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A Guide to Nebraska's Mental Health Commitment Act

What is the Mental Health Commitment Act and what does it do?

The Mental Health Commitment Act is designed to provide treatment for people who are "mentally ill and dangerous." Nebraska public policy encourages people to seek mental health treatment voluntarily. However, if people who are "mentally ill and dangerous" do not seek treatment voluntarily, the Act will require them to go through a mental health board proceeding. This proceeding may result in their receiving treatment on an involuntary basis. Neb. Rev. Stat. §71-902 et seq. (2004).

What is a "mentally ill and dangerous person"?

Nebraska law considers a "mentally ill and dangerous person," as someone who:

- Is mentally ill **or** substance dependent and because of this mental illness or substance dependence, presents a "substantial risk of serious harm to:
- another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm;" <u>or</u>
- himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety." Neb. Rev. Stat. §71-908 (2004).

What are the ways in which a person may be involuntarily committed to a mental health care facility under the Mental Health Commitment Act?

There are several ways in which a person may be involuntarily committed to receive mental health treatment. Following is a list of those ways along with an explanation of each.

Emergency Protective Custody

A law enforcement officer who has probable cause to believe that a person may be mentally ill and dangerous may take the person into custody and have the person admitted to a medical treatment facility with a written certificate. A mental health professional may also hold a

person for the law enforcement officer if the professional has probable cause to believe the person is mentally ill and dangerous. In either situation, the law enforcement officer must write a certificate stating the officer's belief that the person is mentally ill and dangerous. The certificate must also contain information of the person's behavior that would support the officer's belief. A copy of the certificate must be immediately sent to the county attorney.

If a law enforcement officer takes a person into emergency protective custody, a mental health professional will evaluate the person as soon as possible. This evaluation must be conducted no later than 36 hours after admission. The person who performs the evaluation may not be any of the following:

- The mental health professional who had the person taken into custody
- A member or alternate member of the Mental Health Board that will preside over the person's mental health commitment proceeding

If, after the evaluation, the mental health professional finds that the person is not mentally ill and dangerous, the person must be released immediately. However, if the mental health professional finds the person is mentally ill and dangerous, he or she will execute a written certificate within 24 hours after completing the evaluation. A copy of the certificate will be immediately sent to the county attorney. Neb. Rev. Stat. §§71-919 (2007); 71-920 (2004).

County Attorney Receives Complaint

If a person believes someone is mentally ill and dangerous, they may communicate this to the county attorney or they may have a law enforcement officer file a certificate with the county attorney. If the county attorney agrees that the person is mentally ill and dangerous and that neither voluntary hospitalization nor less restrictive treatment options are appropriate, the county attorney will file a petition with the clerk of the district court. Neb. Rev. Stat. §71-921 (2004).

Are there other ways in which a person may be committed to a mental health treatment facility that do not fall under the Mental Health Commitment Act?

Yes. There are two other situations in which a person may be committed to a mental health treatment facility. Each situation is described below.

Transfer from Correctional Facility

Prisoners may need mental health treatment while they are in custody. If they do need such treatment, they may be transferred to a mental health treatment facility. Generally, the Director of Correctional Services will appoint a physician or psychologist to examine whether the prisoner has a need for mental health treatment and whether the correctional facility can provide him or her with adequate treatment. If adequate treatment cannot be provided in the correctional facility, the prisoner will be transferred to a mental health treatment facility. The

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Department of Correctional Services will make discharge decisions in this case. Neb. Rev. Stat. §§83-180(1); 83-180(2) (1996).

"Voluntary" Admission through Guardian

A guardian may voluntarily admit his or her ward to a mental health treatment facility without having a hearing before a judge or the Mental Health Board. Neb. Rev. Stat. §30-2628 (Cum. Supp. 2004). The guardian acts as a third party who is looking to protect the best interests of the ward when the ward is not competent to make such decisions. Therefore, it is not necessary that the ward agree to be admitted to a mental health treatment facility when the guardian deems it necessary.

Can a person voluntarily commit himself or herself to a mental health treatment facility?

Yes. If the person voluntarily applies for admission to a treatment facility, he or she must provide a written request if he or she wishes to be discharged. The person will be unconditionally discharged within 48 hours after delivering a written request to the hospital, treatment facility, or program. However, action may be taken under the Nebraska Mental Health Commitment Act to continue the custody of the person. Neb. Rev. Stat. §71-918 (2006).

How are Mental Health Board proceedings initiated?

Mental Health Board proceedings begin once the county attorney has filed a petition or has received notification from a law enforcement officer that a person has been taken into emergency protective custody. The county attorney will file a petition as soon as is reasonably practicable once he or she has received notification. After the county attorney files a petition, the clerk of the district court will set a hearing date within seven calendar days of when the person was taken into custody. Neb. Rev. Stat. §§71-922 (2005); 71-923 (2004).

