

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 998

Introduced by Schumacher, 22.

Read first time January 15, 2016

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to behavioral health; to amend sections
2 71-919, 71-920, 71-922, 71-926, 71-1203, 71-1204, 71-1206, 71-1210,
3 and 81-3116, Reissue Revised Statutes of Nebraska, and sections
4 71-801, 71-804, and 71-901, Revised Statutes Cumulative Supplement,
5 2014; to provide for emergency community crisis centers; to define a
6 term; to state findings; to provide for a regional outreach center;
7 to change provisions relating to emergency protective custody; to
8 provide duties for the Division of Behavioral Health; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-801, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 71-801 Sections 71-801 to 71-831 and sections 3 to 8 of this act
4 shall be known and may be cited as the Nebraska Behavioral Health
5 Services Act.

6 Sec. 2. Section 71-804, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 71-804 For purposes of the Nebraska Behavioral Health Services Act:

9 (1) Behavioral health disorder means mental illness or alcoholism,
10 drug abuse, or other addictive disorder;

11 (2) Behavioral health region means a behavioral health region
12 established in section 71-807;

13 (3) Behavioral health services means services, including, but not
14 limited to, consumer-provided services, support services, inpatient and
15 outpatient services, and residential and nonresidential services,
16 provided for the prevention, diagnosis, and treatment of behavioral
17 health disorders and the rehabilitation and recovery of persons with such
18 disorders;

19 (4) Community-based behavioral health services or community-based
20 services means behavioral health services that are not provided at a
21 regional center;

22 (5) Department means the Department of Health and Human Services;

23 (6) Director means the Director of Behavioral Health;

24 (7) Division means the Division of Behavioral Health of the
25 department;

26 (8) Emergency community crisis center means a treatment facility
27 providing the services described in section 4 of this act;

28 (9 8) Medical assistance program means the program established
29 pursuant to the Medical Assistance Act;

30 (10 9) Public behavioral health system means the statewide array of
31 behavioral health services for children and adults provided by the public

1 sector or private sector and supported in whole or in part with funding
2 received and administered by the department, including behavioral health
3 services provided under the medical assistance program;

4 ~~(11 10)~~ Regional center means one of the state hospitals for the
5 mentally ill designated in section 83-305; and

6 ~~(12 11)~~ Regional center behavioral health services or regional
7 center services means behavioral health services provided at a regional
8 center.

9 Sec. 3. (1) The Legislature finds that:

10 (a) The demand for inpatient behavioral health beds exceeds the
11 supply of such beds in Nebraska;

12 (b) Hospital emergency departments are not equipped to address the
13 behavioral health needs of persons taken into emergency protective
14 custody pursuant to section 71-919 or persons in need of inpatient
15 psychiatric care;

16 (c) Delays in receiving behavioral health crisis stabilization
17 services significantly increase the risk of emotional deterioration of a
18 person in a mental health crisis and the risk of physical injury to such
19 person and to others;

20 (d) Appropriate, timely resources should be available to persons in
21 need of behavioral health services;

22 (e) The length of time a person in need of behavioral health
23 services is held at a hospital emergency department, along with
24 unnecessary preliminary assessments, should be reduced; and

25 (f) Behavioral health crisis assessment and evaluation should take
26 place in a safe and therapeutic environment.

27 (2) The Legislature declares that establishing a network of
28 emergency community crisis centers across the State of Nebraska will
29 provide appropriate and timely behavioral health resources for persons in
30 need of behavioral health services in Nebraska.

31 Sec. 4. (1) The division shall establish five emergency community

1 crisis centers across the state. Such centers shall provide tiered levels
2 of behavioral health services, including, but not limited to, persons
3 taken into emergency protective custody or persons in need of inpatient
4 psychiatric voluntary or involuntary care or stabilization. The purposes
5 of such centers include, but are not limited to, providing:

6 (a) Comprehensive medical and psychological examinations within
7 thirty-six hours after admission to the center;

8 (b) Short-term intensive treatment to stabilize the psychiatric
9 condition of persons taken into emergency protective custody with the
10 goal of allowing at least fifty percent of such persons to return to
11 their community and to avoid further inpatient behavioral health
12 services; and

13 (c) Connections with community-based behavioral health services and
14 substance abuse programs to serve such persons in their community after
15 discharge from the emergency community crisis center.

