

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Kauth, 31.

Read first time January 14, 2026

Committee:

1 A BILL FOR AN ACT relating to civil commitments; to amend sections
2 71-908, 71-921, 71-923, 71-925, 71-930, 71-932, and 71-949, Reissue
3 Revised Statutes of Nebraska, and sections 71-901, 71-903, 71-922,
4 and 81-1850, Revised Statutes Supplement, 2025; to change
5 requirements for commitment as a mentally ill and dangerous person
6 under the Nebraska Mental Health Commitment Act; to define and
7 redefine terms; to allow interested parties to file petitions under
8 the act; to change provisions relating to inpatient commitment; to
9 provide a penalty for a petition filed in bad faith; to provide
10 duties for mental health boards and county attorneys; to harmonize
11 provisions; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 71-901, Revised Statutes Supplement, 2025, is
2 amended to read:

3 71-901 Sections 71-901 to 71-964 and sections 3 and 5 of this act
4 shall be known and may be cited as the Nebraska Mental Health Commitment
5 Act.

6 **Sec. 2.** Section 71-903, Revised Statutes Supplement, 2025, is
7 amended to read:

8 71-903 For purposes of the Nebraska Mental Health Commitment Act,
9 unless the context otherwise requires, the definitions found in sections
10 71-904 to 71-914.03 and sections 3 and 5 of this act shall apply.

11 **Sec. 3. Interested party means:**

12 (1) A spouse, parent, sibling, or adult child of an individual;
13 (2) A close adult friend of an individual;
14 (3) A guardian or conservator of an individual; or
15 (4) Another person acting in the best interests of the individual.

16 **Sec. 4.** Section 71-908, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-908 Mentally ill and dangerous person means a person who is
19 mentally ill or substance dependent and because of such mental illness or
20 substance dependence presents:

21 (1) A substantial risk of serious harm to another person or persons
22 within the near future as manifested by evidence of recent violent acts
23 or threats of violence or by placing others in reasonable fear of such
24 harm; or

25 (2) A substantial risk of serious harm to himself or herself within
26 the near future as manifested by:

27 (a) Evidence evidence of recent attempts at, or threats of, suicide
28 or serious bodily harm; or

29 (b) Evidence evidence of inability to provide for his or her basic
30 human needs, including food, clothing, shelter, essential medical care,
31 or personal safety; or -

1 (c) Evidence of recent deterioration in physical or mental well
2 being; or

3 (3) A substantial and immediate risk of causing significant damage
4 to property of another as evidenced by recent acts of property damage.

5 **Sec. 5.** Except as otherwise provided in section 71-963, petitioner
6 means the individual who filed a petition under section 71-921, and may
7 include the county attorney or an interested party.

8 **Sec. 6.** Section 71-921, Reissue Revised Statutes of Nebraska, is
9 amended to read:

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

20 (b) An interested party may file a petition as provided in this
21 section if he or she believes that another person is mentally ill and
22 dangerous and that neither voluntary hospitalization nor other treatment
23 alternatives less restrictive of the person's liberty than inpatient or
24 outpatient treatment ordered by a mental health board is available or
25 would suffice to prevent the harm described in section 71-908.

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

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

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

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

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

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

14 (d) A statement that the petitioner county attorney has probable
15 cause to believe that the subject of the petition is mentally ill and
16 dangerous;

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

20 (f) For a petition filed by an interested party, the nature of the
21 interested party's relationship with the subject of the petition; and

22 (g) For a petition filed by an interested party described in
23 subdivision (4) of section 3 of this act, specific facts supporting the
24 claim that the petitioner is acting in the subject's best interests;

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

29 (4) A petition shall contain a declaration by the petitioner, under
30 penalty of perjury, that the contents of the petition are accurate to the
31 best of the petitioner's knowledge and belief.

