

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1288

Introduced by Raybould, 28; Conrad, 46; Day, 49.

Read first time January 16, 2024

Committee:

1 A BILL FOR AN ACT relating to civil commitment; to amend sections 71-901,
2 71-902, 71-903, 71-910, 71-912, 71-919, 71-920, 71-926, 71-929,
3 71-936, 71-937, 71-939, 71-958, 71-961, 71-1201, 71-1203, 71-1204,
4 71-1206, 71-1210, 71-1213, 71-1220, 71-1221, and 71-1223, Reissue
5 Revised Statutes of Nebraska, and sections 83-338 and 83-364,
6 Revised Statutes Cumulative Supplement, 2022; to provide for
7 recognition of tribal mental health and dangerous sex offender
8 commitment orders as prescribed; to provide for tribal law
9 enforcement officers to take a subject into emergency protective
10 custody; to provide for transportation of and commitment of persons
11 committed under tribal law and for payment of related costs; to
12 define and redefine terms; to harmonize provisions; and to repeal
13 the original sections.

14 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 sections 4, 7, 8, and 10 of
4 this act shall be known and may be cited as the Nebraska Mental Health
5 Commitment Act.

6 Sec. 2. Section 71-902, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 71-902 The purpose of the Nebraska Mental Health Commitment Act is
9 to provide for the treatment of persons who are mentally ill and
10 dangerous. It is the public policy of the State of Nebraska that mentally
11 ill and dangerous persons be encouraged to obtain voluntary treatment. If
12 voluntary treatment is not obtained, such persons shall be subject to
13 involuntary custody and treatment only after mental health board
14 proceedings as provided by the Nebraska Mental Health Commitment Act or
15 upon the order of a tribal court. Such persons shall be subjected to
16 emergency protective custody under limited conditions and for a limited
17 period of time.

18 Sec. 3. Section 71-903, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 71-903 For purposes of the Nebraska Mental Health Commitment Act,
21 unless the context otherwise requires, the definitions found in sections
22 71-904 to 71-914 and sections 4, 7, and 8 of this act shall apply.

23 Sec. 4. Indian country has the same meaning as in 18 U.S.C. 1151,
24 as such section existed on January 1, 2024.

25 Sec. 5. Section 71-910, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 71-910 (1) Peace officer or law enforcement officer means a
28 sheriff, a jailer, a marshal, a police officer, or an officer of the
29 Nebraska State Patrol.

30 (2) Peace officer or law enforcement officer includes a member of a
31 tribal police department or federal law enforcement officer duly

1 authorized to assert law enforcement powers by a tribe in the State of
2 Nebraska.

3 Sec. 6. Section 71-912, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 71-912 (1) Subject means any person concerning whom a certificate
6 or petition has been filed under the Nebraska Mental Health Commitment
7 Act. Subject does not include any person under eighteen years of age
8 unless such person is an emancipated minor.

9 (2) Subject also includes a person domiciled within Indian country
10 in Nebraska concerning whom mental health involuntary commitment or
11 emergency protective custody proceedings have been initiated under tribal
12 law.

13 Sec. 7. Tribe or tribal means an Indian tribe or band which is
14 located in whole or in part within Nebraska and which is recognized by
15 federal law or formally acknowledged by the state.

16 Sec. 8. Tribal court means a court or tribunal authorized by a
17 tribe to adjudicate legal disputes and carry out the administration of
18 justice in accordance with tribal law.

19 Sec. 9. Section 71-919, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-919 (1)(a) ~~(1) A law enforcement officer who has probable cause~~
22 ~~to believe that a person is mentally ill and dangerous or a dangerous sex~~
23 ~~offender and that the harm described in section 71-908 or subdivision (1)~~
24 ~~of section 83-174.01 is likely to occur before mental health board~~
25 ~~proceedings under the Nebraska Mental Health Commitment Act or the Sex~~
26 ~~Offender Commitment Act may be initiated to obtain custody of the person~~
27 ~~may take a such person into emergency protective custody, cause him or~~
28 ~~her to be taken into emergency protective custody, or continue his or her~~
29 ~~custody if he or she is already in custody~~ if the officer has probable
30 cause to believe: -

31 (i) Such person is mentally ill and dangerous or a dangerous sex

1 offender and that the harm described in section 71-908 or subdivision (1)
2 of section 83-174.01 is likely to occur before mental health board
3 proceedings under the Nebraska Mental Health Commitment Act or the Sex
4 Offender Commitment Act may be initiated to obtain custody of the person;
5 or

6 (ii) For a person domiciled within Indian country in Nebraska, that
7 such person is mentally ill and dangerous or a dangerous sex offender
8 under tribal law and that harm comparable to that described in section
9 71-908 or subdivision (1) of section 83-174.01 or the equivalent under
10 tribal law is likely to occur before mental health proceedings under
11 tribal law may be initiated to obtain custody of the person.

12 (b) Such person shall be admitted to an appropriate and available
13 medical facility, jail, or Department of Correctional Services facility
14 as provided in subsection (2) of this section.

