

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 780**

Introduced by Schumacher, 22.

Read first time January 07, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Mental Health Commitment Act;  
2 to amend sections 71-919 and 71-1203, Reissue Revised Statutes of  
3 Nebraska, and section 71-901, Revised Statutes Cumulative  
4 Supplement, 2014; to change provisions relating to emergency  
5 protective custody; to provide penalties; to harmonize provisions;  
6 and to repeal the original sections.

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

1 Section 1. Section 71-901, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3 71-901 Sections 71-901 to 71-963 and section 3 of this act shall be  
4 known and may be cited as the Nebraska Mental Health Commitment Act.

5 Sec. 2. Section 71-919, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 71-919 (1) A law enforcement officer who has probable cause to  
8 believe that a person is mentally ill and dangerous or a dangerous sex  
9 offender and that the harm described in section 71-908 or subdivision (1)  
10 of section 83-174.01 is likely to occur before mental health board  
11 proceedings under the Nebraska Mental Health Commitment Act or the Sex  
12 Offender Commitment Act may be initiated to obtain custody of the person  
13 may take such person into emergency protective custody, cause him or her  
14 to be taken into emergency protective custody, or continue his or her  
15 custody if he or she is already in custody. ~~Such person shall be admitted~~  
16 ~~to an appropriate and available medical facility, jail, or Department of~~  
17 ~~Correctional Services facility as provided in subsection (2) of this~~  
18 ~~section. Each county shall make arrangements with appropriate facilities~~  
19 ~~inside or outside the county for such purpose and shall pay the cost of~~  
20 ~~the emergency protective custody of persons from such county in such~~  
21 ~~facilities.~~ A mental health professional who has probable cause to  
22 believe that a person is mentally ill and dangerous or a dangerous sex  
23 offender may cause such person to be taken into custody and shall have a  
24 limited privilege to hold such person until a law enforcement officer or  
25 other authorized person arrives to take custody of such person.

26 (2) Such person shall be immediately placed in the custody of the  
27 Division of Behavioral Health of the Department of Health and Human  
28 Services, or the division's designee, for placement and admission to an  
29 appropriate and available medical facility, jail, or Department of  
30 Correctional Services facility pursuant to subsection (4) of this  
31 section.

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

6       (b) The division or its designee may contract with a local law  
7 enforcement agency for the transport, placement, and admission to an  
8 appropriate and available medical facility, jail, or Department of  
9 Correctional Services facility of persons taken into emergency protective  
10 custody. If the division has contracted with such agency for such  
11 purposes, such facility shall be secured by the division or its designee  
12 within one hour after notification by a law enforcement officer that such  
13 person has been taken into emergency protective custody. The division or  
14 its designee shall immediately cause such person to be transported to  
15 such facility or jail.

16       (4)(a) ~~(2)(a)~~ A person taken into emergency protective custody under  
17 this section shall be admitted to an appropriate and available medical  
18 facility pending proceedings before a mental health board pursuant to the  
19 Nebraska Mental Health Commitment Act unless such person has a prior  
20 conviction for a sex offense listed in section 29-4003.

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

1           ~~(5 3)~~ Upon transfer of custody of such person to the division or its  
2 designee by a law enforcement officer and admission of such person to a  
3 facility of a person taken into emergency protective custody by a law  
4 enforcement officer under this section, such officer shall execute a  
5 written certificate prescribed and provided by the Department of Health  
6 and Human Services. The certificate shall allege the officer's belief  
7 that the person in custody is mentally ill and dangerous or a dangerous  
8 sex offender and shall contain a summary of the person's behavior  
9 supporting such allegations. A copy of such certificate shall be  
10 immediately forwarded to the county attorney.

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

23           Sec. 3. If the Director of Behavioral Health or his or her designee  
24 refuses or neglects to carry out his or her duties pursuant to section  
25 71-919 after being informed by a law enforcement officer that a person  
26 has been taken into emergency protective custody, the director or his or  
27 her designee is guilty of a Class IV misdemeanor. Each such refusal or  
28 neglect of the director or his or her designee shall constitute a  
29 separate offense.

30           Sec. 4. Section 71-1203, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           71-1203 For purposes of the Sex Offender Commitment Act:

2           (1) The definitions found in sections 71-905, 71-906, 71-907,  
3 71-910, 71-911, and 83-174.01 apply;

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

6           (3) Outpatient treatment means treatment ordered by a mental health  
7 board directing a subject to comply with specified outpatient treatment  
8 requirements, including, but not limited to, (a) taking prescribed  
9 medication, (b) reporting to a mental health professional or treatment  
10 facility for treatment or for monitoring of the subject's condition, or  
11 (c) participating in individual or group therapy or educational,  
12 rehabilitation, residential, or vocational programs;

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

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

21           Sec. 5. Original sections 71-919 and 71-1203, Reissue Revised  
22 Statutes of Nebraska, and section 71-901, Revised Statutes Cumulative  
23 Supplement, 2014, are repealed.