1 **Sec. 7.** Section 71-922, Revised Statutes Supplement, 2025, is
2 amended to read:

3 71-922 (1) Mental health board proceedings shall be deemed to have
4 commenced upon the earlier of (a) the filing of a petition under section
5 71-921 or (b) notification by the county attorney to the law enforcement
6 officer who took the subject into emergency protective custody under
7 section 71-920 or the administrator of the facility or jail having charge
8 of the subject of his or her intention to file such petition. The county
9 attorney shall file such petition as soon as reasonably practicable after
10 such notification.

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

28 (3) The petition and all subsequent pleadings and filings in the
29 case shall be entitled In the Interest of, Alleged to be
30 Mentally Ill and Dangerous.

31 (4) The county attorney or interested party may dismiss his or her

1 the petition at any time prior to the commencement of the hearing of the
2 mental health board under section 71-924, and upon such motion by the
3 county attorney or interested party, the mental health board shall
4 dismiss such the petition.

5 (5)(a) It shall be unlawful for any person to file a petition under
6 section 71-921 as an interested party if done in bad faith or for an
7 improper purpose. A violation of this subsection is a Class IV felony.

8 (b) If the mental health board determines that an interested party
9 has filed a petition in violation of this subsection, the board shall
10 refer the matter to the county attorney for prosecution.

11 **Sec. 8.** Section 71-923, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 71-923 (1) Upon the filing of the petition under section 71-921, the
14 clerk of the district court shall cause a summons fixing the time and
15 place for a hearing to be prepared and issued to the sheriff for service.
16 The sheriff shall personally serve upon the subject and the subject's
17 legal guardian or custodian, if any, the summons and copies of the
18 petition, the list of rights provided by sections 71-943 to 71-960, and a
19 list of the names, addresses, and telephone numbers of mental health
20 professionals in that immediate vicinity by whom the subject may be
21 evaluated prior to his or her hearing. The summons shall fix a time for
22 the hearing within seven calendar days after the subject has been taken
23 into emergency protective custody. The failure of a subject to appear as
24 required under this section shall constitute grounds for the issuance by
25 the mental health board of a warrant for his or her custody.

26 (2) When a petition is filed by an interested party, the clerk of
27 the district court shall cause a notice of such filing to be provided to
28 the county attorney.

29 **Sec. 9.** Section 71-925, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 71-925 (1) The petitioner state has the burden to prove by clear and

1 convincing evidence that (a) the subject is mentally ill and dangerous
2 and (b) neither voluntary hospitalization nor other treatment
3 alternatives less restrictive of the subject's liberty than inpatient or
4 outpatient treatment ordered by the mental health board are available or
5 would suffice to prevent the harm described in section 71-908.

6 (2) If the mental health board finds that the subject is not
7 mentally ill and dangerous, the board shall dismiss the petition and
8 order the unconditional discharge of the subject.

9 (3) If the mental health board finds that the subject is mentally
10 ill and dangerous but that voluntary hospitalization or other treatment
11 alternatives less restrictive of the subject's liberty than treatment
12 ordered by the mental health board are available and would suffice to
13 prevent the harm described in section 71-908, the board shall (a) dismiss
14 the petition and order the unconditional discharge of the subject or (b)
15 suspend further proceedings for a period of up to ninety days to permit
16 the subject to obtain voluntary treatment. At any time during such
17 ninety-day period, the petitioner county attorney may apply to the board
18 for reinstatement of proceedings with respect to the subject, and after
19 notice to the subject, the subject's counsel, and the subject's legal
20 guardian or conservator, if any, the board shall hear the application. If
21 no such application is filed or pending at the conclusion of such ninety-
22 day period, the board shall dismiss the petition and order the
23 unconditional discharge of the subject.