15 (c)(i) Except as provided in subdivision (1)(c)(ii) of this section,
16 each ~~Each~~ county shall make arrangements with appropriate facilities
17 inside or outside the county for such purpose and shall pay the cost of
18 the emergency protective custody of persons from such county in such
19 facilities.

20 (ii) For a subject domiciled within Indian country in Nebraska for
21 whom emergency protective custody is initiated under tribal law, the
22 tribe shall make arrangements with appropriate facilities inside or
23 outside the tribe for such purpose and shall make arrangements for
24 payment of the cost of the emergency protective custody of persons from
25 such tribe in such facilities.

26 (d) A mental health professional who has probable cause to believe
27 that a person is mentally ill and dangerous or a dangerous sex offender
28 may cause such person to be taken into custody and shall have a limited
29 privilege to hold such person until a law enforcement officer or other
30 authorized person arrives to take custody of such person.

31 (2)(a) A person taken into emergency protective custody under this

1 section shall be admitted to an appropriate and available medical
2 facility unless such person has a prior conviction for a sex offense
3 listed in section 29-4003.

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

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

22 (b) In the case of a subject domiciled within Indian country who is
23 taken into emergency protective custody by a law enforcement officer
24 under tribal law, upon admission to a facility, such officer shall
25 execute written documentation in a format provided by the tribe. At a
26 minimum, such documentation shall clearly identify the subject, identify
27 the relevant tribe, allege the officer's belief that the person in
28 custody is mentally ill and dangerous or a dangerous sex offender under
29 tribal law, and contain a summary of the subject's behavior supporting
30 such allegations. A copy of such documentation shall be immediately
31 forwarded to the appropriate tribal prosecutor or tribal official.

1 (4) The administrator of the facility shall have such person
2 evaluated by a mental health professional as soon as reasonably possible
3 but not later than thirty-six hours after admission. The mental health
4 professional shall not be the mental health professional who causes such
5 person to be taken into custody under this section and shall not be a
6 member or alternate member of the mental health board that will preside
7 over any hearing under the Nebraska Mental Health Commitment Act or the
8 Sex Offender Commitment Act with respect to such person. A person shall
9 be released from emergency protective custody after completion of such
10 evaluation unless the mental health professional determines, in his or
11 her clinical opinion, that such person is mentally ill and dangerous or a
12 dangerous sex offender. In the case of a subject domiciled within Indian
13 country who is taken into emergency protective custody under tribal law,
14 the mental health professional shall notify an appropriate tribal
15 prosecutor or official of such release.

16 Sec. 10. (1) With respect to a subject domiciled in Indian country,
17 the State of Nebraska recognizes tribal hold orders, commitment orders,
18 and emergency protective custody orders to the same extent as those
19 initiated by any county in the state or as otherwise provided in the
20 Nebraska Mental Health Commitment Act. This recognition applies for
21 purposes of commitment to and acceptance for treatment at a treatment
22 facility, including, but not limited to, a regional center, and for
23 necessary related purposes.

24 (2) If a tribal court finds that a subject domiciled within Indian
25 country is mentally ill and dangerous pursuant to tribal law, such tribal
26 court may order the subject committed to the treatment at a facility.
27 Such order shall conform to subsection (3) of this section.

28 (3) The tribal court shall issue a warrant authorizing the
29 administrator of such treatment facility to receive and keep the subject
30 as a patient. The warrant shall state the findings of the tribal court
31 and the legal settlement of the subject, if known, or any available

1 information relating thereto. Such warrant shall shield every official
2 and employee of the treatment facility against all liability to
3 prosecution of any kind on account of the reception and detention of the
4 subject if the detention is otherwise in accordance with law and policies
5 of the treatment facility.

6 (4) This section and the changes made to the Nebraska Mental Health
7 Commitment Act by this legislative bill shall not be construed to affect
8 the jurisdiction of tribal courts or to regulate internal proceedings of
9 tribes or matters of tribal law. The purpose of this section and such
10 changes is to facilitate the treatment and placement of subjects
11 domiciled in Indian country in treatment facilities not operated by
12 tribes.

13 Sec. 11. Section 71-920, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 71-920 (1) Except as provided in subsection (3) of this section, a A
16 mental health professional who, upon evaluation of a person admitted for
17 emergency protective custody under section 71-919, determines that such
18 person is mentally ill and dangerous shall execute a written certificate
19 as provided in subsection (2) of this section not later than twenty-four
20 hours after the completion of such evaluation. A copy of such certificate
21 shall be immediately forwarded to the county attorney.

22 (2) The certificate shall be in writing and shall include the
23 following information:

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

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

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

29 (d) The name and address of any other person who may have knowledge
30 of the subject's mental illness or substance dependence who may be called
31 as a witness at a mental health board hearing with respect to the

1 subject, if known;

2 (e) The name and address of the medical facility in which the
3 subject is being held for emergency protective custody and evaluation;

4 (f) The name and work address of the certifying mental health
5 professional;

6 (g) A statement by the certifying mental health professional that he
7 or she has evaluated the subject since the subject was admitted for
8 emergency protective custody and evaluation; and

9 (h) A statement by the certifying mental health professional that,
10 in his or her clinical opinion, the subject is mentally ill and dangerous
11 and the clinical basis for such opinion.