County Attorney and Petition

The county attorney will file a petition to have a person committed to a mental health treatment facility if he or she agrees that the person is mentally ill and dangerous and that neither voluntary hospitalization nor a less restrictive form of treatment is appropriate. The petition will be filed with the clerk of the district court in any county within:

- The judicial district in which the person is located
- The judicial district in which the person's alleged behavior occurred prompting the basis for the petition or
- Another judicial district in the State of Nebraska if authorized, upon good cause shown, by a district judge of the judicial district in which the person is located. Neb. Rev. Stat. §71-921 (2004).

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The petition may include a request for emergency protective custody and evaluation of the person before the mental health board hearing begins. If the court or chairperson of the mental health board has probable cause to believe that the person is mentally ill and dangerous, a warrant directing the sheriff to take custody of the person may be issued.

If the person is already in emergency protective custody, a copy of the certificate must be filed with the petition. The person will be held in the nearest appropriate and available medical facility and will not be placed in jail. Neb. Rev. Stat. §71-922 (2005).

Summons

Once a petition is filed, the clerk of the district court will have a summons fixing the time and place for a hearing prepared and issued to the sheriff for service.

The sheriff will personally serve the summons to the subject and if the subject is a minor or is incapacitated, to the subject's guardian. Copies of the petition, the list of the person's rights (See "What are the rights of persons in need of treatment" (page 8)), and a notice of the names, addresses, and phone numbers of mental health professionals in the area who may evaluate the person before the hearing will be served along with the summons. The summons will also include the time and place of the hearing which is to commence within seven calendar days. If the person does not appear as required by the summons, a warrant may be issued. Neb. Rev. Stat. §71-923 (2004).

Warrant

If the person fails to appear at a hearing after being served a summons, the mental health board may issue a warrant to take the person into custody. Neb. Rev. Stat. §71-923 (2004).

What happens at a Mental Health Board hearing?

The mental health board will conduct a hearing to determine if there is "clear and convincing evidence" that the person is mentally ill and dangerous and that neither voluntary hospitalization nor a less restrictive treatment alternative is possible.

When the hearing begins, the Mental Health Board must ask if the person has received a copy of the petition and a list of rights. (See "What are the rights of persons in need of treatment" (page 8)) The Mental Health Board must also ask if the person has read and understood the petition and rights. If there is a part of the petition or rights that the person has not read or understood, the Mental Health Board must explain to the person the unread parts or portions not understood.

The Mental Health Board must also ask the person whether he or she admits or denies the allegations contained in the petition. If the person admits the allegations, the Mental Health

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Board will enter a treatment order. However, if the person denies the allegations of the petition, the board will continue with the hearing. Neb. Rev. Stat. §§71-924; 71-925 (2004).

Person is not found to be mentally ill and dangerous

If the Mental Health Board determines that there is not clear and convincing evidence that the person is mentally ill and dangerous, then the person must be unconditionally discharged and the petition dismissed. Neb. Rev. Stat. §71-925 (2004).

Person is found to be mentally ill and dangerous and If voluntary hospitalization or less restrictive alternative is possible

If the Mental Health Board determines that there is clear and convincing evidence that the person is mentally ill and dangerous **but** that a voluntary hospitalization or some less restrictive alternative is possible, the board will either:

- Dismiss the petition and unconditionally discharge the person <u>or</u>
- Suspend the proceedings for up to 90 days to allow the person to seek voluntary treatment. Neb. Rev. Stat. §71-925 (2004).
- Suspend proceedings

If the proceedings are suspended, during the 90-day period, the county attorney may apply with the board to reinstate the proceedings. After giving notice to the person who is the subject of the proceedings, his or her counsel (if any), and his or her guardian (if any), the Mental Health Board will hear the application. However, if no application is filed or pending after the 90 day period, the board will dismiss the petition and order an unconditional discharge of the person. Neb. Rev. Stat. §71-925 (2004).

If voluntary commitment or less restrictive alternative is not possible

If the Mental Health Board determines there is clear and convincing evidence that the person is mentally ill and dangerous **and** that voluntary hospitalization or a less restrictive treatment alternative is *not* possible, within 48 hours the board will:

- Order the person to receive outpatient treatment or
- Order the person to receive inpatient treatment. Neb. Rev. Stat. §71-925 (2004).

If it is determined that inpatient treatment is necessary, can the decision be appealed?

Yes. Either the person subject to the commitment or the county attorney may appeal a treatment order of the mental health board to the district court. Final district court orders may then be appealed to the Court of Appeals pursuant to the procedure in criminal cases. Once a final judgment is made, it will be certified and will become a part of the records of the mental health board with respect to that person. Neb. Rev. Stat. §71-930 (2004).

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What treatment will a person receive?

Placement considerations for treatment

If the mental health board orders a person to receive inpatient treatment but the person has not yet been admitted for treatment, the person may petition for a rehearing based on improvement in his or her condition. This improvement would need to show that inpatient treatment would no longer be necessary or appropriate.

If the mental health board does order treatment, the board must consider all treatment alternatives. In doing so, the board must impose the least restraint possible on the person. Inpatient treatment should be considered as a last resort. Both the county attorney and the person may offer proposed treatment orders that the board may choose to adopt. If the board adopts the proposed treatment, it may enter a proposed order without a full hearing.

