

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 909**

Introduced by McDonnell, 5.

Read first time January 10, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to mental health; to amend sections 71-901,  
2 71-919, 71-921, 71-922, 71-949, 71-1205, and 71-1206, Reissue  
3 Revised Statutes of Nebraska; to authorize mental health  
4 professionals and licensed independent mental health practitioners  
5 to take persons into emergency protective custody as prescribed; to  
6 provide a certification process and duties for the Department of  
7 Health and Human Services; to change provisions relating to  
8 commencement of mental health board proceedings; to define a term;  
9 to harmonize provisions; and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-901, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 71-901 Sections 71-901 to 71-963 and section 2 of this act shall be  
4 known and may be cited as the Nebraska Mental Health Commitment Act.

5 Sec. 2. (1) The Department of Health and Human Services shall  
6 create a certification process for licensed independent mental health  
7 practitioners to exercise the authority granted in subdivision (1)(b) of  
8 section 71-919 relating to emergency protective custody. To obtain  
9 certification, a practitioner shall submit an application to the  
10 department in a form and manner prescribed by the department. The  
11 department shall create eligibility and training requirements for such  
12 certification. At a minimum, certification shall require that the  
13 practitioner be trained in the following areas:

14 (a) A review of relevant statutes and other law;

15 (b) What constitutes probable cause under section 71-919;

16 (c) What happens to a subject who is taken into custody, committed,  
17 or otherwise subject to the authority of the mental health board under  
18 the Nebraska Mental Health Commitment Act;

19 (d) Ethical considerations;

20 (e) How to evaluate and assess dangerousness and risk level; and

21 (f) Consideration of how to safely hold and transport a subject  
22 taken into emergency protective custody.

23 (2) The department may charge an application fee to cover the cost  
24 of certification under this section.

25 (3) The department may adopt and promulgate rules and regulations to  
26 carry out this section.

27 Sec. 3. Section 71-919, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 71-919 (1)(a) ~~(1)~~ A law enforcement officer or mental health  
30 professional who has probable cause to believe that a person is mentally  
31 ill and dangerous or a dangerous sex offender and that the harm described

1 in section 71-908 or subdivision (1) of section 83-174.01 is likely to  
2 occur before mental health board proceedings under the Nebraska Mental  
3 Health Commitment Act or the Sex Offender Commitment Act may be initiated  
4 to obtain custody of the person may take such person into emergency  
5 protective custody, cause him or her to be taken into emergency  
6 protective custody, or continue his or her custody if he or she is  
7 already in custody.

8 (b)(i) For purposes of this subdivision (1)(b), licensed independent  
9 mental health practitioner means an individual who:

10 (A) Is a licensed independent mental health practitioner under the  
11 Mental Health Practice Act; and

12 (B) Is certified as provided in section 2 of this act.

13 (ii) A licensed independent mental health practitioner who has  
14 probable cause to believe that a person is mentally ill and dangerous and  
15 that the harm described in section 71-908 is likely to occur before  
16 mental health board proceedings under the Nebraska Mental Health  
17 Commitment Act may be initiated to obtain custody of the person may take  
18 such person into emergency protective custody, cause him or her to be  
19 taken into emergency protective custody, or continue his or her custody  
20 if he or she is already in custody.

21 (c) A Such person in custody as described in this subsection shall  
22 be admitted to an appropriate and available medical facility, jail, or  
23 Department of Correctional Services facility as provided in subsection  
24 (2) of this section. Each county shall make arrangements with appropriate  
25 facilities inside or outside the county for such purpose and shall pay  
26 the cost of the emergency protective custody of persons from such county  
27 in such facilities. A mental health professional who has probable cause  
28 to believe that a person is mentally ill and dangerous or a dangerous sex  
29 offender may cause such person to be taken into custody and shall have a  
30 limited privilege to hold such person until a law enforcement officer or  
31 other authorized person arrives to take custody of such person.

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

5           (b) A person taken into emergency protective custody under this  
6 section who has a prior conviction for a sex offense listed in section  
7 29-4003 shall be admitted to a jail or Department of Correctional  
8 Services facility unless a medical or psychiatric emergency exists for  
9 which treatment at a medical facility is required. The person in  
10 emergency protective custody shall remain at the medical facility until  
11 the medical or psychiatric emergency has passed and it is safe to  
12 transport such person, at which time the person shall be transferred to  
13 an available jail or Department of Correctional Services facility.

14           (3) Upon admission to a facility of a person taken into emergency  
15 protective custody by a law enforcement officer, mental health  
16 professional, or licensed independent mental health practitioner under  
17 this section, such officer, professional, or practitioner shall execute a  
18 written certificate prescribed and provided by the Department of Health  
19 and Human Services. The certificate shall allege the officer's,  
20 professional's, or practitioner's belief that the person in custody is  
21 mentally ill and dangerous or a dangerous sex offender and shall contain  
22 a summary of the person's behavior supporting such allegations. A copy of  
23 such certificate shall be immediately forwarded to the county attorney.

