

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 663

Introduced by Geist, 25.

Read first time January 20, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to mental health records; to amend sections
- 2 71-925 and 71-961, Reissue Revised Statutes of Nebraska, and section
- 3 83-109, Revised Statutes Cumulative Supplement, 2020; to provide for
- 4 the release of certain information to the Nebraska Commission on Law
- 5 Enforcement and Criminal Justice; to provide a duty for the
- 6 commission; to define a term; to harmonize provisions; and to repeal
- 7 the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-925, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-925 (1) The state has the burden to prove by clear and convincing
4 evidence that (a) the subject is mentally ill and dangerous and (b)
5 neither voluntary hospitalization nor other treatment alternatives less
6 restrictive of the subject's liberty than inpatient or outpatient
7 treatment ordered by the mental health board are available or would
8 suffice to prevent the harm described in section 71-908.

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

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

27 (4) If the subject admits the allegations of the petition or the
28 mental health board finds that the subject is mentally ill and dangerous
29 and that neither voluntary hospitalization nor other treatment
30 alternatives less restrictive of the subject's liberty than inpatient or
31 outpatient treatment ordered by the board are available or would suffice

1 to prevent the harm described in section 71-908, the board shall, within
2 forty-eight hours, (a) order the subject to receive outpatient treatment
3 or (b) order the subject to receive inpatient treatment. If the subject
4 is ordered by the board to receive inpatient treatment, the order shall
5 commit the subject to the custody of the Department of Health and Human
6 Services for such treatment.

7 (5)(a) If the Department of Health and Human Services takes custody
8 of a subject under subsection (4) of this section, the department shall
9 provide the Nebraska Commission on Law Enforcement and Criminal Justice
10 with the name, address, birth date, social security number, and any other
11 information of the subject as is strictly necessary to properly identify
12 the subject using the indicator described in subdivision (5)(b) of this
13 section.

14 (b) Using the information provided under this subsection, the
15 commission shall establish an indicator within a criminal justice
16 information system maintained in this state. The indicator shall not
17 include any information other than that a subject was ordered to
18 inpatient treatment and committed to the custody of the department. The
19 commission shall grant access to the indicator to emergency dispatch
20 operators or other persons designated by the commission to carry out the
21 purposes of this subdivision. The indicator shall be used by emergency
22 dispatch operators or other persons designated by the commission to alert
23 law enforcement personnel or other first responders that the subject has
24 been previously ordered to inpatient treatment and committed to the
25 custody of the department.

26 (c) The department and commission shall establish procedures for
27 furnishing the information required by this subsection which shall
28 guarantee that no information is released beyond what is necessary for
29 purposes of this subsection.

30 (d) For purposes of this subdivision, emergency dispatch operator
31 means the dispatch operator of a public safety answering point as defined

1 in section 86-431.

2 (6) ~~(5)~~ A subject who (a) is ordered by the mental health board to
3 receive inpatient treatment and (b) has not yet been admitted for such
4 treatment pursuant to such order may petition for a rehearing by the
5 mental health board based on improvement in the subject's condition such
6 that inpatient treatment ordered by the board would no longer be
7 necessary or appropriate.

8 (7) ~~(6)~~ A treatment order by the mental health board under this
9 section shall represent the appropriate available treatment alternative
10 that imposes the least possible restraint upon the liberty of the
11 subject. The board shall consider all treatment alternatives, including
12 any treatment program or conditions suggested by the subject, the
13 subject's counsel, or other interested person. Inpatient hospitalization
14 or custody shall only be considered as a treatment alternative of last
15 resort. The county attorney and the subject may jointly offer a proposed
16 treatment order for adoption by the board. The board may enter the
17 proposed order without a full hearing.

18 (8) ~~(7)~~ The mental health board may request the assistance of the
19 Department of Health and Human Services or any other person or public or
20 private entity to advise the board prior to the entry of a treatment
21 order pursuant to this section and may require the subject to submit to
22 reasonable psychiatric and psychological evaluation to assist the board
23 in preparing such order. Any mental health professional conducting such
24 evaluation at the request of the mental health board shall be compensated
25 by the county or counties served by such board at a rate determined by
26 the district judge and reimbursed for mileage at the rate provided in
27 section 81-1176.