12 (3) In the case of a subject domiciled within Indian country who is
13 taken into emergency protective custody by a law enforcement officer
14 under tribal law, a mental health professional who, upon evaluation of
15 such person, determines that such person is mentally ill and dangerous
16 shall execute appropriate written documentation in a format provided by
17 the tribe not later than twenty-four hours after the completion of such
18 evaluation. A copy of such certificate shall be immediately forwarded to
19 the person designated by the tribe.

20 Sec. 12. Section 71-926, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-926 (1) At the conclusion of a mental health board hearing under
23 section 71-924 and prior to the entry of a treatment order by the board
24 under section 71-925, the board may (a) order that the subject be
25 retained in custody until the entry of such order and the subject may be
26 admitted for treatment pursuant to such order or (b) order the subject
27 released from custody under such conditions as the board deems necessary
28 and appropriate to prevent the harm described in section 71-908 and to
29 assure the subject's appearance at a later disposition hearing by the
30 board. A subject shall be retained in custody under this section at the
31 nearest appropriate and available medical facility and shall not be

1 placed in a jail. Each county shall make arrangements with appropriate
2 medical facilities inside or outside the county for such purpose and
3 shall pay the cost of the emergency protective custody of persons from
4 such county in such facilities.

5 (2) A subject who has been ordered to receive inpatient or
6 outpatient treatment by a mental health board may be provided treatment
7 while being retained in emergency protective custody and pending
8 admission of the subject for treatment pursuant to such order.

9 (3)(a) In the case of a subject domiciled within Indian country who
10 is taken into emergency protective custody by a law enforcement officer
11 under tribal law, at the conclusion of a mental health hearing under
12 tribal law and prior to entry of a treatment order by the tribal court,
13 the tribal court may order that the subject be:

14 (i) Retained in custody until entry of such order and the subject
15 may be admitted for treatment pursuant to such order; or

16 (ii) Released from custody under such conditions as the tribal court
17 or tribunal deems necessary and appropriate to prevent harm comparable to
18 that described in section 71-908 or the equivalent under tribal law and
19 to assure the subject's appearance at a later disposition hearing. A
20 subject shall be retained in custody under this section at the nearest
21 appropriate and available medical facility and shall not be placed in a
22 jail.

23 (b) Each tribe shall make arrangements with appropriate medical
24 facilities inside or outside the tribe for such purpose and shall make
25 arrangements for payment of the cost of the emergency protective custody
26 of persons from such tribe in such facilities.

27 (c) A subject who has been ordered to receive inpatient or
28 outpatient treatment pursuant to tribal law may be provided treatment
29 while being retained in emergency protective custody and pending
30 admission of the subject for treatment pursuant to such order.

31 Sec. 13. Section 71-929, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 71-929 (1) If a mental health board issues a warrant for the
3 admission or return of a subject to a treatment facility and funds to pay
4 the expenses thereof are needed in advance, the board shall estimate the
5 probable expense of conveying the subject to the treatment facility,
6 including the cost of any assistance that might be required, and shall
7 submit such estimate to the county clerk of the county in which such
8 person is located. The county clerk shall certify the estimate and shall
9 issue an order on the county treasurer in favor of the sheriff or other
10 person entrusted with the execution of the warrant.

11 (2) The sheriff or other person executing the warrant shall include
12 in his or her return a statement of expenses actually incurred, including
13 any excess or deficiency. Any excess from the amount advanced for such
14 expenses under subsection (1) of this section shall be paid to the county
15 treasurer, taking his or her receipt therefor, and any deficiency shall
16 be obtained by filing a claim with the county board. If no funds are
17 advanced, the expenses shall be certified on the warrant and paid when
18 returned.

19 (3) The sheriff shall be reimbursed for mileage at the rate provided
20 in section 33-117 for conveying a subject to a treatment facility under
21 this section. For other services performed under the Nebraska Mental
22 Health Commitment Act, the sheriff shall receive the same fees as for
23 like services in other cases.

24 (4) Except as provided in subsection (5) of this section, all All
25 compensation and expenses provided for in this section shall be allowed
26 and paid out of the treasury of the county by the county board.

27 (5)(a) In the case of a subject domiciled within Indian country who
28 is taken into emergency protective custody under tribal law, sheriffs and
29 other law enforcement officers of the State of Nebraska and its political
30 subdivisions may transport such a subject to a treatment facility,
31 whether inside or outside of Indian country.

1 (b) The sheriff or other law enforcement agency may enter into a
2 contract with a tribe for reimbursement for:

3 (i) Reasonable costs incurred in conveying a subject to a treatment
4 facility under this subsection; and

5 (ii) Other services performed for a tribe under the Nebraska Mental
6 Health Commitment Act or under the equivalent law of the tribe at a rate
7 comparable to the rate for such services in other cases.

