

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 964**

Introduced by McDonnell, 5.

Read first time January 10, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Mental Health Commitment Act;
- 2 to amend sections 71-919, 71-921, 71-922, and 71-1205, Reissue
- 3 Revised Statutes of Nebraska; to authorize mental health
- 4 professionals to take persons into emergency protective custody as
- 5 prescribed; to change provisions relating to commencement of mental
- 6 health board proceedings; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-919, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 71-919 (1) A law enforcement officer or mental health professional  
4 who has probable cause to believe that a person is mentally ill and  
5 dangerous or a dangerous sex offender and that the harm described in  
6 section 71-908 or subdivision (1) of section 83-174.01 is likely to occur  
7 before mental health board proceedings under the Nebraska Mental Health  
8 Commitment Act or the Sex Offender Commitment Act may be initiated to  
9 obtain custody of the person may take such person into emergency  
10 protective custody, cause him or her to be taken into emergency  
11 protective custody, or continue his or her custody if he or she is  
12 already in custody. Such person shall be admitted to an appropriate and  
13 available medical facility, jail, or Department of Correctional Services  
14 facility as provided in subsection (2) of this section. Each county shall  
15 make arrangements with appropriate facilities inside or outside the  
16 county for such purpose and shall pay the cost of the emergency  
17 protective custody of persons from such county in such facilities.—A  
18 ~~mental health professional who has probable cause to believe that a~~  
19 ~~person is mentally ill and dangerous or a dangerous sex offender may~~  
20 ~~cause such person to be taken into custody and shall have a limited~~  
21 ~~privilege to hold such person until a law enforcement officer or other~~  
22 ~~authorized person arrives to take custody of such person.~~

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

27 (b) A person taken into emergency protective custody under this  
28 section who has a prior conviction for a sex offense listed in section  
29 29-4003 shall be admitted to a jail or Department of Correctional  
30 Services facility unless a medical or psychiatric emergency exists for  
31 which treatment at a medical facility is required. The person in

1 emergency protective custody shall remain at the medical facility until  
2 the medical or psychiatric emergency has passed and it is safe to  
3 transport such person, at which time the person shall be transferred to  
4 an available jail or Department of Correctional Services facility.

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

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

26 Sec. 2. Section 71-921, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 71-921 (1) Any person who believes that another person is mentally  
29 ill and dangerous may communicate such belief to the county attorney. The  
30 filing of a certificate by a law enforcement officer or mental health  
31 professional under section 71-919 shall be sufficient to communicate such

1 belief. If the county attorney concurs that such person is mentally ill  
2 and dangerous and that neither voluntary hospitalization nor other  
3 treatment alternatives less restrictive of the subject's liberty than  
4 inpatient or outpatient treatment ordered by a mental health board is  
5 available or would suffice to prevent the harm described in section  
6 71-908, he or she shall file a petition as provided in this section.

7 (2) The petition shall be filed with the clerk of the district court  
8 in any county within: (a) The judicial district in which the subject is  
9 located; (b) the judicial district in which the alleged behavior of the  
10 subject occurred which constitutes the basis for the petition; or (c)  
11 another judicial district in the State of Nebraska if authorized, upon  
12 good cause shown, by a district judge of the judicial district in which  
13 the subject is located. In such event, all proceedings before the mental  
14 health board shall be conducted by the mental health board serving such  
15 other county, and all costs relating to such proceedings shall be paid by  
16 the county of residence of the subject. In the order transferring such  
17 cause to another county, the judge shall include such directions as are  
18 reasonably necessary to protect the rights of the subject.

19 (3) The petition shall be in writing and shall include the following  
20 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) A statement that the county attorney has probable cause to  
27 believe that the subject of the petition is mentally ill and dangerous;

28 (e) A statement that the beliefs of the county attorney are based on  
29 specific behavior, acts, attempts, or threats which shall be specified  
30 and described in detail in the petition; and

31 (f) The name and address of any other person who may have knowledge

1 of the subject's mental illness or substance dependence and who may be  
2 called as a witness at a mental health board hearing with respect to the  
3 subject, if known.

