

LEGISLATIVE BILL 498

Approved by the Governor March 25, 1994

Introduced by Wesely, 26

AN ACT relating to mental health; to amend sections 29-3701, 29-3702, 29-3703, 83-1002, 83-1018, and 83-1046, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1017 and 83-1078, Revised Statutes Supplement, 1992; to change criminal procedure provisions relating to treatment of persons found not responsible by reason of insanity; to define a term; to change restrictions on the number of mental health boards in a judicial district; to change board membership provisions; to provide for training of members of mental health boards as prescribed; to change provisions relating to treatment, discharge, and seizure of and hearings involving persons subject to the Nebraska Mental Health Commitment Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 29-3701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-3701. (1) Following receipt of a verdict of acquittal on grounds of insanity, the court shall forthwith conduct a hearing to determine whether there is probable cause to believe the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an event act or threat omissions, threats, or overt acts. In making this determination the court shall consider all evidence adduced at trial and all additional relevant evidence. If the court finds probable cause it shall order an evaluation not to exceed ninety days in length of the person's mental condition and a treatment plan pursuant to subsection (4) of this section. The evaluation of the person may be conducted as an outpatient at a regional center or other appropriate facility if the court finds by clear and convincing evidence that the person poses no current danger to society at the time of the probable cause hearing and will not become a danger to society during the evaluation period. Otherwise the evaluation of the person shall be conducted as an inpatient at a locked and secure regional center facility or other appropriate locked and secure facility. When the court orders such an inpatient evaluation, the court shall specify in a detailed written order all conditions of the person's confinement during the evaluation and under what, if any, circumstances the person may leave the locked and secure facility. The written order specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked and secure facility is consistent with the safety of the public. If the court finds probable cause, the court shall determine whether and under what conditions of confinement the acquitted person should be committed to a regional center or other appropriate facility for a period not to exceed ninety days for an evaluation of the person's mental condition and for the preparation of a treatment plan pursuant to subsection (4) of this section. When the court commits the person for evaluation, the court shall specify all conditions of the person's confinement during the evaluation including, but not limited to, all circumstances under which the person may leave a locked facility at the piece of confinement. The order of commitment specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked facility is consistent with the safety of the public.

(2) The superintendent of the regional center or the director of the facility to which the person has been committed referred or confined for evaluation shall be responsible for supervising the evaluation and the preparation of an individualized treatment plan.

(3) The report of the evaluation shall address the following to the extent that the available information allows: (a) The person's psychological condition at the time of the evaluation; (b) the probable course of development of the person's condition, with special attention to the probable relationship between the person's current condition and the person's condition at the time of any omissions, threats, or overt acts establishing dangerousness, including the crime for which he or she was acquitted on grounds of insanity; (c) the probable relationship, if any, between the previous omissions, threats, or overt acts establishing dangerousness and the person's condition at the time of the omissions, threats, or overt acts; and

(d) the prognosis for change in the person's condition in light of available treatment, evaluation shall include a determination of whether the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an overt act or threat.

(4) The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the person, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the plan, a statement of the least restrictive treatment conditions consistent with the safety of the public, and a description of intermediate and long-range treatment goals and a projected timetable for their attainment.

(5) Such evaluation and treatment plan shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. Copies of the evaluation and treatment plan shall be furnished to the prosecuting attorney and to the person.

(6) If the person desires a separate evaluation, he or she may file a motion with the court requesting an evaluation by one or more qualified experts of his or her choice. Such evaluation shall be at the person's expense unless otherwise ordered by the court. Any such expert evaluating a person pursuant to this subsection shall have access to the person's records at his or her place of confinement. The court may extend the person's commitment referral or confinement for an additional period not to exceed sixty days, if necessary to permit completion of the separate evaluation. The evaluation shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. A copy of such evaluation shall be furnished the prosecuting attorney.

Sec. 2. That section 29-3702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-3702. (1) Prior to the expiration of the evaluation period provided for in section 29-3701, the court shall conduct an evidentiary hearing regarding the condition of the person, at which time a representative of the facility where he or she was evaluated may testify as to the results of the evaluation and the contents of the treatment plan. Based upon the results of the evaluation, evidence adduced at trial, evidence of other omissions, threats, or overt acts indicative of dangerousness, and any other relevant evidence, the court shall determine whether the person is dangerous to himself, herself, or others by reason of mental illness or defect, will be so dangerous in the foreseeable future, or will be so dangerous absent continuing participation in appropriate treatment.