8 Sec. 14. Section 71-936, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-936 When the administrator of any regional center or treatment
11 facility for the treatment of persons who are mentally ill or substance
12 dependent determines that any involuntary patient in such facility may be
13 safely and properly discharged or placed on convalescent leave, the
14 administrator of such regional center or treatment facility shall
15 immediately notify the mental health board of the judicial district from
16 which such patient was committed. In the case of a subject who is
17 domiciled in Indian country and committed for treatment as provided in
18 section 10 of this act, such administrator shall immediately notify the
19 tribal court.

20 Sec. 15. Section 71-937, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-937 (1) A mental health board shall be notified in writing of
23 the release by the treatment facility of any individual committed by the
24 mental health board. Such notice shall immediately be forwarded to the
25 county attorney. The mental health board shall, upon the motion of the
26 county attorney, or may upon its own motion, conduct a hearing to
27 determine whether the individual is mentally ill and dangerous and
28 consequently not a proper subject for release. Such hearing shall be
29 conducted in accordance with the procedures established for hearings
30 under the Nebraska Mental Health Commitment Act. The subject of such
31 hearing shall be accorded all rights guaranteed to the subject of a

1 petition under the act.

2 (2) In the case of a subject who is domiciled in Indian country and
3 committed for treatment as provided in section 10 of this act, the tribal
4 court shall be notified in writing of the release by the treatment
5 facility of any such subject committed by the tribal court.

6 Sec. 16. Section 71-939, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 71-939 (1)(a) When any person receiving treatment at a treatment
9 facility or program for persons with mental illness or substance
10 dependence pursuant to an order of a court or mental health board is
11 absent without authorization from such treatment facility or program, the
12 administrator or program director of such treatment facility or program
13 shall immediately notify the Nebraska State Patrol and the court or clerk
14 of the mental health board of the judicial district from which such
15 person was committed. ~~The notification shall include the person's name~~
16 ~~and description and a determination by a psychiatrist, clinical director,~~
17 ~~administrator, or program director as to whether the person is believed~~
18 ~~to be currently dangerous to others.~~

19 (b) The clerk shall issue the warrant of the board directed to the
20 sheriff of the county for the arrest and detention of such person. Such
21 warrant may be executed by the sheriff or any other peace officer.

22 (2)(a) When any person receiving treatment at a treatment facility
23 or program for persons with mental illness or substance dependence
24 pursuant to an order of a tribal court as provided in section 10 of this
25 act is absent without authorization from such treatment facility or
26 program, the administrator or program director of such treatment facility
27 or program shall immediately notify the Nebraska State Patrol and the
28 appropriate tribal prosecutor or official.

29 (b) The appropriate tribal official may issue a warrant directed to
30 a peace officer or sheriff of any county for the arrest and detention of
31 such person. Such warrant may be executed by the sheriff or any other

1 peace officer.

2 (3) The notification required by subdivision (1)(a) or (2)(a) of
3 this section shall include the person's name and description and a
4 determination by a psychiatrist, clinical director, administrator, or
5 program director as to whether the person is believed to be currently
6 dangerous to others.

7 (4) Pending the issuance of such the warrant of the mental health
8 board, any peace officer may seize and detain such person when the peace
9 officer has probable cause to believe that the person is reported to be
10 absent without authorization as described in this section. Such person
11 shall be returned to the treatment facility or program or shall be taken
12 to a facility as described in section 71-919 until he or she can be
13 returned to such treatment facility or program.

14 Sec. 17. Section 71-958, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 71-958 Any qualified mental health professional, upon being
17 authorized by the administrator of the treatment facility having custody
18 of the subject, may provide appropriate medical treatment for the subject
19 while in custody, except that a subject shall not be subjected to such
20 quantities of medication or other treatment within such period of time
21 prior to any hearing held under the Nebraska Mental Health Commitment Act
22 or the Sex Offender Commitment Act or, for a subject who is domiciled in
23 Indian country and committed for treatment as provided in section 10 of
24 this act, a hearing held under the equivalent tribal law, as will
25 substantially impair his or her ability to assist in his or her defense
26 at such hearing.

27 Sec. 18. Section 71-961, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 71-961 (1) All records kept on any subject shall remain confidential
30 except as otherwise provided by law. Such records shall be accessible to
31 (a) the subject, except as otherwise provided in subsection (2) of this

1 section, (b) the subject's legal counsel, (c) the subject's guardian or
2 conservator, if any, (d) the mental health board having jurisdiction over
3 the subject, (e) persons authorized by an order of a judge or court, (f)
4 persons authorized by written permission of the subject, (g) agents or
5 employees of the Department of Health and Human Services upon delivery of
6 a subpoena from the department in connection with a licensing or
7 licensure investigation by the department, (h) individuals authorized to
8 receive notice of the release of a sex offender pursuant to section
9 83-174, (i) the Nebraska State Patrol or the department pursuant to
10 section 69-2409.01, ~~or~~ (j) the Division of Parole Supervision if the
11 subject meets the requirements for lifetime community supervision
12 pursuant to section 83-174.03, and (k) any tribal court having
13 jurisdiction over a subject who is domiciled in Indian country and
14 committed for treatment as provided in section 10 of this act.

