

LEGISLATIVE BILL 884

Approved by the Governor February 2, 2000

Introduced by Executive Board: Coordsen, 32, Chairperson

AN ACT relating to the Nebraska Mental Health Commitment Act; to amend sections 83-1003, 83-1008, 83-1013, 83-1015, 83-1016, 83-1019, 83-1023, 83-1024, 83-1026, 83-1047, 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058, 83-1059, 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069, Reissue Revised Statutes of Nebraska; to change citation references; to change and eliminate references to repealed sections; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 83-1003, Reissue Revised Statutes of Nebraska, is amended to read:

83-1003. County attorney shall mean the county attorney, or any of such county attorney's deputies, of the county in which a subject of a petition under ~~this act~~ the Nebraska Mental Health Commitment Act is found at the commencement of proceedings against such subject.

Sec. 2. Section 83-1008, Reissue Revised Statutes of Nebraska, is amended to read:

83-1008. Indigent shall mean the inability of a subject of a petition under ~~this act~~ the Nebraska Mental Health Commitment Act to retain legal counsel or to pay the other expenses of defending any proceeding without prejudicing his or her financial ability to provide necessities of life for himself or herself or his or her legal dependents.

Sec. 3. Section 83-1013, Reissue Revised Statutes of Nebraska, is amended to read:

83-1013. Sheriff shall mean the sheriff, or any of his or her deputies, of the county in which the subject of a petition under ~~this act~~ the Nebraska Mental Health Commitment Act is found at the commencement of proceedings against such subject.

Sec. 4. Section 83-1015, Reissue Revised Statutes of Nebraska, is amended to read:

83-1015. Jail shall mean any jail in the state in which facilities separate and apart shall be maintained and used for persons detained under ~~this act~~ the Nebraska Mental Health Commitment Act.

Sec. 5. Section 83-1016, Reissue Revised Statutes of Nebraska, is amended to read:

83-1016. The clerk of the district court appointed for that purpose by the district judge or judges of that judicial district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board, affixing ~~thereto~~ his or her seal as clerk of the district court. The clerk shall file and carefully preserve in his or her office all papers connected with any inquest by the board members, and properly belonging to his or her office, together with all notices, reports, and other communications. He or she shall keep separate books in which he or she shall enter the minutes of the proceedings of the board. All notices, reports, and communications required may be sent by mail, unless otherwise provided for in ~~this act~~ the Nebraska Mental Health Commitment Act. The fact and date that they are sent and that they are received shall be noted on the proper record.

Sec. 6. Section 83-1019, Reissue Revised Statutes of Nebraska, is amended to read:

83-1019. Any person may apply for his or her own voluntary admission to any public or private hospital, other facility, or program for treatment of mental illness, alcoholism, or drug abuse in accordance with the regulations of such facilities or programs governing such admissions. Any person admitted for voluntary inpatient or similar custodial treatment in such facility shall be entitled to be unconditionally discharged from the facility within forty-eight hours after delivery of his or her written request made to any official of such facility, unless action is taken under ~~this act~~ the Nebraska Mental Health Commitment Act to continue his or her custody.

Sec. 7. Section 83-1023, Reissue Revised Statutes of Nebraska, is amended to read:

83-1023. The sheriff or director of the mental health center or hospital shall have each subject admitted by certificate under sections 83-1020 and 83-1021 evaluated by a mental health professional as soon as

reasonably possible but not later than thirty-six hours after his or her admission. The examining mental health professional may not be a member of the mental health board that will preside over the petition hearing. If, from such evaluation, it is the judgment of the mental health professional that the subject is either not a mentally ill dangerous person, or that the harm described by section 83-1009 is not likely to occur before mental health board proceedings under ~~this act~~ the Nebraska Mental Health Commitment Act may be invoked to obtain custody of the individual, the director of the facility shall immediately notify the county attorney of his or her conclusion in this regard, and, unless proceedings are pending before the mental health board or are instituted before such board within twenty-four hours after such notice has been received by the county attorney, the subject shall immediately be discharged from further custody under the certificate.

Sec. 8. Section 83-1024, Reissue Revised Statutes of Nebraska, is amended to read:

83-1024. Any person believing that any individual is a mentally ill dangerous person may communicate his or her belief to the county attorney. Should the county attorney concur that the individual is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board-ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the county attorney shall cause a petition to be drafted and acted upon as provided in ~~this act~~ the Nebraska Mental Health Commitment Act.