(2) If the court does not find that there is clear and convincing evidence of such dangerousness, as demonstrated by omissions, threats, or overt acts, the court shall unconditionally release the person from further court-ordered treatment. If the court finds clear and convincing evidence of such dangerousness, as demonstrated by omissions, threats, or overt acts, the court shall order that such person participate in an appropriate treatment program specifying conditions of liberty and monitoring consistent with the treatment needs of the person and the safety of the public. The treatment program may involve any public or private facility or program which offers treatment for mental illness and may include an inpatient, residential, day, or outpatient setting. The court shall place the person in the least restrictive available treatment program that is consistent with the treatment needs of the person and the safety of the public. If the court determines that there is clear and convincing evidence that the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an overt act or threat, the court shall commit the person for treatment to one of the regional centers or other appropriate facility. The court shall specify the conditions of confinement regarding the person's freedom of movement outside locked facilities at the place of confinement, including whether or not the facility may grant the person leave into the community for any period of time, however short. The order of commitment specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked facility is consistent with the safety of the public. Personnel at the facility providing the treatment program shall obey the court-ordered conditions, and any person who fails to do so shall upon conviction be subject to the full contempt powers of the court.

Sec. 3. That section 29-3703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-3703. (1) The court which tried a person who is found not

responsible by reason of insanity shall annually and may, upon its own motion or upon motion of the person or the prosecuting attorney, review the records of such person and conduct an evidentiary hearing on the status of the person. The court may, upon its own motion or upon a motion by the person or the prosecuting attorney, order an independent psychiatric or psychological evaluation of the person. The court shall consider the results of the evaluation at the evidentiary hearing. When the independent evaluation is conducted pursuant to a motion by the court or the prosecuting attorney, the cost of such independent evaluation shall be the expense of the county. When the evaluation is conducted pursuant to a motion by the person and if the person is not indigent, the cost of the evaluation shall be borne by the person.

(2) If as a result of such hearing the court finds that such person is no longer dangerous to himself, herself, or others by reason of mental illness or defect, and will not be so dangerous in the foreseeable future, the court shall order such person unconditionally released from further confinement court-ordered treatment. If the court does not so find, the court shall order that such person returned to an appropriate facility under an appropriate treatment plan and conditions of confinement. The court may place the person in a less restrictive setting only if it finds that such placement is consistent with the safety of the public; participate in an appropriate treatment program specifying conditions of liberty and monitoring consistent with the treatment needs of the person and the safety of the public. The treatment program may involve any public or private facility or program which offers treatment for mental illness and may include an inpatient, residential, day, or outpatient setting. The court shall place the person in the least restrictive available treatment program that is consistent with the treatment needs of the person and the safety of the public.

(3) If the person has been treated in a regional center or other appropriate facility and is ordered placed in a less restrictive treatment program, the regional center or other appropriate facility shall develop an individual discharge plan consistent with the order of the court and shall provide the less restrictive treatment program a copy of the discharge plan and all relevant treatment information.

(4) Upon motion of the prosecuting attorney or upon its own motion, but at least annually, the court shall hold a hearing to determine whether the person is complying with the conditions set by the court. Upon an initial showing of probable cause by affidavit or sworn testimony that the person is not complying with the court-ordered conditions, the court may issue a warrant directing the sheriff or any peace officer to take the person into custody and place him or her into a mental health center, regional center, or other appropriate facility with available space where he or she shall be held pending the hearing. When a person has been taken into custody pursuant to this subsection, the hearing shall be held within ten days. Following the hearing, the court shall determine whether placement in the current treatment program should be continued or ceased and whether the conditions of the placement should be continued or modified.

(5) Any treatment program to which a person is committed on the effective date of this act under this section or section 29-3702 shall submit reports to the trial court and the prosecuting attorney documenting the treatment progress of that person at least annually. Additionally, if the person fails to comply with any condition specified by the court, the court and the prosecuting attorney shall be notified forthwith.

Sec. 4. That section 83-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1002. For the purposes of this act the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections 83-1003 to 83-1015 and section 5 of this act shall be used.

Sec. 5. Outpatient treatment shall mean treatment by order of a mental health board directing a subject to comply with specified treatment requirements that are reasonably designed to alleviate or reduce the subject's illness or disability or to maintain or prevent deterioration of the subject's mental or emotional functioning. The requirements may include, but are not limited to, (1) taking prescribed medication, (2) reporting to a professional or facility for treatment or to permit monitoring of the subject's condition, or (3) participating in individual or group therapy, educational, rehabilitation, residential, or vocational programs.