15 (2) Upon application by the county attorney or by the administrator
16 of the treatment facility where the subject is in custody and upon a
17 showing of good cause therefor, a judge of the district court of the
18 county where the mental health board proceedings were held or of the
19 county where the treatment facility is located may order that the records
20 not be made available to the subject if, in the judgment of the court,
21 the availability of such records to the subject will adversely affect his
22 or her mental illness or personality disorder and the treatment thereof.

23 (3) When a subject is absent without authorization from a treatment
24 facility or program described in section 71-939 or 71-1223 and is
25 considered to be dangerous to others, the subject's name and description
26 and a statement that the subject is believed to be considered dangerous
27 to others may be disclosed in order to aid in the subject's apprehension
28 and to warn the public of such danger.

29 Sec. 19. Section 71-1201, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 71-1201 Sections 71-1201 to 71-1226 and section 21 of this act shall

1 be known and may be cited as the Sex Offender Commitment Act.

2 Sec. 20. Section 71-1203, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 71-1203 For purposes of the Sex Offender Commitment Act:

5 (1) The definitions found in sections 71-905, 71-906, 71-907,
6 71-910, 71-911, and 83-174.01 and sections 4, 7, and 8 of this act apply;

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

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

16 (4)(a) ~~(4)~~ Subject means any person concerning whom (a) a
17 certificate has been filed under section 71-1204, (b) a certificate has
18 been filed under section 71-919 and such person is held pursuant to
19 subdivision (2)(b) of section 71-919, or (c) a petition has been filed
20 under the Sex Offender Commitment Act.

21 (b) Subject also includes a person domiciled within Indian country
22 in Nebraska concerning whom sex offender involuntary commitment or
23 emergency protective custody proceedings have been initiated under tribal
24 law. Subject does not include any person under eighteen years of age
25 unless such person is an emancipated minor; and

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

28 Sec. 21. (1) With respect to a subject domiciled in Indian country,
29 the State of Nebraska recognizes tribal hold orders, commitment orders,
30 and emergency protective custody orders to the same extent as those
31 initiated by any county in the state or as otherwise provided in the Sex

1 Offender Commitment Act. This recognition applies for purposes of
2 commitment to and acceptance for treatment at a treatment facility,
3 including, but not limited to, a regional center, and for necessary
4 related purposes.

5 (2) A subject admitted to a state-operated treatment facility
6 pursuant to this section has all the rights accorded by sections 71-943
7 to 71-960.

8 (3) For a subject admitted to a state-operated treatment facility
9 pursuant to this section:

10 (a) The treatment facility shall file treatment reports with the
11 Indian Health Service or the placing tribe within sixty days after
12 commencement of the subject's stay at the treatment facility;

13 (b) The treatment facility shall file a subsequent treatment report
14 with the Indian Health Service or the placing tribe within six months
15 after the subject's admission to the facility or prior to discharge,
16 whichever comes first;

17 (c) Provisional discharge or transfer of the subject may be
18 authorized by the administrator only with the consent of the Indian
19 Health Service or the placing tribe; and

20 (d) Discharge of the subject from the treatment facility to the
21 Indian Health Service or the placing tribe may be authorized by the
22 administrator after notice to and consultation with the Indian Health
23 Service or the placing tribe.

24 (4) If the tribal court finds a subject living within Indian country
25 to be a dangerous sex offender and the tribal court orders the subject
26 committed to receive inpatient treatment at a treatment facility, the
27 tribal court shall issue a warrant authorizing the administrator of such
28 treatment facility to receive and keep the subject as a patient. The
29 warrant shall state the findings of the tribal court and the legal
30 settlement of the subject, if known, or any available information
31 relating thereto. Such warrant shall shield every official and employee

1 of the treatment facility against all liability to prosecution of any
2 kind on account of the reception and detention of the subject if the
3 detention is otherwise in accordance with law and policies of the
4 treatment facility.

5 (5) This section and the changes made to the Sex Offender Commitment
6 Act by this legislative bill shall not be construed to affect the
7 jurisdiction of tribal courts or to regulate internal proceedings of
8 tribes or matters of tribal law. The purpose of this section and such
9 changes is to facilitate the treatment and placement of subjects
10 domiciled in Indian country in treatment facilities not operated by
11 tribes.

12 Sec. 22. Section 71-1204, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 71-1204 (1) Except as provided in subsection (3) of this section, a
15 A mental health professional who, upon evaluation of a person admitted
16 for emergency protective custody under section 71-919, determines that
17 such person is a dangerous sex offender shall execute a written
18 certificate as provided in subsection (2) of this section not later than
19 twenty-four hours after the completion of such evaluation. A copy of such
20 certificate shall be immediately forwarded to the county attorney.