16 (2) The director shall establish two emergency community crisis
17 centers in the first year following the effective date of this act and an
18 additional center in each of the next three years until five emergency
19 community crisis centers are established. The director shall determine
20 the location of such centers as provided in section 6 of this act and in
21 a way that provides service areas across the state that are as nearly as
22 reasonably possible equivalent in size and population served.

23 Sec. 5. Each emergency community crisis center established under
24 section 4 of this act shall:

25 (1) Provide custody, screening, emergency psychiatric evaluation,
26 psychological evaluation and testing, medication therapy, nursing care
27 and assessment, laboratory tests if ordered by a physician, discharge
28 planning, and other services necessary to provide behavioral health
29 crisis intervention to persons eighteen years of age or older taken into
30 emergency protective custody pursuant to section 71-919 and to provide
31 psychiatric inpatient care; and

1 (2) Employ mental health professionals as defined in section 71-906
2 and such other staff as necessary to carry out the duties of the center.

3 Sec. 6. A county board or a group of counties acting pursuant to an
4 interlocal agreement under the Interlocal Agreement Act may apply within
5 one hundred eighty days after the effective date of this act to the
6 director to have an emergency community crisis center located in such
7 county or one of the counties party to such interlocal agreement. Each
8 application shall include a strategic plan drawn up by the applicant
9 which shall include, but not be limited to, the proposed location of the
10 center, geographic and population data for the area proposed to be
11 served, whether the center will be located in a new or an existing
12 structure, and such other information as the director may require.

13 The director shall approve or disapprove the application within
14 ninety days after it is submitted, taking into account factors which
15 include, but are not limited to, the geographic and population
16 distribution requirements of section 4 of this act. Each center shall be
17 established by the successful applicant within eighteen months after the
18 applicant receives notice of approval from the director.

19 Sec. 7. The division shall establish a regional outreach center
20 providing a statewide toll-free hotline. The hotline shall provide
21 information relating to access to inpatient beds for behavioral health
22 services in Nebraska. Such hotline may be operated by the department, or
23 the department may contract with a state agency or with any other public
24 or private entity capable of providing such service to operate the
25 hotline.

26 Sec. 8. Section 71-901, Revised Statutes Cumulative Supplement,
27 2014, is amended to read:

28 71-901 Sections 71-901 to 71-963 and section 11 of this act shall be
29 known and may be cited as the Nebraska Mental Health Commitment Act.

30 Sec. 9. Section 71-919, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 71-919 (1) A law enforcement officer who has probable cause to
2 believe that a 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 may take such person into emergency protective custody, cause him or her
8 to be taken into emergency protective custody, or continue his or her
9 custody if he or she is already in custody. ~~Such person shall be admitted~~
10 ~~to an appropriate and available medical facility, jail, or Department of~~
11 ~~Correctional Services facility as provided in subsection (2) of this~~
12 ~~section. Each county shall make arrangements with appropriate facilities~~
13 ~~inside or outside the county for such purpose and shall pay the cost of~~
14 ~~the emergency protective custody of persons from such county in such~~
15 ~~facilities.~~ A mental health professional who has probable cause to
16 believe that a person is mentally ill and dangerous or a dangerous sex
17 offender may cause such person to be taken into custody and shall have a
18 limited privilege to hold such person until a law enforcement officer or
19 other authorized person arrives to take custody of such person.

20 (2) Such person shall be immediately placed in the custody of the
21 Division of Behavioral Health of the Department of Health and Human
22 Services, or the division's designee, for placement and admission to an
23 appropriate and available medical facility, emergency community crisis
24 center as defined in section 71-804, jail, or Department of Correctional
25 Services facility pursuant to subsection (4) of this section.

26 (3)(a) Legal and physical transfer of custody of such person to the
27 division or its designee shall take place at a local medical facility or
28 law enforcement agency office within one hour after notification by a law
29 enforcement officer that such a person has been taken into emergency
30 protective custody.

31 (b) The division or its designee may contract with a local law

1 enforcement agency for the transport, placement, and admission to an
2 appropriate and available medical facility, emergency community crisis
3 center, jail, or Department of Correctional Services facility of persons
4 taken into emergency protective custody. If the division has contracted
5 with such agency for such purposes, such facility shall be secured by the
6 division or its designee within one hour after notification by a law
7 enforcement officer that such person has been taken into emergency
8 protective custody. The division or its designee shall immediately cause
9 such person to be transported to such facility or jail.

