall file it with the tribal court or appropriate tribal official.

5 (4) The administrator of the facility shall have such person
6 evaluated by a mental health professional as soon as reasonably possible
7 but not later than thirty-six hours after admission. The mental health
8 professional shall not be the mental health professional who causes such
9 person to be taken into custody under this section and shall not be a
10 member or alternate member of the mental health board that will preside
11 over any hearing under the Nebraska Mental Health Commitment Act or the
12 Sex Offender Commitment Act with respect to such person. A person shall
13 be released from emergency protective custody after completion of such
14 evaluation unless the mental health professional determines, in his or
15 her clinical opinion, that such person is mentally ill and dangerous or a
16 dangerous sex offender. In the case of a subject domiciled within Indian
17 country who is taken into emergency protective custody under tribal law,
18 the mental health professional shall notify an appropriate tribal
19 prosecutor or official of such release.

20 **Sec. 3.** Section 71-931, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-931 (1) Any treatment order entered by a mental health board
23 under section 71-925 shall include directions for (a) the preparation and
24 implementation of an individualized treatment plan for the subject and
25 (b) documentation and reporting of the subject's progress under such
26 plan.

27 (2) The individualized treatment plan shall contain a statement of
28 (a) the nature of the subject's mental illness or substance dependence,
29 (b) the least restrictive treatment alternative consistent with the
30 clinical diagnosis of the subject, and (c) intermediate and long-term
31 treatment goals for the subject and a projected timetable for the

1 attainment of such goals.

2 (3) A copy of the individualized treatment plan shall be filed with
3 the mental health board for review and inclusion in the subject's file
4 and served upon the county attorney, the subject, the subject's counsel,
5 and the subject's legal guardian or conservator, if any, within five
6 working days after the entry of the board's order. The county attorney
7 shall file a copy with the court. Treatment shall be commenced within two
8 working days after preparation of the plan.

9 (4) The subject shall be entitled to know the contents of the
10 individualized treatment plan and what the subject must do in order to
11 meet the requirements of such plan.

12 (5) The subject shall be notified by the mental health board when
13 the mental health board has changed the treatment order or has ordered
14 the discharge of the subject from commitment.

15 **Sec. 4.** Section 71-932, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-932 The person or entity designated by the mental health board
18 under section 71-931 to prepare and oversee the subject's individualized
19 treatment plan shall submit periodic reports to the mental health board
20 of the subject's progress under such plan and any modifications to the
21 plan. The mental health board may distribute copies of such reports to
22 other interested parties as permitted by law. With respect to a subject
23 ordered by the mental health board to receive inpatient treatment, such
24 initial report shall be filed with the mental health board for review and
25 inclusion in the subject's file and served upon the county attorney, the
26 subject, the subject's counsel, and the subject's legal guardian or
27 conservator, if any, no later than ten days after submission of the
28 subject's individualized treatment plan. The county attorney shall file a
29 copy with the court. With respect to each subject committed by the mental
30 health board, such reports shall be so filed and served no less
31 frequently than every ninety days for a period of one year following

1 submission of the subject's individualized treatment plan and every six
2 months thereafter.

3 **Sec. 5.** Section 71-933, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 71-933 (1) Any provider of outpatient treatment to a subject ordered
6 by a mental health board to receive such treatment shall report to the
7 board and to the county attorney if (a) the subject is not complying with
8 his or her individualized treatment plan, (b) the subject is not
9 following the conditions set by the mental health board, (c) the
10 treatment plan is not effective, or (d) there has been a significant
11 change in the subject's mental illness or substance dependence. Such
12 report may be transmitted by facsimile, but the original of the report
13 shall be mailed to the board and the county attorney no later than
14 twenty-four hours after the facsimile transmittal. The county attorney
15 shall file a copy with the court.

16 (2)(a) Upon receipt of such report, the county attorney shall have
17 the matter investigated to determine whether there is a factual basis for
18 the report.

19 (b) If the county attorney determines that there is no factual basis
20 for the report or that no further action is warranted, he or she shall
21 notify the board and the treatment provider and take no further action.

22 (c) If the county attorney determines that there is a factual basis
23 for the report and that intervention by the mental health board is
24 necessary to protect the subject or others, the county attorney may file
25 a motion for reconsideration of the conditions set forth by the board and
26 have the matter set for hearing.