24 (4) If the subject admits the allegations of the petition or the
25 mental health board finds that the subject is mentally ill and dangerous
26 and that neither voluntary hospitalization nor other treatment
27 alternatives less restrictive of the subject's liberty than inpatient or
28 outpatient treatment ordered by the board are available or would suffice
29 to prevent the harm described in section 71-908, the board shall, within
30 forty-eight hours, (a) order the subject to receive outpatient treatment
31 or (b) order the subject to receive inpatient treatment. If the subject

1 is ordered by the board to receive inpatient treatment, the order shall
2 commit the subject to the custody of the Department of Health and Human
3 Services for such treatment.

4 (5) A subject who (a) is ordered by the mental health board to
5 receive inpatient treatment and (b) has not yet been admitted for such
6 treatment pursuant to such order may petition for a rehearing by the
7 mental health board based on improvement in the subject's condition such
8 that inpatient treatment ordered by the board would no longer be
9 necessary or appropriate.

10 (6) A treatment order by the mental health board under this section
11 shall represent the appropriate available treatment alternative that
12 imposes the least possible restraint upon the liberty of the subject, in
13 accordance with any recommendation of a treatment provider. The board
14 shall consider all treatment alternatives, based on any recommendation of
15 a treatment provider, including any treatment program or conditions
16 suggested by the subject, the subject's counsel, or other interested
17 person. ~~Inpatient hospitalization or custody shall only be considered as~~
18 ~~a treatment alternative of last resort. The petitioner county attorney~~
19 and the subject may jointly offer a proposed treatment order for adoption
20 by the board. The board may enter the proposed order without a full
21 hearing.

22 (7) The mental health board may request the assistance of the
23 Department of Health and Human Services or any other person or public or
24 private entity to advise the board prior to the entry of a treatment
25 order pursuant to this section and may require the subject to submit to
26 reasonable psychiatric and psychological evaluation to assist the board
27 in preparing such order. Any mental health professional conducting such
28 evaluation at the request of the mental health board shall be compensated
29 by the county or counties served by such board at a rate determined by
30 the district judge and reimbursed for mileage at the rate provided in
31 section 81-1176.

1 **Sec. 10.** Section 71-930, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-930 The subject of a petition or the petitioner ~~county attorney~~
4 may appeal a treatment order of the mental health board under section
5 71-925 to the district court. Such appeals shall be de novo on the
6 record. A final order of the district court may be appealed to the Court
7 of Appeals in accordance with the procedure in criminal cases. The final
8 judgment of the court shall be certified to and become a part of the
9 records of the mental health board with respect to the subject.

10 **Sec. 11.** Section 71-932, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-932 The person or entity designated by the mental health board
13 under section 71-931 to prepare and oversee the subject's individualized
14 treatment plan shall submit periodic reports to the mental health board
15 of the subject's progress under such plan and any modifications to the
16 plan. The mental health board may distribute copies of such reports to
17 other interested persons parties as permitted by law. With respect to a
18 subject ordered by the mental health board to receive inpatient
19 treatment, such initial report shall be filed with the mental health
20 board for review and inclusion in the subject's file and served upon the
21 county attorney, the subject, the subject's counsel, and the subject's
22 legal guardian or conservator, if any, no later than ten days after
23 submission of the subject's individualized treatment plan. With respect
24 to each subject committed by the mental health board, such reports shall
25 be so filed and served no less frequently than every ninety days for a
26 period of one year following submission of the subject's individualized
27 treatment plan and every six months thereafter.

28 **Sec. 12.** Section 71-949, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 71-949 (1) Counsel for a subject, upon request made to the county
31 attorney or interested party who has filed a petition at any time after

1 the subject has been taken into emergency protective custody under the
2 Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act,
3 or after the filing of a petition under section 71-921 or 71-1205,
4 whichever occurs first, shall have the right to be provided with:

5 (a) The (1) the names of all witnesses expected to testify in
6 support of the petition; ↵

7 (b) Knowledge (2) knowledge of the location and access at reasonable
8 times for review or copying of all written documents including reports of
9 peace officers, law enforcement agencies, and mental health
10 professionals; ↵

11 (c) Access (3) access to all other tangible objects relating to the
12 petition in the possession of the county attorney or interested party or
13 to which the county attorney or interested party has access; ↵ and

14 (d) Written (4) written records of any treatment facility or mental
15 health professional which or who has at any time treated the subject for
16 mental illness, substance dependence, or a personality disorder, which
17 records are relevant to the issues of whether the subject is mentally ill
18 and dangerous or a dangerous sex offender and, if so, what treatment
19 disposition should be ordered by the mental health board.