Sec. 9. Section 83-1026, Reissue Revised Statutes of Nebraska, is amended to read:

83-1026. The petition provided for in section 83-1024 shall be verified by the petitioner and approved by the county attorney, who shall state his or her belief whether the immediate custody of the subject of the petition is required to prevent the occurrence of the harm described by section 83-1009 before a summons could be served and the subject required to appear at a hearing under sections 83-1027, 83-1035, and 83-1036. If the subject is in emergency protective custody under a certificate filed pursuant to sections 83-1020 to 83-1023 at the time of the filing of a petition, such certificate shall be attached to the petition. The petition and all subsequent pleadings and filings under ~~this act~~ the Nebraska Mental Health Commitment Act shall be entitled In the Interest of, Alleged to be a Mentally Ill Dangerous Person, inserting the subject's name in the blank. The county attorney shall have the discretion to dismiss the petition at any time prior to the commencement of the hearing provided by sections 83-1035 and 83-1036, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

Sec. 10. Section 83-1047, Reissue Revised Statutes of Nebraska, is amended to read:

83-1047. In addition to the rights granted subjects of petitions by any other provisions of ~~this act~~ the Nebraska Mental Health Commitment Act, such subjects shall be entitled to the rights provided in sections 83-1048 to 83-1064 during proceedings against them under ~~this the~~ act.

Sec. 11. Section 83-1048, Reissue Revised Statutes of Nebraska, is amended to read:

83-1048. The subject of a petition shall, in advance of the hearing, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that the person is a mentally ill dangerous person requiring mental health board-ordered treatment, and all rights which such subject has under ~~this act~~ the Nebraska Mental Health Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights, required by sections 83-1027, 83-1028, 83-1035, and 83-1036. If the subject of the petition has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder, if true, is such that it is not prudent to disclose the label of the mental disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness including its label. The clerk shall issue the summons by order of the mental health board.

Sec. 12. Section 83-1049, Reissue Revised Statutes of Nebraska, is amended to read:

83-1049. The subject of a petition shall have the right to be represented by counsel in all proceedings under ~~this act~~ the Nebraska Mental Health Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all

reasonable times. As soon as possible after a subject is taken into emergency protective custody under sections 83-1020 to 83-1023, or after the filing of a petition under sections 83-1025 and 83-1026, whichever occurs first, and before the hearing, the board shall determine whether the subject of the petition is indigent. If the subject is found to be indigent, the board shall ~~forthwith~~ certify that fact to the district or county court by causing to be delivered to the clerk of the district court or the clerk of the county court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency custody or a petition is filed.

Sec. 13. Section 83-1050, Reissue Revised Statutes of Nebraska, is amended to read:

83-1050. The appointment of counsel shall be in accordance with the following procedures:

(1) Except in counties having a public defender, upon the receipt from the board of a certificate for the appointment of counsel, the clerk of the district court shall notify the district judge or the county judge of the county in which the proceedings are pending of the receipt of the certificate. The judge to whom the certificate was issued shall ~~forthwith~~ appoint an attorney to represent the person against whom an application is filed before the mental health board, whereupon the clerk of the court shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the board. The clerk of the district court or the clerk of the county court, as the case may be, shall also keep and maintain a record of all appointments, which shall be conclusive evidence thereof. All appointments of counsel provided in ~~this act~~ the Nebraska Mental Health Commitment Act may be made at any time or place in the state; and

(2) In counties having a public defender, upon ~~the~~ receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the public defender of his or her appointment to represent the person and shall enter upon the certificate the name of the attorney appointed, and deliver the certificate of appointment of counsel to the board.

Sec. 14. Section 83-1051, Reissue Revised Statutes of Nebraska, is amended to read:

83-1051. Counsel appointed as provided in subdivision (1) of section 83-1050 shall apply to the court in which his or her appointment is recorded for fees for services performed. Such counsel also may apply to the court to secure separate professional examination of the person whose liberty is involved and shall be reimbursed for costs incurred in securing such separate examination or examinations or in having other professional persons as witnesses before the mental health board. The court, upon hearing the application, shall fix reasonable fees, including reimbursement of costs incurred. The county board of the county in which the application was filed shall allow the account, bill, or claim presented by the attorney for services performed under the provisions of ~~this act~~ the Nebraska Mental Health Commitment Act in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof shall have been determined by the court.