Sec. 6. That section 83-1017, Revised Statutes Supplement, 1992, be amended to read as follows:

83-1017. (1) At least one There is hereby created one or more mental health boards board shall be created for each judicial district established pursuant to section 24-301.02. No 7 except that no judicial

district shall have more than three mental health boards, except that four mental health boards may be created in a judicial district if the presiding judge of the judicial district demonstrates to the Chief Justice of the Supreme Court that four mental health boards are necessary to meet the needs of the judicial district. 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.

(2) The mental health 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. 7. 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 terms 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; a clinical social worker; or a layperson 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 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 on a yearly basis. The department shall consult with consumer and family advocacy groups in the development and presentation of the training. After June 30, 1995, no person shall remain on the board or be eligible for appointment or reappointment as a member or alternate member of the board unless he or she has attended and satisfactorily completed such mental health board training within the past two years. Members and alternate members shall be reimbursed for their time and expenses incurred in attending training in a manner and amount prescribed by the presiding judge of the district court in the district in which the board is located. Second alternates may be temporarily appointed for no longer than one year without meeting the training requirements of this subsection only if no other person who has received training is available in the district for temporary appointment.

Sec. 8. A subject shall be entitled to know the extent of the individualized treatment plan developed pursuant to section 83-1044 and what the subject must do in order to meet the requirements of the plan. A subject shall be notified when the mental health board has changed the treatment disposition or issued an order of discharge from commitment.

Sec. 9. (1) If (a) the subject of outpatient commitment is not following the treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness, the outpatient treatment provider shall notify the board and the county attorney in writing forthwith. The report may be transmitted by facsimile mail, but the original of the report shall be mailed to the board and the county attorney within twenty-four hours of the facsimile transmittal.

(2)(a) The county attorney upon receipt of information indicating noncompliance with conditions set by the board shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, the county attorney shall notify the person or program that made the report and take no further action.

(c) If the county attorney determines that there is a factual basis to believe (i) the subject is not following the treatment plan, (ii) the subject is not following the conditions set by the board, (iii) the treatment plan is not effective, or (iv) there has been a significant change in the subject's mental illness, and that board intervention is required to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter

set for hearing.

(d) If the county attorney determines that there is a factual basis to believe that any of the conditions in subdivision (2)(c) of this section are present, that the subject poses a threat of danger to himself or herself or others as a result of his or her mental illness, and that there are reasonable grounds to believe that the subject or others will be injured prior to mental health board proceedings if the subject is not restrained, the county attorney may file an application for a warrant authorizing the seizure and holding of the subject supported by affidavit or sworn testimony. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed by facsimile mail, but the original shall be filed with the board within three days, excluding holidays and weekends. Sworn testimony in support of the warrant may be taken over the telephone at the discretion of the board.

Sec. 10. 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 subject committed to outpatient treatment can be adequately and safely served by the present treatment plan. The mental health board may issue a warrant directing any law enforcement officer in the state to take the subject into custody. The board shall order the sheriff to transport the subject to a mental health center or public or private hospital with available space specified by the board where he or she will be held pending the hearing. No person may be held in custody pending the hearing for a period exceeding seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or a person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's parent or legal guardian if the subject is a minor or legally incompetent a notice of the time and place fixed for the hearing, a copy of the petition, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject of the hearing shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Sec. 11. That section 83-1046, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1046. Following each filing of the periodic progress reports described in section 83-1045, the subject, the subject's counsel, or the subject's parent or legal guardian if the subject is a minor or legally incompetent may request a review hearing and upon request shall have the right to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or change in treatment disposition. The mental health board shall schedule the review hearing to be held within fourteen days of receipt of the written request. The mental health board may schedule such a review hearing (1) at any time pursuant to section 83-1079 or 83-1080, (2) upon the request of the subject, the subject's counsel, the subject's parent or legal guardian if the subject is a minor or legally incompetent, the county attorney, 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, or the mental health professional directly involved in implementing the subject's individualized treatment plan, or (3) upon the board's own motion.

Whenever it shall be shown by any person or it appears upon the record of the periodic progress reports, to the satisfaction of the mental health board, that either cause no longer exists for the care or treatment or a less restrictive alternative exists for a person committed as a mentally ill dangerous person, the mental health board shall order the immediate discharge of that person or change the treatment disposition. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act this act shall attach to the subject.

Sec. 12. That section 83-1078, Revised Statutes Supplement, 1992, be amended to read as follows:

83-1078. This act Sections 83-308.02, 83-312, 83-318, 83-337, 83-351, and 83-1001 to 83-1080 and sections 5 and 8 to 10 of this act shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Sec. 13. That original sections 29-3701, 29-3702, 29-3703, 83-1002, 83-1018, and 83-1046, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1017 and 83-1078, Revised Statutes Supplement, 1992, are repealed.