20 (2) The board may order further discovery at its discretion.

21 (3)(a) The county attorney shall have a reciprocal right to discover
22 items and information comparable to those first discovered by the
23 subject.

24 (b) The county court and district court shall have the power to rule
25 on objections to discovery in matters which are not self-activating.

26 (4) The right of appeal from denial of discovery shall be at the
27 time of the conclusion of the mental health board hearing.

28 **Sec. 13.** Section 81-1850, Revised Statutes Supplement, 2025, is
29 amended to read:

30 81-1850 (1) For purposes of this section:

31 (a) Covered offense means:

- (i) Murder in the first degree, section 28-303;
- (ii) Murder in the second degree, section 28-304;
- (iii) Manslaughter, section 28-305;
- (iv) Motor vehicle homicide, section 28-306;
- (v) Assault in the first degree, section 28-308;
- (vi) Assault in the second degree, section 28-309;
- (vii) Assault by strangulation or suffocation, section 28-310.01;
- (viii) Terroristic threats, section 28-311.01;
- (ix) Stalking, section 28-311.03;
- (x) Kidnapping, section 28-313;
- (xi) False imprisonment in the first degree, section 28-314;
- (xii) Sexual abuse by a school employee, section 28-316.01;
- (xiii) Sexual assault in the first degree, section 28-319;
- (xiv) Sexual assault of a child in the first degree, section 28-319.01;
- (xv) Sexual assault in the second degree, section 28-320;
- (xvi) Sexual assault of a child in the second or third degree, section 28-320.01;
- (xvii) Child enticement by means of an electronic communication device, section 28-320.02;
- (xviii) Sexual abuse of a protected individual, section 28-322.04;
- (xix) Domestic assault in the first or second degree, section 28-323;
- (xx) Sex trafficking, sex trafficking of a minor, labor trafficking, or labor trafficking of a minor, section 28-831; or
- (xxi) An attempt, solicitation, or conspiracy to commit an offense listed in subdivision (1)(a) of this section; and

(b) Victim has the same meaning as in section 29-119.

(2)(a) Except as provided in subdivision (2)(b) of this section, when a person is convicted of a felony, the county attorney shall forward the name and address of any victim of such convicted person to the Board

1 of Parole, the Department of Correctional Services, the county
2 corrections agency, the Department of Health and Human Services, and the
3 Board of Pardons, as applicable.

4 (b) A victim may waive the right to notification under this section
5 by notifying the county attorney, in which case the county attorney is
6 not required to comply with subdivision (2)(a) of this section.

7 (c) The Board of Parole, the Department of Correctional Services,
8 the county corrections agency, the Department of Health and Human
9 Services, and the Board of Pardons shall include the victim's name in the
10 file of the convicted person, but the name shall not be part of the
11 public record of any parole or pardons hearings of the convicted person.

12 (d) Any victim, including a victim who has waived his or her right
13 to notification, may request the notification prescribed in this section,
14 as applicable, by sending a written request to the Board of Parole, the
15 Department of Correctional Services, the county corrections agency, the
16 Department of Health and Human Services, or the Board of Pardons any time
17 after the convicted person is incarcerated and until the convicted person
18 is no longer under the jurisdiction of the Board of Parole, the county
19 corrections agency, the Department of Correctional Services, or the Board
20 of Pardons or, if the convicted person is under the jurisdiction of the
21 Department of Health and Human Services, within the three-year period
22 after the convicted person is no longer under the jurisdiction of the
23 Board of Parole, the county corrections agency, the Department of
24 Correctional Services, or the Board of Pardons.