27 (d) The county attorney may apply for a warrant to take immediate
28 custody of the subject pending a rehearing by the board under subdivision
29 (c) of this subsection if the county attorney has reasonable cause to
30 believe that the subject poses a threat of danger to himself or herself
31 or others prior to such rehearing. The application for a warrant shall be

1 supported by affidavit or sworn testimony by the county attorney, a
2 mental health professional, or any other informed person. The application
3 for a warrant and the supporting affidavit may be filed with the board by
4 facsimile, but the original shall be filed with the board not later than
5 three days after the facsimile transmittal, excluding holidays and
6 weekends. Sworn testimony in support of the warrant application may be
7 taken over the telephone at the discretion of the board.

8 **Sec. 6.** Section 71-937, Revised Statutes Cumulative Supplement,
9 2024, is amended to read:

10 71-937 (1) A mental health board shall be notified in writing of the
11 release by the treatment facility of any individual committed by the
12 mental health board. Such notice shall immediately be forwarded to the
13 county attorney. The county attorney shall file a copy with the court.
14 The mental health board shall, upon the motion of the county attorney, or
15 may upon its own motion, conduct a hearing to determine whether the
16 individual is mentally ill and dangerous and consequently not a proper
17 subject for release. Such hearing shall be conducted in accordance with
18 the procedures established for hearings under the Nebraska Mental Health
19 Commitment Act. The subject of such hearing shall be accorded all rights
20 guaranteed to the subject of a petition under the act.

21 (2) In the case of a subject who is domiciled in Indian country and
22 committed for treatment as provided in section 71-964, the tribal court
23 shall be notified in writing of the release by the treatment facility of
24 any such subject committed by the tribal court.

25 **Sec. 7.** Section 71-1204, Revised Statutes Cumulative Supplement,
26 2024, is amended to read:

27 71-1204 (1) Except as provided in subsection (3) of this section, a
28 mental health professional who, upon evaluation of a person admitted for
29 emergency protective custody under section 71-919, determines that such
30 person is a dangerous sex offender shall execute a written certificate as
31 provided in subsection (2) of this section not later than twenty-four

1 hours after the completion of such evaluation. A copy of such certificate
2 shall be immediately forwarded to the county attorney. The county
3 attorney shall file a copy with the court.

4 (2) The certificate shall be in writing and shall include the
5 following information:

6 (a) The subject's name and address, if known;

7 (b) The name and address of the subject's spouse, legal counsel,
8 guardian or conservator, and next of kin, if known;

9 (c) The name and address of anyone providing psychiatric or other
10 care or treatment to the subject, if known;

11 (d) The name and address of any other person who may have knowledge
12 of the subject's mental illness or personality disorder who may be called
13 as a witness at a mental health board hearing with respect to the
14 subject, if known;

15 (e) The name and address of the medical facility in which the
16 subject is being held for emergency protective custody and evaluation;

17 (f) The name and work address of the certifying mental health
18 professional;

19 (g) A statement by the certifying mental health professional that he
20 or she has evaluated the subject since the subject was admitted for
21 emergency protective custody and evaluation; and

22 (h) A statement by the certifying mental health professional that,
23 in his or her clinical opinion, the subject is a dangerous sex offender
24 and the clinical basis for such opinion.

25 (3) In the case of a subject domiciled within Indian country who is
26 taken into emergency protective custody by a law enforcement officer
27 under tribal law, a mental health professional who, upon evaluation of
28 such person, determines that such person is a dangerous sex offender
29 shall execute appropriate written documentation in a format provided by
30 the tribe not later than twenty-four hours after the completion of such
31 evaluation. A copy of such certificate shall be immediately forwarded to

1 the person designated by the tribe.

2 **Sec. 8.** Section 71-1215, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 71-1215 (1) Any treatment order entered by a mental health board
5 under section 71-1209 shall include directions for (a) the preparation
6 and implementation of an individualized treatment plan for the subject
7 and (b) documentation and reporting of the subject's progress under such
8 plan.

9 (2) The individualized treatment plan shall contain a statement of
10 (a) the nature of the subject's mental illness or personality disorder,
11 (b) the least restrictive treatment alternative consistent with the
12 clinical diagnosis of the subject, and (c) intermediate and long-term
13 treatment goals for the subject and a projected timetable for the
14 attainment of such goals.

15 (3) A copy of the individualized treatment plan shall be filed with
16 the mental health board for review and inclusion in the subject's file
17 and served upon the county attorney, the subject, the subject's counsel,
18 and the subject's legal guardian or conservator, if any, within five
19 working days after the entry of the board's order. The county attorney
20 shall file a copy with the court. Treatment shall be commenced within two
21 working days after preparation of the plan.