10 (4)(a) ~~(2)(a)~~ A person taken into emergency protective custody under
11 this section shall be admitted to an appropriate and available medical
12 facility or emergency community crisis center pending proceedings before
13 a mental health board pursuant to the Nebraska Mental Health Commitment
14 Act unless such person has a prior conviction for a sex offense listed in
15 section 29-4003.

16 (b) A person taken into emergency protective custody under this
17 section who has a prior conviction for a sex offense listed in section
18 29-4003 shall be admitted to a jail or Department of Correctional
19 Services facility unless a medical or psychiatric emergency exists for
20 which treatment at a medical facility or emergency community crisis
21 center is required. The person in emergency protective custody shall
22 remain at the medical facility or emergency community crisis center until
23 the medical or psychiatric emergency has passed and it is safe to
24 transport such person, at which time the person shall be transferred to
25 an available jail or Department of Correctional Services facility pending
26 proceedings before a mental health board pursuant to the Nebraska Mental
27 Health Commitment Act.

28 (5 ~~3~~) Upon transfer of custody of such person to the division or its
29 designee by a law enforcement officer and admission of such person to a
30 facility of a person taken into emergency protective custody by a law
31 enforcement officer under this section, such officer shall execute a

1 written certificate prescribed and provided by the Department of Health
2 and Human Services. The certificate shall allege the officer's belief
3 that the person in custody is mentally ill and dangerous or a dangerous
4 sex offender and shall contain a summary of the person's behavior
5 supporting such allegations. A copy of such certificate shall be
6 immediately forwarded to the county attorney.

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

19 Sec. 10. If the Director of Behavioral Health or his or her
20 designee refuses or neglects to carry out his or her duties pursuant to
21 section 71-919 after being informed by a law enforcement officer that a
22 person has been taken into emergency protective custody, the director or
23 his or her designee is guilty of a Class IV misdemeanor. Each such
24 refusal or neglect of the director or his or her designee shall
25 constitute a separate offense.

26 Sec. 11. Section 71-920, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 71-920 (1) A mental health professional who, upon evaluation of a
29 person admitted for emergency protective custody under section 71-919,
30 determines that such person is mentally ill and dangerous shall execute a
31 written certificate as provided in subsection (2) of this section not

1 later than twenty-four hours after the completion of such evaluation. A
2 copy of such certificate shall be immediately forwarded to the county
3 attorney.

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 substance dependence 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 or emergency
16 community crisis center as defined in section 71-804 in which the subject
17 is being held for emergency protective custody and evaluation;

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

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

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

26 Sec. 12. Section 71-922, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 71-922 (1) Mental health board proceedings shall be deemed to have
29 commenced upon the earlier of (a) the filing of a petition under section
30 71-921 or (b) notification by the county attorney to the law enforcement
31 officer who took the subject into emergency protective custody under

1 section 71-920 or the administrator of the treatment center, emergency
2 community crisis center as defined in section 71-804, or medical facility
3 having charge of the subject of his or her intention to file such
4 petition. The county attorney shall file such petition as soon as
5 reasonably practicable after such notification.

6 (2) A petition filed by the county attorney under section 71-921 may
7 contain a request for the emergency protective custody and evaluation of
8 the subject prior to commencement of a mental health board hearing
9 pursuant to such petition with respect to the subject. Upon receipt of
10 such request and upon a finding of probable cause to believe that the
11 subject is mentally ill and dangerous as alleged in the petition, the
12 court or chairperson of the mental health board may issue a warrant
13 directing the sheriff to take custody of the subject. If the subject is
14 already in emergency protective custody under a certificate filed under
15 section 71-919, a copy of such certificate shall be filed with the
16 petition. The subject in such custody shall be held in the nearest
17 appropriate and available medical facility or emergency community crisis
18 center and shall not be placed in a jail. Each county shall make
19 arrangements with appropriate medical facilities or an emergency
20 community crisis center inside or outside the county for such purpose and
21 shall pay the cost of the emergency protective custody of persons from
22 such county in such facilities.

23 (3) The petition and all subsequent pleadings and filings in the
24 case shall be entitled In the Interest of, Alleged to be
25 Mentally Ill and Dangerous. The county attorney may dismiss the petition
26 at any time prior to the commencement of the hearing of the mental health
27 board under section 71-924, and upon such motion by the county attorney,
28 the mental health board shall dismiss the petition.