25 (3) A victim whose name appears in the file of the convicted person
26 shall be notified by the Board of Parole:

27 (a) Within ninety days after conviction of an offender, of the
28 tentative date of release and the earliest parole eligibility date of
29 such offender;

30 (b) Of any parole hearings or proceedings;

31 (c) Of any decision of the Board of Parole;

1 (d) When a convicted person who is on parole is returned to custody
2 because of parole violations; and

3 (e) If the convicted person has been adjudged a mentally disordered
4 sex offender or is a convicted sex offender, when such convicted person
5 is released from custody or treatment.

6 Such notification shall be given in person, by telecommunication, or
7 by mail.

8 (4) A victim whose name appears in the file of the convicted person
9 shall be notified by the Department of Correctional Services or a county
10 corrections agency:

11 (a) When a convicted person is granted a furlough or release from
12 incarceration for twenty-four hours or longer or any transfer of the
13 convicted person to community status;

14 (b) When a convicted person is released into community-based
15 programs, including educational release and work release programs. Such
16 notification shall occur at the beginning and termination of any such
17 program;

18 (c) When a convicted person escapes or does not return from a
19 granted furlough or release and again when the convicted person is
20 returned into custody;

21 (d) When a convicted person is discharged from custody upon
22 completion of his or her sentence. Such notice shall be given at least
23 thirty days before discharge, when practicable;

24 (e) Of the (i) department's calculation of the earliest parole
25 eligibility date of the prisoner with all potential good time or
26 disciplinary credits considered if the sentence exceeds ninety days or
27 (ii) county corrections agency's calculation of the earliest release date
28 of the prisoner. The victim may request one notice of the calculation
29 described in this subdivision. Such information shall be mailed not later
30 than thirty days after receipt of the request;

31 (f) Of any reduction in the prisoner's minimum sentence; and

1 (g) Of the victim's right to submit a statement as provided in
2 section 81-1848.

18 (b) When a person under a mental health board commitment pursuant to
19 subdivision (a) of this subsection:

20 (i) Escapes from an inpatient facility providing board-ordered
21 treatment and again when the person is returned to an inpatient facility;

22 (ii) Is discharged or has a change in disposition from inpatient
23 board-ordered treatment;

24 (iii) Is granted a furlough or release for twenty-four hours or
25 longer; and

26 (iv) Is released into educational release programs or work release
27 programs. Such notification shall occur at the beginning and termination
28 of any such program.

29 (6) Subsection (5) of this section applies to a person convicted of
30 a covered offense which is also alleged to be the recent act or threat
31 underlying the commitment of such person as mentally ill and dangerous or

1 as a dangerous sex offender as defined in section 83-174.01.

2 (7) A victim whose name appears in the file of a person convicted of
3 a covered offense shall be notified, via certified mail, by the Board of
4 Pardons:

5 (a) Of any pardon or commutation proceedings at least thirty
6 calendar days prior to the proceedings; and

7 (b) If a pardon or commutation has been granted, within ten days
8 after such granting.

9 (8) The Board of Parole, the Department of Correctional Services,
10 the Department of Health and Human Services, and the Board of Pardons
11 shall adopt and promulgate rules and regulations as needed to carry out
12 this section.

13 (9) The victim's address and telephone number maintained by the
14 Department of Correctional Services, the Department of Health and Human
15 Services, the county corrections agency, the Board of Parole, and the
16 Board of Pardons pursuant to subsection (2) of this section shall be
17 exempt from disclosure under Nebraska public records laws and federal
18 freedom of information laws, as such federal laws existed on January 1,
19 2004.

20 **Sec. 14.** Original sections 71-908, 71-921, 71-923, 71-925, 71-930,
21 71-932, and 71-949, Reissue Revised Statutes of Nebraska, and sections
22 71-901, 71-903, 71-922, and 81-1850, Revised Statutes Supplement, 2025,
23 are repealed.