Sec. 15. Section 83-1055, Reissue Revised Statutes of Nebraska, is amended to read:

83-1055. All mental health board hearings under ~~this act~~ the Nebraska Mental Health Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

Sec. 16. Section 83-1058, Reissue Revised Statutes of Nebraska, is amended to read:

83-1058. The subject of a petition shall have the right at a hearing held under ~~this act~~ the Nebraska Mental Health Commitment Act to confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the Constitution of the United States, and Article I, section 11, of the Constitution of Nebraska.

Sec. 17. Section 83-1059, Reissue Revised Statutes of Nebraska, is amended to read:

83-1059. The rules of evidence applicable in civil proceedings shall be followed at all hearings held under ~~this act~~ the Nebraska Mental Health Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Sec. 18. Section 83-1061, Reissue Revised Statutes of Nebraska, is amended to read:

83-1061. All proceedings held under ~~this act~~ the Nebraska Mental Health Commitment Act shall be of record, and all oral proceedings shall be reported verbatim by either a qualified shorthand reporter or by tape-recording equipment equivalent in quality to that required in county courts by section ~~24-545~~ 25-2732. The written findings of the mental health board shall be part of the subject's records and shall be available to the parties in the case and to the hospital if it is the decision of the board to commit the subject. Any qualified shorthand reporter who reports proceedings presided over by a board or otherwise than in his or her capacity as an official district court stenographic reporter ~~under the provisions of section 24-338~~ shall apply to the court for reasonable expenses and fees for services performed in such hearings. The court shall fix reasonable expenses and fees, and the county board shall allow payment to the reporter in the full amount fixed by the court.

Sec. 19. Section 83-1062, Reissue Revised Statutes of Nebraska, is amended to read:

83-1062. Any qualified mental health professional, upon being authorized by the director of the mental health center or government, private, or state hospital having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except ~~+~~ PROVIDED, that the subject of a petition shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under ~~this act~~ the Nebraska Mental Health Commitment Act as will substantially impair his or her ability to assist in his or her defense at such hearing.

Sec. 20. Section 83-1064, Reissue Revised Statutes of Nebraska, is amended to read:

83-1064. The subject of a petition may waive any of the proceedings or rights incident to proceedings granted him or her by section 83-1047 or any other provision of ~~this act~~ the Nebraska Mental Health Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject, and such subject's legal guardian if he or she is legally incompetent. When the mental health board determines that the subject is not able to waive his or her rights under the conditions set forth in this section, it shall be up to the discretion of the subject's counsel to exercise the right. When the subject is not represented by counsel the rights may not be waived.

Sec. 21. Section 83-1066, Reissue Revised Statutes of Nebraska, is amended to read:

83-1066. Subjects in custody or receiving treatment under ~~this act~~ the Nebraska Mental Health Commitment Act shall have the right:

(1) To be considered legally competent for all purposes unless they have been declared legally incompetent. The mental health board shall not have the power to declare an individual incompetent;

(2) To receive prompt and adequate evaluation and treatment for mental illness and physical ailments, and to participate in their treatment planning activities to the extent determined to be appropriate by the mental health professional in charge of the treatment of such subjects;

(3) To refuse treatment, except such treatment as is essential in the judgment of the medical health professional in charge of such treatment to prevent the patient from causing injury to himself, herself, or others or which will substantially improve his or her mental illness;

(4) To communicate freely with all persons by sealed mail, personal visitation, and private telephone conversations;

(5) To have reasonably private living conditions, including private storage space for personal belongings;

(6) To engage or refuse to engage in religious worship and political activity;

(7) To be compensated for their labor in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 206, as amended;

(8) To have access to a patient grievance procedure; and

(9) To file, either personally or by counsel, petitions or applications for writs of habeas corpus for the purpose of challenging the legality of such subject's custody or treatment.

Sec. 22. Section 83-1069, Reissue Revised Statutes of Nebraska, is amended to read:

83-1069. Any person who willfully (1) files, or causes to be filed, a certificate or petition under ~~this act~~ the Nebraska Mental Health Commitment Act, knowing any of the allegations thereof to be false, (2) deprives a subject of any of the rights granted the subject by ~~this the~~ the act or section

83-390, or (3) breaches the confidentiality of records required by section 83-1068 shall be guilty of a Class II misdemeanor in addition to any civil liability which he or she may incur for such acts.

Sec. 23. Original sections 83-1003, 83-1008, 83-1013, 83-1015, 83-1016, 83-1019, 83-1023, 83-1024, 83-1026, 83-1047, 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058, 83-1059, 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069, Reissue Revised Statutes of Nebraska, are repealed.