29 Sec. 13. Section 71-926, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 71-926 (1) At the conclusion of a mental health board hearing under

1 section 71-924 and prior to the entry of a treatment order by the board
2 under section 71-925, the board may (a) order that the subject be
3 retained in custody until the entry of such order and the subject may be
4 admitted for treatment pursuant to such order or (b) order the subject
5 released from custody under such conditions as the board deems necessary
6 and appropriate to prevent the harm described in section 71-908 and to
7 assure the subject's appearance at a later disposition hearing by the
8 board. A subject shall be retained in custody under this section at the
9 nearest appropriate and available medical facility or emergency community
10 crisis center as defined in section 71-804 and shall not be placed in a
11 jail. Each county shall make arrangements with appropriate medical
12 facilities or an emergency community crisis center inside or outside the
13 county for such purpose and shall pay the cost of the emergency
14 protective custody of persons from such county in such facilities.

15 (2) A subject who has been ordered to receive inpatient or
16 outpatient treatment by a mental health board may be provided treatment
17 while being retained in emergency protective custody and pending
18 admission of the subject for treatment pursuant to such order.

19 Sec. 14. Section 71-1203, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-1203 For purposes of the Sex Offender Commitment Act:

22 (1) The definitions found in sections 71-905, 71-906, 71-907,
23 71-910, 71-911, and 83-174.01 apply;

24 (2) Administrator means the administrator or other chief
25 administrative officer of a treatment facility or his or her designee;

26 (3) Outpatient treatment means treatment ordered by a mental health
27 board directing a subject to comply with specified outpatient treatment
28 requirements, including, but not limited to, (a) taking prescribed
29 medication, (b) reporting to a mental health professional or treatment
30 facility for treatment or for monitoring of the subject's condition, or
31 (c) participating in individual or group therapy or educational,

1 rehabilitation, residential, or vocational programs;

2 (4) Subject means any person concerning whom (a) a certificate has
3 been filed under section 71-1204, (b) a certificate has been filed under
4 section 71-919 and such person is held pursuant to subdivision ~~(4)(b)~~ ~~(2)~~
5 ~~(b)~~ of section 71-919, or (c) a petition has been filed under the Sex
6 Offender Commitment Act. Subject does not include any person under
7 eighteen years of age unless such person is an emancipated minor; and

8 (5) Treatment facility means a facility which provides services for
9 persons who are dangerous sex offenders.

10 Sec. 15. Section 71-1204, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-1204 (1) A mental health professional who, upon evaluation of a
13 person admitted for emergency protective custody under section 71-919,
14 determines that such person is a dangerous sex offender shall execute a
15 written certificate as provided in subsection (2) of this section not
16 later than twenty-four hours after the completion of such evaluation. A
17 copy of such certificate shall be immediately forwarded to the county
18 attorney.

19 (2) The certificate shall be in writing and shall include the
20 following information:

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

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

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

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

30 (e) The name and address of the medical facility or emergency
31 community crisis center as defined in section 71-804 in which the subject

1 is being held for emergency protective custody and evaluation;

2 (f) The name and work address of the certifying mental health
3 professional;

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

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

10 Sec. 16. Section 71-1206, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-1206 (1) Mental health board proceedings shall be deemed to have
13 commenced upon the earlier of (a) the filing of a petition under section
14 71-1205 or (b) notification by the county attorney to the law enforcement
15 officer who took the subject into emergency protective custody under
16 section 71-919 or the administrator of the treatment facility having
17 charge of the subject of the intention of the county attorney to file
18 such petition. The county attorney shall file such petition as soon as
19 reasonably practicable after such notification.