21 (2) The certificate shall be in writing and shall include the
22 following information:

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

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

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

28 (d) The name and address of any other person who may have knowledge
29 of the subject's mental illness or personality disorder who may be called
30 as a witness at a mental health board hearing with respect to the
31 subject, if known;

1 (e) The name and address of the medical facility in which the
2 subject is being held for emergency protective custody and evaluation;

3 (f) The name and work address of the certifying mental health
4 professional;

5 (g) A statement by the certifying mental health professional that he
6 or she has evaluated the subject since the subject was admitted for
7 emergency protective custody and evaluation; and

8 (h) A statement by the certifying mental health professional that,
9 in his or her clinical opinion, the subject is a dangerous sex offender
10 and the clinical basis for such opinion.

11 (3) In the case of a subject domiciled within Indian country who is
12 taken into emergency protective custody by a law enforcement officer
13 under tribal law, a mental health professional who, upon evaluation of
14 such person, determines that such person is a dangerous sex offender
15 shall execute appropriate written documentation in a format provided by
16 the tribe not later than twenty-four hours after the completion of such
17 evaluation. A copy of such certificate shall be immediately forwarded to
18 the person designated by the tribe.

19 Sec. 23. Section 71-1206, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-1206 (1) Mental health board proceedings shall be deemed to have
22 commenced upon the earlier of (a) the filing of a petition under section
23 71-1205 or (b) notification by the county attorney to the law enforcement
24 officer who took the subject into emergency protective custody under
25 section 71-919 or the administrator of the treatment facility having
26 charge of the subject of the intention of the county attorney to file
27 such petition. The county attorney shall file such petition as soon as
28 reasonably practicable after such notification.

29 (2) A petition filed by the county attorney under section 71-1205
30 may contain a request for the emergency protective custody and evaluation
31 of the subject prior to commencement of a mental health board hearing

1 pursuant to such petition with respect to the subject. Upon receipt of
2 such request and upon a finding of probable cause to believe that the
3 subject is a dangerous sex offender as alleged in the petition, the court
4 or chairperson of the mental health board may issue a warrant directing
5 the sheriff to take custody of the subject. If the subject is already in
6 emergency protective custody under a certificate filed under section
7 71-919, a copy of such certificate shall be filed with the petition. The
8 subject in such custody, including pursuant to tribal law as provided in
9 section 21 of this act, shall be held in an appropriate and available
10 medical facility, jail, or Department of Correctional Services facility.
11 A dangerous sex offender shall not be admitted to a medical facility for
12 emergency protective custody unless a medical or psychiatric emergency
13 exists requiring treatment not available at a jail or correctional
14 facility.

15 (3)(a) Except as provided in subdivision (3)(b) of this section,
16 each ~~Each~~ county shall make arrangements with appropriate facilities
17 inside or outside the county for such purpose and shall pay the cost of
18 the emergency protective custody of persons from such county in such
19 facilities.

20 (b) For a subject domiciled within Indian country in Nebraska for
21 whom emergency protective custody is initiated under tribal law, the
22 tribe shall make arrangements with appropriate facilities inside or
23 outside the tribe for such purpose and shall make arrangements for the
24 payment of the cost of the emergency protective custody of persons from
25 such tribe in such facilities.

26 (4) ~~(3)~~ The petition and all subsequent pleadings and filings in the
27 case shall be entitled In the Interest of , Alleged to be a
28 Dangerous Sex Offender. The county attorney may dismiss the petition at
29 any time prior to the commencement of the hearing of the mental health
30 board under section 71-1208, and upon such motion by the county attorney,
31 the mental health board shall dismiss the petition.

1 Sec. 24. Section 71-1210, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-1210 (1) At the conclusion of a mental health board hearing under
4 section 71-1208 and prior to the entry of a treatment order by the board
5 under section 71-1209, the board may (a) order that the subject be
6 retained in custody until the entry of such order and the subject may be
7 admitted for treatment pursuant to such order or (b) order the subject
8 released from custody under such conditions as the board deems necessary
9 and appropriate to prevent the harm described in subdivision (1) of
10 section 83-174.01 and to assure the subject's appearance at a later
11 disposition hearing by the board. A subject shall be retained in custody
12 under this section at an appropriate and available medical facility,
13 jail, or Department of Correctional Services facility. A dangerous sex
14 offender shall not be admitted to a medical facility for emergency
15 protective custody unless a medical or psychiatric emergency exists
16 requiring treatment not available at a jail or correctional facility.
17 Each county shall make arrangements with appropriate facilities inside or
18 outside the county for such purpose and shall pay the cost of the
19 emergency protective custody of persons from such county in such
20 facilities.

21 (2) A subject who has been ordered to receive inpatient or
22 outpatient treatment by a mental health board may be provided treatment
23 while being retained in emergency protective custody and pending
24 admission of the subject for treatment pursuant to such order.