28 Sec. 2. Section 71-961, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 71-961 (1) All records kept on any subject shall remain confidential
31 except as otherwise provided by law. Such records shall be accessible to

1 (a) the subject, except as otherwise provided in subsection (2) of this
2 section, (b) the subject's legal counsel, (c) the subject's guardian or
3 conservator, if any, (d) the mental health board having jurisdiction over
4 the subject, (e) persons authorized by an order of a judge or court, (f)
5 persons authorized by written permission of the subject, (g) agents or
6 employees of the Department of Health and Human Services upon delivery of
7 a subpoena from the department in connection with a licensing or
8 licensure investigation by the department, (h) individuals authorized to
9 receive notice of the release of a sex offender pursuant to section
10 83-174, (i) the Nebraska State Patrol or the department pursuant to
11 section 69-2409.01, ~~or~~ (j) the Division of Parole Supervision if the
12 subject meets the requirements for lifetime community supervision
13 pursuant to section 83-174.03, or (k) the entities described in
14 subsection (5) of section 71-925.

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. 3. Section 83-109, Revised Statutes Cumulative Supplement,
30 2020, is amended to read:

31 83-109 The Department of Health and Human Services shall have

1 general control over the admission of patients and residents to all
2 institutions over which it has jurisdiction. Each individual shall be
3 assigned to the institution best adapted to care for him or her. A record
4 of every patient or resident of every institution shall be kept complete
5 from the date of his or her entrance to the date of his or her discharge
6 or death, such records to be accessible only (1) to the department, a
7 legislative committee, the Governor, any federal agency requiring medical
8 records to adjudicate claims for federal benefits, and any public or
9 private agency under contract to provide facilities, programs, and
10 patient services, (2) upon order of a judge or court, (3) in accordance
11 with sections 20-161 to 20-166, (4) to the Nebraska State Patrol pursuant
12 to section 69-2409.01, (5) to those portions of the record required to be
13 released to a victim as defined in section 29-119 in order to comply with
14 the victim notification requirements pursuant to subsections (4) and (5)
15 of section 81-1850, (6) to law enforcement and county attorneys when a
16 crime occurs on the premises of an institution, (7) upon request when a
17 patient or resident has been deceased for fifty years or more, ~~or~~ (8) to
18 current treatment providers, or (9) to the entities described in
19 subsection (5) of section 71-925. In addition, a patient or resident or
20 his or her legally authorized representative may authorize the specific
21 release of his or her records, or portions thereof, by filing with the
22 department a signed written consent. Transfers of patients or residents
23 from one institution to another shall be within the exclusive
24 jurisdiction of the department and shall be recorded in the office of the
25 department, with the reasons for such transfers. When the department is
26 unable to assign a patient to a regional center or commit him or her to
27 any other institution at the time of application, a record thereof shall
28 be kept and the patient accepted at the earliest practicable date. The
29 superintendents of the regional centers and Beatrice State Developmental
30 Center shall notify the department immediately whenever there is any
31 question regarding the propriety of the commitment, detention, transfer,

1 or placement of any person admitted to a state institution. The
2 department shall then investigate the matter and take such action as
3 shall be proper. Any interested party who is not satisfied with such
4 action may appeal such action, and the appeal shall be in accordance with
5 the Administrative Procedure Act. The department shall have full
6 authority on its own suggestion or upon the application of any interested
7 person to investigate the physical and mental status of any patient or
8 resident of any regional center or the Beatrice State Developmental
9 Center. If upon such investigation the department considers such patient
10 or resident fit to be released from the regional center or Beatrice State
11 Developmental Center, it shall cause such patient or resident to be
12 discharged or released on convalescent leave.

13 Sec. 4. Original sections 71-925 and 71-961, Reissue Revised
14 Statutes of Nebraska, and section 83-109, Revised Statutes Cumulative
15 Supplement, 2020, are repealed.