20 (2) A petition filed by the county attorney under section 71-1205
21 may contain a request for the emergency protective custody and evaluation
22 of the subject prior to commencement of a mental health board hearing
23 pursuant to such petition with respect to the subject. Upon receipt of
24 such request and upon a finding of probable cause to believe that the
25 subject is a dangerous sex offender as alleged in the petition, the court
26 or chairperson of the mental health board may issue a warrant directing
27 the sheriff to take custody of the subject. If the subject is already in
28 emergency protective custody under a certificate filed under section
29 71-919, a copy of such certificate shall be filed with the petition. The
30 subject in such custody shall be held in an appropriate and available
31 medical facility, emergency community crisis center as defined in section

1 71-804, jail, or Department of Correctional Services facility. A
2 dangerous sex offender shall not be admitted to a medical facility or
3 emergency community crisis center for emergency protective custody unless
4 a medical or psychiatric emergency exists requiring treatment not
5 available at a jail or correctional facility. Each county shall make
6 arrangements with appropriate facilities inside or outside the county for
7 such purpose and shall pay the cost of the emergency protective custody
8 of persons from such county in such facilities.

9 (3) The petition and all subsequent pleadings and filings in the
10 case shall be entitled In the Interest of , Alleged to be a
11 Dangerous Sex Offender. The county attorney may dismiss the petition at
12 any time prior to the commencement of the hearing of the mental health
13 board under section 71-1208, and upon such motion by the county attorney,
14 the mental health board shall dismiss the petition.

15 Sec. 17. Section 71-1210, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-1210 (1) At the conclusion of a mental health board hearing under
18 section 71-1208 and prior to the entry of a treatment order by the board
19 under section 71-1209, the board may (a) order that the subject be
20 retained in custody until the entry of such order and the subject may be
21 admitted for treatment pursuant to such order or (b) order the subject
22 released from custody under such conditions as the board deems necessary
23 and appropriate to prevent the harm described in subdivision (1) of
24 section 83-174.01 and to assure the subject's appearance at a later
25 disposition hearing by the board. A subject shall be retained in custody
26 under this section at an appropriate and available medical facility,
27 emergency community crisis center as defined in section 71-804, jail, or
28 Department of Correctional Services facility. A dangerous sex offender
29 shall not be admitted to a medical facility or emergency community crisis
30 center for emergency protective custody unless a medical or psychiatric
31 emergency exists requiring treatment not available at a jail or

1 correctional facility. Each county shall make arrangements with
2 appropriate facilities inside or outside the county for such purpose and
3 shall pay the cost of the emergency protective custody of persons from
4 such county in such facilities.

5 (2) A subject who has been ordered to receive inpatient or
6 outpatient treatment by a mental health board may be provided treatment
7 while being retained in emergency protective custody and pending
8 admission of the subject for treatment pursuant to such order.

9 Sec. 18. Section 81-3116, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 81-3116 The responsibilities of the divisions created in section
12 81-3113 include, but are not limited to, the following:

13 (1) The Division of Behavioral Health shall administer (a) the state
14 hospitals for the mentally ill designated in section 83-305, ~~and~~ (b)
15 publicly funded community-based behavioral health services, and (c)
16 emergency community crisis centers established under section 4 of this
17 act;

18 (2) The Division of Children and Family Services shall administer
19 (a) protection and safety programs and services, including child welfare
20 programs and services and the Office of Juvenile Services, (b) economic
21 and family support programs and services, and (c) service areas as may be
22 designated by the chief executive officer or by the Director of Children
23 and Family Services under authority of the chief executive officer,
24 except that on and after September 1, 2012, the western, central, and
25 northern service areas shall be aligned to be coterminous with the
26 district court judicial districts described in section 24-301.02;

27 (3) The Division of Developmental Disabilities shall administer (a)
28 the Beatrice State Developmental Center and (b) publicly funded
29 community-based developmental disabilities services;

30 (4) The Division of Medicaid and Long-Term Care shall administer (a)
31 the medical assistance program also known as medicaid, (b) aging

1 services, and (c) other related programs and services;

2 (5) The Division of Public Health shall administer (a) preventive
3 and community health programs and services, (b) the regulation and
4 licensure of health-related professions and occupations, and (c) the
5 regulation and licensure of health care facilities and health care
6 services; and

7 (6) The Division of Veterans' Homes shall administer (a) the Eastern
8 Nebraska Veterans' Home, (b) the Grand Island Veterans' Home, (c) the
9 Norfolk Veterans' Home, and (d) the Western Nebraska Veterans' Home.

10 Sec. 19. Original sections 71-919, 71-920, 71-922, 71-926, 71-1203,
11 71-1204, 71-1206, 71-1210, and 81-3116, Reissue Revised Statutes of
12 Nebraska, and sections 71-801, 71-804, and 71-901, Revised Statutes
13 Cumulative Supplement, 2014, are repealed.