22 (4) The subject shall be entitled to know the contents of the
23 individualized treatment plan and what the subject must do in order to
24 meet the requirements of such plan.

25 (5) The subject shall be notified by the mental health board when
26 the mental health board has changed the treatment order or has ordered
27 the discharge of the subject from commitment.

28 **Sec. 9.** Section 71-1216, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 71-1216 The person or entity designated by the mental health board
31 under section 71-1215 to prepare and oversee the subject's individualized

1 treatment plan shall submit periodic reports to the mental health board
2 of the subject's progress under such plan and any modifications to the
3 plan. The mental health board may distribute copies of such reports to
4 other interested parties as permitted by law. With respect to a subject
5 ordered by the mental health board to receive inpatient treatment, such
6 initial report shall be filed with the mental health board for review and
7 inclusion in the subject's file and served upon the county attorney, the
8 subject, the subject's counsel, and the subject's legal guardian or
9 conservator, if any, no later than ten days after submission of the
10 subject's individualized treatment plan. The county attorney shall file a
11 copy with the court. With respect to each subject committed by the mental
12 health board, such reports shall be so filed and served no less
13 frequently than every ninety days for a period of one year following
14 submission of the subject's individualized treatment plan and every six
15 months thereafter.

16 **Sec. 10.** Section 71-1217, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-1217 (1) Any provider of outpatient treatment to a subject
19 ordered by a mental health board to receive such treatment shall report
20 to the board and to the county attorney if (a) the subject is not
21 complying with his or her individualized treatment plan, (b) the subject
22 is not following the conditions set by the mental health board, (c) the
23 treatment plan is not effective, or (d) there has been a significant
24 change in the subject's mental illness or personality disorder or the
25 level of risk posed to the public. Such report may be transmitted by
26 facsimile, but the original of the report shall be mailed to the board
27 and the county attorney no later than twenty-four hours after the
28 facsimile transmittal. The county attorney shall file a copy with the
29 court.

30 (2)(a) Upon receipt of such report, the county attorney shall have
31 the matter investigated to determine whether there is a factual basis for

1 the report.

2 (b) If the county attorney determines that there is no factual basis
3 for the report or that no further action is warranted, he or she shall
4 notify the board and the treatment provider and take no further action.

5 (c) If the county attorney determines that there is a factual basis
6 for the report and that intervention by the mental health board is
7 necessary to protect the subject or others, the county attorney may file
8 a motion for reconsideration of the conditions set forth by the board and
9 have the matter set for hearing.

10 (d) The county attorney may apply for a warrant to take immediate
11 custody of the subject pending a rehearing by the board under subdivision
12 (c) of this subsection if the county attorney has reasonable cause to
13 believe that the subject poses a threat of danger to himself or herself
14 or others prior to such rehearing. The application for a warrant shall be
15 supported by affidavit or sworn testimony by the county attorney, a
16 mental health professional, or any other informed person. The application
17 for a warrant and the supporting affidavit may be filed with the board by
18 facsimile, but the original shall be filed with the board not later than
19 three days after the facsimile transmittal, excluding holidays and
20 weekends. Sworn testimony in support of the warrant application may be
21 taken over the telephone at the discretion of the board.

22 **Sec. 11.** Section 71-1221, Revised Statutes Cumulative Supplement,
23 2024, is amended to read:

24 71-1221 (1) A mental health board shall be notified in writing of
25 the release by the treatment facility of any individual committed by the
26 mental health board. Such notice shall immediately be forwarded to the
27 county attorney. The county attorney shall file a copy with the court.
28 The mental health board shall, upon the motion of the county attorney, or
29 may upon its own motion, conduct a hearing to determine whether the
30 individual is a dangerous sex offender and consequently not a proper
31 subject for release. Such hearing shall be conducted in accordance with

1 the procedures established for hearings under the Sex Offender Commitment
2 Act. The subject of such hearing shall be accorded all rights guaranteed
3 to the subject of a petition under the act.

4 (2) In the case of a subject who is domiciled in Indian country and
5 committed for treatment as provided in section 71-1226.01, the tribal
6 court shall be notified in writing of the release by the treatment
7 facility of any such subject committed by the tribal court.

8 **Sec. 12.** Original sections 71-931, 71-932, 71-933, 71-1215,
9 71-1216, and 71-1217, Reissue Revised Statutes of Nebraska, and sections
10 29-1823, 71-919, 71-937, 71-1204, and 71-1221, Revised Statutes
11 Cumulative Supplement, 2024, are repealed.