

LEGISLATIVE BILL 501

Approved by the Governor February 24, 1978

Introduced by Public Health and Welfare Committee, R. Lewis, 38, Chmn.; Brennan, 9; Rasmussen, 41; Boughn, 21; Moylan, 6; R. Maresh, 32; Kelly, 35

AN ACT to amend sections 83-1019, 83-1020, 83-1021, 83-1023, 83-1030, 83-1034, 83-1037, 83-1038, 83-1044, and 83-1045, Reissue Revised Statutes of Nebraska, 1943, relating to the Nebraska Mental Health Commitment Act; to provide a limited privilege; to provide for contracts with medical facilities; to change and provide time limitations for certain commitment proceedings as prescribed; to provide duties of the mental health board; and to repeal the original sections.

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

Section 1. That section 83-1019, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1019. Any person may apply for his own voluntary admission to any public or private hospital, other facility, or program for treatment of mental illness in accordance with the regulations of such facilities or programs governing such admissions; Provided, that any person admitted for voluntary inpatient or similar custodial treatment in such facility shall be entitled to be unconditionally discharged from the facility within ~~twenty-four~~ forty-eight hours after delivery of his or her written request made to any official of such facility, unless action is taken under this act to continue his or her custody.

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

83-1020. 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 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. When no such facility exists, the The individual may be placed in a jail only if the individual cannot be adequately protected in other facilities.

Sec. 3. That section 83-1021, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1021. At the time of the admission, the peace officer responsible for taking an individual into custody shall execute a written certificate, as prescribed and provided by the Director of Medical Services for the Department of Public Institutions, which certificate shall allege that such officer believes that the subject in custody 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 may be invoked to obtain custody of the subject. The certificate shall contain a summary of the subject's behavior supporting such allegations. A copy of such certificate shall be forwarded immediately to the county attorney.

Sec. 4. That section 83-1023, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1023. The sheriff or director of the mental health center or hospital shall have each subject admitted by certificate under sections 83-1020 and 83-1021 evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after his or her admission. 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 mental health board proceedings under this act may be invoked to obtain custody of the individual, the director of the facility shall immediately notify the county attorney of his conclusion in this regard, and,

unless proceedings are pending before the mental health board or are instituted before such board within twenty-four hours after such notice has been received by the county attorney, the subject shall immediately be discharged from further custody under the certificate.

Sec. 5. That section 83-1030, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1030. The preliminary hearing of a subject taken into custody by warrant under section 83-1028 shall be held within forty-eight hours, if possible, but in any event not longer than five days, including excluding weekends and legal holidays, of the time he or she is taken into custody. In no event may the lapse of time between such subject's initial custody under sections 83-1020 to 83-1023 and the commencement of his or her preliminary hearing exceed five days, including excluding weekends and legal holidays. The final hearing shall be held in all events within fourteen days after the start of the preliminary hearing.

Sec. 6. That section 83-1034, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1034. Pending the final hearing, the board may order the subject retained in custody in a jail, mental health center, or state hospital or other custodial facility upon finding that the harm described in section 83-1009 is otherwise likely to occur before the final hearing can be held. 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 his or her final hearing and to prevent the harm described in section 83-1009 from occurring before the final hearing. In the event the subject is ordered held in custody pending his final hearing, such hearing shall be held within ten fourteen days of the preliminary hearing and, if he or she is ordered released from custody, the final hearing shall be held within thirty days of his or her preliminary hearing.

Sec. 7. That section 83-1037, Reissue Revised Statutes of Nebraska, 1943, 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 ~~proceed--as soon-as-practicable-to~~ within forty-eight hours enter an order of final disposition providing for the treatment of the subject of the petition.

Sec. 8. That section 83-1038, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1038. The disposition ordered by the mental health board shall represent the alternative which imposes the least restraint upon the liberty of the subject required to successfully treat the particular mental illness and prevent the particular harm which was the basis for the board's finding the person to be a mentally ill dangerous person. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or any interested person, including outpatient treatment, consultation, chemotherapy or any other program or set of conditions. Full-time inpatient hospitalization or custody shall be considered a treatment alternative of last resort. A subject, committed to a ~~state~~ any facility, shall be subject to the rules of that institution.

Sec. 9. That section 83-1044, Reissue Revised Statutes of Nebraska, 1943, 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.

Sec. 10. That section 83-1045, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1045. The official, agency or other person designated by the mental health board under section 83-1044 to be responsible for the subject's individualized treatment plan shall submit periodic progress reports to the board, which board shall distribute copies to and other interested parties. Each progress report shall summarize progress which has been made under the plan and shall state whether the treatment plan has been modified. Such progress reports shall be filed with the board for review and inclusion in the subject's board file, and served upon the county attorney, the subject and 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 thirty ten days of the submission of the individualized treatment plan of a subject whose order of final disposition requires full-time inpatient hospitalization or custody. Such progress reports shall be so filed and served, in the cases of all subjects undergoing board ordered treatment pursuant to section 83-1040, no less frequently than every ninety days following the filing of their initial individualized treatment plans for a period of one year from the date of such filing and every six months thereafter.

Sec. 11. That original sections 83-1019, 83-1020, 83-1021, 83-1023, 83-1030, 83-1034, 83-1037, 83-1038, 83-1044, and 83-1045, Reissue Revised Statutes of Nebraska, 1943, are repealed.