4 Sec. 3. Section 71-922, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 71-922 (1) Mental health board proceedings shall be deemed to have  
7 commenced upon the earlier of:

8 (a) The ~~(a) the~~ filing of a petition under section 71-921; or

9 (b) Notification ~~(b) notification~~ by the county attorney of his or  
10 her intention to file such petition to:

11 (i) The ~~the~~ law enforcement officer who took the subject into  
12 emergency protective custody under section ~~71-919; 71-920~~ or

13 (ii) The ~~the~~ administrator of the treatment center or medical  
14 facility having charge of the subject; or

15 (iii) The administrator of a jail or Department of Correctional  
16 Services facility, if the subject was taken into emergency protective  
17 custody under section 71-919 as a dangerous sex offender and is being  
18 held at a jail or correctional facility of his or her intention to file  
19 such petition.

20 (2) The county attorney shall file such petition as soon as  
21 reasonably practicable after ~~a such~~ notification under subdivision (1)(b)  
22 of this section.

23 (3) ~~(2)~~ A petition filed by the county attorney under section 71-921  
24 may contain a request for the emergency protective custody and evaluation  
25 of the subject prior to commencement of a mental health board hearing  
26 pursuant to such petition with respect to the subject. Upon receipt of  
27 such request and upon a finding of probable cause to believe that the  
28 subject is mentally ill and dangerous as alleged in the petition, the  
29 court or chairperson of the mental health board may issue a warrant  
30 directing the sheriff to take custody of the subject. If the subject is  
31 already in emergency protective custody under a certificate filed under

1 section 71-919, a copy of such certificate shall be filed with the  
2 petition. The subject in such custody shall be held in the nearest  
3 appropriate and available medical facility and shall not be placed in a  
4 jail. Each county shall make arrangements with appropriate medical  
5 facilities inside or outside the county for such purpose and shall pay  
6 the cost of the emergency protective custody of persons from such county  
7 in such facilities.

8 (4) ~~(3)~~ The petition and all subsequent pleadings and filings in the  
9 case shall be entitled In the Interest of ....., Alleged to be  
10 Mentally Ill and Dangerous. The county attorney may dismiss the petition  
11 at any time prior to the commencement of the hearing of the mental health  
12 board under section 71-924, and upon such motion by the county attorney,  
13 the mental health board shall dismiss the petition.

14 Sec. 4. Section 71-1205, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 71-1205 (1) Any person who believes that another person is a  
17 dangerous sex offender may communicate such belief to the county  
18 attorney. The filing of a certificate by a law enforcement officer or  
19 mental health professional under section 71-919 shall be sufficient to  
20 communicate such belief. If the county attorney concurs that such person  
21 is a dangerous sex offender and that neither voluntary hospitalization  
22 nor other treatment alternatives less restrictive of the subject's  
23 liberty than inpatient or outpatient treatment ordered by a mental health  
24 board is available or would suffice to prevent the harm described in  
25 subdivision (1) of section 83-174.01, the county attorney shall file a  
26 petition as provided in this section.

27 (2) The petition shall be filed with the clerk of the district court  
28 in any county within: (a) The judicial district in which the subject is  
29 located; (b) the judicial district in which the alleged behavior of the  
30 subject occurred which constitutes the basis for the petition; or (c)  
31 another judicial district in the State of Nebraska, if authorized, upon

1 good cause shown, by a district judge of the judicial district in which  
2 the subject is located. In such event, all proceedings before the mental  
3 health board shall be conducted by the mental health board serving such  
4 other county and all costs relating to such proceedings shall be paid by  
5 the county of residence of the subject. In the order transferring such  
6 cause to another county, the judge shall include such directions as are  
7 reasonably necessary to protect the rights of the subject.

8 (3) The petition shall be in writing and shall include the following  
9 information:

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

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

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

15 (d) A statement that the county attorney has probable cause to  
16 believe that the subject of the petition is a dangerous sex offender;

17 (e) A statement that the beliefs of the county attorney are based on  
18 specific behavior, acts, criminal convictions, attempts, or threats which  
19 shall be described in detail in the petition; and

20 (f) The name and address of any other person who may have knowledge  
21 of the subject's mental illness or personality disorder and who may be  
22 called as a witness at a mental health board hearing with respect to the  
23 subject, if known.

24 Sec. 5. Original sections 71-919, 71-921, 71-922, and 71-1205,  
25 Reissue Revised Statutes of Nebraska, are repealed.