24           (4) The administrator of the facility shall have such person  
25 evaluated by a mental health professional as soon as reasonably possible  
26 but not later than thirty-six hours after admission. The mental health  
27 professional shall not be the mental health professional who takes or  
28 causes such person to be taken into custody under this section and shall  
29 not be a member or alternate member of the mental health board that will  
30 preside over any hearing under the Nebraska Mental Health Commitment Act  
31 or the Sex Offender Commitment Act with respect to such person. A person

1 shall be released from emergency protective custody after completion of  
2 such evaluation unless the mental health professional determines, in his  
3 or her clinical opinion, that such person is mentally ill and dangerous  
4 or a dangerous sex offender.

5 Sec. 4. Section 71-921, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 71-921 (1) Any person who believes that another person is mentally  
8 ill and dangerous may communicate such belief to the county attorney. The  
9 filing of a certificate by a law enforcement officer, mental health  
10 professional, or licensed independent mental health practitioner under  
11 section 71-919 shall be sufficient to communicate such belief. If the  
12 county attorney concurs that such person is mentally ill and dangerous  
13 and that neither voluntary hospitalization nor other treatment  
14 alternatives less restrictive of the subject's liberty than inpatient or  
15 outpatient treatment ordered by a mental health board is available or  
16 would suffice to prevent the harm described in section 71-908, he or she  
17 shall file a petition as provided in this section.

18 (2) The petition shall be filed with the clerk of the district court  
19 in any county within:

20 (a) The judicial district in which the subject is located;

21 (b) The ~~the~~ judicial district in which the alleged behavior of the  
22 subject occurred which constitutes the basis for the petition; or

23 (c) Another ~~another~~ judicial district in the State of Nebraska if  
24 authorized, upon good cause shown, by a district judge of the judicial  
25 district in which the subject is located. In such event, all proceedings  
26 before the mental health board shall be conducted by the mental health  
27 board serving such other county, and all costs relating to such  
28 proceedings shall be paid by the county of residence of the subject. In  
29 the order transferring such cause to another county, the judge shall  
30 include such directions as are reasonably necessary to protect the rights  
31 of the subject.

1 (3) The petition shall be in writing and shall include the following  
2 information:

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

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

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

8 (d) A statement that the county attorney has probable cause to  
9 believe that the subject of the petition is mentally ill and dangerous;

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

13 (f) The name and address of any other person who may have knowledge  
14 of the subject's mental illness or substance dependence and who may be  
15 called as a witness at a mental health board hearing with respect to the  
16 subject, if known.

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

19 71-922 (1) Mental health board proceedings shall be deemed to have  
20 commenced upon the earlier of:

21 (a) The filing of a petition under section 71-921; or

22 (b) Notification by the county attorney of the  
23 county attorney's intention to file such petition to;

24 (i) The law enforcement officer, mental health professional, or  
25 licensed independent mental health practitioner who took the subject into  
26 emergency protective custody under section 71-919; 71-920 or

27 (ii) The administrator of the treatment center or medical  
28 facility having charge of the subject; or of his or her intention to file  
29 such petition.

30 (iii) The administrator of a jail or Department of Correctional  
31 Services facility if the person is being held at a jail or correctional

1 facility pursuant to subdivision (2)(b) of section 71-919.

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

5 (3) (2) A petition filed by the county attorney under section 71-921  
6 may contain a request for the emergency protective custody and evaluation  
7 of the subject prior to commencement of a mental health board hearing  
8 pursuant to such petition with respect to the subject. Upon receipt of  
9 such request and upon a finding of probable cause to believe that the  
10 subject is mentally ill and dangerous as alleged in the petition, the  
11 court or chairperson of the mental health board may issue a warrant  
12 directing the sheriff to take custody of the subject. If the subject is  
13 already in emergency protective custody under a certificate filed under  
14 section 71-919, a copy of such certificate shall be filed with the  
15 petition. The subject in such custody shall be held in the nearest  
16 appropriate and available medical facility and shall not be placed in a  
17 jail. Each county shall make arrangements with appropriate medical  
18 facilities inside or outside the county for such purpose and shall pay  
19 the cost of the emergency protective custody of persons from such county  
20 in such facilities.

21 (4) (3) The petition and all subsequent pleadings and filings in the  
22 case shall be entitled In the Interest of ....., Alleged to be  
23 Mentally Ill and Dangerous. The county attorney may dismiss the petition  
24 at any time prior to the commencement of the hearing of the mental health  
25 board under section 71-924, and upon such motion by the county attorney,  
26 the mental health board shall dismiss the petition.