25 (3)(a) In the case of a subject domiciled within Indian country who
26 is taken into emergency protective custody by a law enforcement officer
27 under tribal law, at the conclusion of a mental health hearing under
28 tribal law and prior to entry of a treatment order by the tribal court,
29 the tribal court may order that the subject be:

30 (i) Retained in custody until entry of such order and the subject
31 may be admitted for treatment pursuant to such order; or

1 (ii) Released from custody under such conditions as the tribal court
2 or tribunal deems necessary and appropriate to prevent harm comparable to
3 that described in subdivision (1) of section 83-174.01 or the equivalent
4 under tribal law and to assure the subject's appearance at a later
5 disposition hearing. A subject shall be retained in custody under this
6 section at the nearest appropriate and available medical facility and
7 shall not be placed in a jail. A dangerous sex offender shall not be
8 admitted to a medical facility for emergency protective custody unless a
9 medical or psychiatric emergency exists requiring treatment not available
10 at a jail or correctional facility.

11 (b) Each tribe shall make arrangements with appropriate medical
12 facilities inside or outside the tribe for such purpose and shall pay the
13 cost of the emergency protective custody of persons from such tribe in
14 such facilities.

15 (c) A subject who has been ordered to receive inpatient or
16 outpatient treatment pursuant to tribal law may be provided treatment
17 while being retained in emergency protective custody and pending
18 admission of the subject for treatment pursuant to such order.

19 Sec. 25. Section 71-1213, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-1213 (1) If a mental health board issues a warrant for the
22 admission or return of a subject to a treatment facility and funds to pay
23 the expenses thereof are needed in advance, the board shall estimate the
24 probable expense of conveying the subject to the treatment facility,
25 including the cost of any assistance that might be required, and shall
26 submit such estimate to the county clerk of the county in which such
27 person is located. The county clerk shall certify the estimate and shall
28 issue an order on the county treasurer in favor of the sheriff or other
29 person entrusted with the execution of the warrant.

30 (2) The sheriff or other person executing the warrant shall include
31 in his or her return a statement of expenses actually incurred, including

1 any excess or deficiency. Any excess from the amount advanced for such
2 expenses under subsection (1) of this section shall be paid to the county
3 treasurer, taking his or her receipt therefor, and any deficiency shall
4 be obtained by filing a claim with the county board. If no funds are
5 advanced, the expenses shall be certified on the warrant and paid when
6 returned.

7 (3) The sheriff shall be reimbursed for mileage at the rate provided
8 in section 33-117 for conveying a subject to a treatment facility under
9 this section. For other services performed under the Sex Offender
10 Commitment Act, the sheriff shall receive the same fees as for like
11 services in other cases.

12 (4) Except as provided in subsection (5) of this section, all All
13 compensation and expenses provided for in this section shall be allowed
14 and paid out of the treasury of the county by the county board.

15 (5)(a) In the case of a subject domiciled within Indian country who
16 is taken into emergency protective custody under tribal law, sheriffs and
17 other law enforcement officers of the State of Nebraska and its political
18 subdivisions may transport such a subject to a treatment facility,
19 whether inside or outside of Indian country.

20 (b) The sheriff or other law enforcement agency may enter into a
21 contract with a tribe for reimbursement for:

22 (i) Reasonable costs incurred in conveying a subject to a treatment
23 facility under this subsection; and

24 (ii) Other services performed for a tribe under the Sex Offender
25 Commitment Act or under the equivalent law of the tribe at a rate
26 comparable to the rate for such services in other cases.

27 Sec. 26. Section 71-1220, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 71-1220 When the administrator of any regional center or treatment
30 facility for the treatment of dangerous sex offenders determines that any
31 involuntary patient in such facility may be safely and properly

1 discharged or placed on convalescent leave, the administrator of such
2 regional center or treatment facility shall immediately notify the mental
3 health board of the judicial district from which such patient was
4 committed. In the case of a subject who is domiciled in Indian country
5 and committed for treatment as provided in section 21 of this act, such
6 administrator shall immediately notify the tribal court.

7 Sec. 27. Section 71-1221, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 71-1221 (1) A mental health board shall be notified in writing of
10 the release by the treatment facility of any individual committed by the
11 mental health board. Such notice shall immediately be forwarded to the
12 county attorney. The mental health board shall, upon the motion of the
13 county attorney, or may upon its own motion, conduct a hearing to
14 determine whether the individual is a dangerous sex offender and
15 consequently not a proper subject for release. Such hearing shall be
16 conducted in accordance with the procedures established for hearings
17 under the Sex Offender Commitment Act. The subject of such hearing shall
18 be accorded all rights guaranteed to the subject of a petition under the
19 act.

20 (2) In the case of a subject who is domiciled in Indian country and
21 committed for treatment as provided in section 21 of this act, the tribal
22 court shall be notified in writing of the release by the treatment
23 facility of any such subject committed by the tribal court.

24 Sec. 28. Section 71-1223, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 71-1223 (1)(a) When any person receiving treatment at a treatment
27 facility or program for dangerous sex offenders pursuant to an order of a
28 court or mental health board is absent without authorization from such
29 treatment facility or program, the administrator or program director of
30 such treatment facility or program shall immediately notify the Nebraska
31 State Patrol and the court or clerk of the mental health board of the

1 judicial district from which such person was committed. ~~The notification~~
2 ~~shall include the person's name and description and a determination by a~~
3 ~~psychiatrist, clinical director, administrator, or program director as to~~
4 ~~whether the person is believed to be currently dangerous to others.~~

5 (b) The clerk shall issue the warrant of the board directed to the
6 sheriff of the county for the arrest and detention of such person. Such
7 warrant may be executed by the sheriff or any other peace officer.