27 Sec. 6. Section 71-949, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 71-949 Counsel for a subject, upon request made to the county  
30 attorney at any time after the subject has been taken into emergency  
31 protective custody under the Nebraska Mental Health Commitment Act or the

1 Sex Offender Commitment Act, or after the filing of a petition under  
2 section 71-921 or 71-1205, whichever occurs first, shall have the right  
3 to be provided with (1) the names of all witnesses expected to testify in  
4 support of the petition, (2) knowledge of the location and access at  
5 reasonable times for review or copying of all written documents including  
6 reports of peace officers, law enforcement agencies, ~~and~~ mental health  
7 professionals, and licensed independent mental health practitioners (3)  
8 access to all other tangible objects in the possession of the county  
9 attorney or to which the county attorney has access, and (4) written  
10 records of any treatment facility or mental health professional which or  
11 who has at any time treated the subject for mental illness, substance  
12 dependence, or a personality disorder, which records are relevant to the  
13 issues of whether the subject is mentally ill and dangerous or a  
14 dangerous sex offender and, if so, what treatment disposition should be  
15 ordered by the mental health board. The board may order further discovery  
16 at its discretion. The county attorney shall have a reciprocal right to  
17 discover items and information comparable to those first discovered by  
18 the subject. The county court and district court shall have the power to  
19 rule on objections to discovery in matters which are not self-activating.  
20 The right of appeal from denial of discovery shall be at the time of the  
21 conclusion of the mental health board hearing.

22 Sec. 7. Section 71-1205, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 71-1205 (1) Any person who believes that another person is a  
25 dangerous sex offender may communicate such belief to the county  
26 attorney. The filing of a certificate by a law enforcement officer or  
27 mental health professional under section 71-919 shall be sufficient to  
28 communicate such belief. If the county attorney concurs that such person  
29 is a dangerous sex offender and that neither voluntary hospitalization  
30 nor other treatment alternatives less restrictive of the subject's  
31 liberty than inpatient or outpatient treatment ordered by a mental health

1 board is available or would suffice to prevent the harm described in  
2 subdivision (1) of section 83-174.01, the county attorney shall file a  
3 petition as provided in this section.

4 (2) The petition shall be filed with the clerk of the district court  
5 in any county within:

6 (a) The judicial district in which the subject is located;

7 (b) ~~The~~ the judicial district in which the alleged behavior of the  
8 subject occurred which constitutes the basis for the petition; or

9 (c) Another ~~another~~ judicial district in the State of Nebraska, if  
10 authorized, upon good cause shown, by a district judge of the judicial  
11 district in which the subject is located. In such event, all proceedings  
12 before the mental health board shall be conducted by the mental health  
13 board serving such other county and all costs relating to such  
14 proceedings shall be paid by the county of residence of the subject. In  
15 the order transferring such cause to another county, the judge shall  
16 include such directions as are reasonably necessary to protect the rights  
17 of the subject.

18 (3) The petition shall be in writing and shall include the following  
19 information:

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

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

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

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

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

30 (f) The name and address of any other person who may have knowledge  
31 of the subject's mental illness or personality disorder and who may be

1 called as a witness at a mental health board hearing with respect to the  
2 subject, if known.

3 Sec. 8. Section 71-1206, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 71-1206 (1) Mental health board proceedings shall be deemed to have  
6 commenced upon the earlier of:

7 (a) The ~~(a) the~~ filing of a petition under section 71-1205; or

8 (b) Notification ~~(b) notification~~ by the county attorney of the  
9 county attorney's intention to file such petition to:

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

13 (ii) The ~~the~~ administrator of the treatment facility, jail, or  
14 Department of Correctional Services facility having charge of the subject  
15 ~~of the intention of the county attorney to file such petition.~~

16 (2) The county attorney shall file such petition as soon as  
17 reasonably practicable after a such notification under subdivision (1)(b)  
18 of this section.

19 (3) ~~(2)~~ A petition filed by the county attorney under section  
20 71-1205 may contain a request for the emergency protective custody and  
21 evaluation of the subject prior to commencement of a mental health board  
22 hearing pursuant to such petition with respect to the subject. Upon  
23 receipt of such request and upon a finding of probable cause to believe  
24 that the subject is a dangerous sex offender as alleged in the petition,  
25 the court or chairperson of the mental health board may issue a warrant  
26 directing the sheriff to take custody of the subject. If the subject is  
27 already in emergency protective custody under a certificate filed under  
28 section 71-919, a copy of such certificate shall be filed with the  
29 petition. The subject in such custody shall be held in an appropriate and  
30 available medical facility, jail, or Department of Correctional Services  
31 facility. A dangerous sex offender shall not be admitted to a medical

1 facility for emergency protective custody unless a medical or psychiatric  
2 emergency exists requiring treatment not available at a jail or  
3 correctional facility. Each county shall make arrangements with  
4 appropriate facilities inside or outside the county for such purpose and  
5 shall pay the cost of the emergency protective custody of persons from  
6 such county in such facilities.

7 (4) ~~(3)~~ The petition and all subsequent pleadings and filings in the  
8 case shall be entitled In the Interest of . . . . . , Alleged to be a  
9 Dangerous Sex Offender. The county attorney may dismiss the petition at  
10 any time prior to the commencement of the hearing of the mental health  
11 board under section 71-1208, and upon such motion by the county attorney,  
12 the mental health board shall dismiss the petition.

13 Sec. 9. Original sections 71-901, 71-919, 71-921, 71-922, 71-949,  
14 71-1205, and 71-1206, Reissue Revised Statutes of Nebraska, are repealed.