8 (2)(a) When any person receiving treatment at a treatment facility
9 or program for persons with mental illness or substance dependence
10 pursuant to an order of a tribal court as provided in section 21 of this
11 act is absent without authorization from such treatment facility or
12 program, the administrator or program director of such treatment facility
13 or program shall immediately notify the Nebraska State Patrol and the
14 appropriate tribal prosecutor or official.

15 (b) The appropriate tribal official may issue a warrant directed to
16 a peace officer or sheriff of any county for the arrest and detention of
17 such person. Such warrant may be executed by the sheriff or any other
18 peace officer.

19 (3) The notification required by subdivision (1)(a) or (2)(a) of
20 this section shall include the person's name and description and a
21 determination by a psychiatrist, clinical director, administrator, or
22 program director as to whether the person is believed to be currently
23 dangerous to others.

24 (4) Pending the issuance of such the warrant of the mental health
25 board, any peace officer may seize and detain such person when the peace
26 officer has probable cause to believe that the person is reported to be
27 absent without authorization as described in this the section. Such
28 person shall be returned to the treatment facility or program or shall be
29 taken to a facility as described in section 71-919 until he or she can be
30 returned to such treatment facility or program.

31 Sec. 29. Section 83-338, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 83-338 (1) If at any time it becomes necessary, for lack of capacity
3 or other cause, to establish priorities for the admission of patients
4 into the state hospitals for the mentally ill, admission shall be limited
5 to: (a) Patients whose care in the state hospital is necessary in order
6 to protect the public health and safety; (b) defendants who are
7 determined by a court to be incompetent to stand trial and who remain
8 lodged in the county jail; (c) patients committed by a mental health
9 board under the Nebraska Mental Health Commitment Act or the Sex Offender
10 Commitment Act, ~~or by a district court, or by a tribal court as provided~~
11 in section 10 or 21 of this act; (d) patients who are most likely to be
12 benefited by treatment in the state hospitals, regardless of whether such
13 patients are committed by a mental health board or whether such patients
14 seek voluntary admission to one of the state hospitals; and (e) when
15 cases are equally meritorious, in all other respects, patients who are
16 indigent.

17 (2) The Lincoln Regional Center shall provide a minimum number of
18 beds equal to the following percentages of total available capacity:

19 (a) Ten percent for patients entering the facility pursuant to
20 subdivision (1)(a) of this section;

21 (b) Ten percent for patients entering the facility pursuant to
22 subdivision (1)(b) of this section;

23 (c) Thirty percent for patients entering the facility pursuant to
24 subdivision (1)(c) of this section;

25 (d) Ten percent for patients entering the facility pursuant to
26 subdivision (1)(d) of this section;

27 (e) Ten percent for patients entering the facility pursuant to
28 subdivision (1)(e) of this section; and

29 (f) Thirty percent to remain unallocated for the Department of
30 Health and Human Services to allocate according to the priorities
31 established in subsection (1) of this section as needed to reduce

1 existing waiting lists.

2 (3) Beginning on or before November 1, 2022, the Department of
3 Health and Human Services shall make available on its website a weekly
4 report on the capacity and status of state-operated mental health
5 facilities, including, but not limited to, the capacity and wait times
6 associated with each priority category established in subsection (1) of
7 this section.

8 Sec. 30. Section 83-364, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 83-364 (1) Except as provided in subsection (2) of this section,
11 when ~~when~~ any person is admitted to a state institution or other
12 inpatient treatment facility pursuant to an order of a mental health
13 board under the Nebraska Mental Health Commitment Act or the Sex Offender
14 Commitment Act or receives treatment prescribed by such institution or
15 facility following release or without being admitted as a resident
16 patient, the patient and the patient's relatives shall be liable for the
17 cost of the care, support, maintenance, and treatment of such person to
18 the extent and in the manner provided by sections 83-227.01, 83-227.02,
19 83-350, and 83-363 to 83-380. Such sections also shall apply to persons
20 admitted to a state institution as transferees from any state penal
21 institution or youth rehabilitation and treatment center but only after
22 the expiration of the time for which the transferees were originally
23 sentenced or committed.

24 (2) In the case of a subject domiciled in Indian country in Nebraska
25 who is committed for treatment under tribal law as provided in section 10
26 or 21 of this act, the tribe shall make arrangements for payment of the
27 cost of care for such services.

28 Sec. 31. Original sections 71-901, 71-902, 71-903, 71-910, 71-912,
29 71-919, 71-920, 71-926, 71-929, 71-936, 71-937, 71-939, 71-958, 71-961,
30 71-1201, 71-1203, 71-1204, 71-1206, 71-1210, 71-1213, 71-1220, 71-1221,
31 and 71-1223, Reissue Revised Statutes of Nebraska, and sections 83-338

1 and 83-364, Revised Statutes Cumulative Supplement, 2022, are repealed.