The mental health board may also request the Department of Health and Human Services (DHHS) or any other person or public or private entity to advise it before entering a treatment order and may also require the person to undergo a psychiatric or psychological evaluation. Neb. Rev. Stat. §71-925 (2004).

Treatment Plan

If it has been determined that the person is in need of treatment once the hearing has been concluded, the Mental Health Board will designate a person or agency to prepare and oversee an individualized treatment plan for the person. The designated person or agency responsible for the plan must also record the progress of the patient and report such progress to the mental health board. Neb. Rev. Stat. §71-932 (2004).

Contents of the treatment plan

The individualized treatment plan must contain the following:

- the nature of the subject's mental illness or substance dependence;
- the least restrictive treatment alternative appropriate for the person; and
- intermediate and long-term treatment goals with a timetable denoting when those goals are to be reached. Neb. Rev. Stat. §71-931 (2004).

Copies of the treatment plan

The treatment plan will be filed with the mental health board and will be included in the person's mental health board file. Within five working days after the entry of the board's order, a copy of the plan must also be served upon:

- The county attorney
- The person
- The person's counsel and
- The person's legal guardian or conservator (if any). Neb. Rev. Stat. §71-931 (2004).

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Implementation of the treatment plan

Once a treatment plan has been prepared, treatment shall begin within two working days. Neb. Rev. Stat. §71-931 (2004).

What the person in need of treatment is entitled to know

The person in need of treatment is entitled to know the contents of the treatment plan and what he or she must do to meet the requirements of the plan. The person will be notified when the mental health board has changed the treatment needs of the person or has ordered the person to be discharged. Neb. Rev. Stat. §71-931 (2004).

Progress Reports

The person or agency responsible for preparing and overseeing the person's treatment plan must submit periodic progress reports to the mental health board. The mental health board may distribute copies of the progress report to other interested persons.

Contents of the progress report

Each progress report will state a summary of the progress made toward the goals in the treatment plan. The report will also state whether the treatment plan has been modified.

Copies of progress reports

Progress reports must be filed with the mental health board. The mental health board will review the reports and will include them in the person's file. Progress reports will also be served upon the county attorney, the person in need of treatment, the person's counsel, and the person's legal guardian or conservator (if any) within ten days of the submission of the person's individualized treatment plan when inpatient treatment is required.

Frequency of filing progress reports

Progress reports must be filed and served at least every ninety (90) days for one year after the first treatment plan has been submitted. After one year, progress reports must be filed and served every six months. Neb. Rev. Stat. §71-932 (2004).

Review hearing

After the filing of each progress report, the person in need of treatment, the person's counsel, or the person's legal guardian or conservator (if any) may request and is entitled to:

- a review hearing by the mental health board and
- seek from the board an order of discharge from commitment or change in treatment ordered by the board

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If a request is made, the mental health board **must** schedule the hearing within 14 calendar days of receiving the written request. The mental health board **may** also schedule a review hearing:

- at any time
- upon the request of the person, the person's counsel, the person's legal guardian or conservator (if any), the county attorney, the official, agency, or other person or entity designated by the mental health board to prepare and oversee the person's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or
- upon the board's own motion.

The board will immediately discharge the person or enter a new treatment order when anyone is able to show or it is documented through the filed periodic reports that:

- cause no longer exists for care or treatment of the person or
- a less restrictive treatment alternative exists for the person. Neb. Rev. Stat. §71-935 (2004).

Change in treatment

At times, persons may need to have their treatment changed so that they will receive treatment that is more or less restrictive than their current treatment.

Outpatient treatment

The treatment provider must submit a report to the mental health board and the county attorney if:

- The person is not following his or her individualized treatment plan
- The person is not following the conditions set by the mental health board
- The current treatment is not effective or
- There has been a significant change in the person's mental illness or substance dependence. Neb. Rev. Stat. §71-933 (2004).

Once the county attorney receives the report, he or she will determine if there is a factual basis for the report.

No factual basis is found

If there is no factual basis for the report, no further action will be taken and the board will be notified of this finding.

Factual basis is found

If factual basis is found for the report and it is necessary for the mental health board to intervene to protect the person, the county attorney may file a motion for reconsideration and have the matter set for hearing. The county attorney may apply for a warrant to take the person

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into custody immediately while awaiting rehearing from the board if the county attorney believes the person poses a direct threat to himself, herself, or others. Neb. Rev. Stat. §71-933 (2004).

The mental health board will hold a hearing to examine whether the current treatment plan is appropriate to safely and adequately address the person's needs. The Mental Health Board will then decide whether the current treatment plan will be continued, modified, or ended. Neb. Rev. Stat. §71-934 (2004).

No longer a need for treatment

If an administrator of a treatment facility determines that a person may be safely and properly discharged or placed on convalescent leave, the administrator shall immediately submit a written notice to the mental health board of the judicial district where the person was committed. The mental health board will forward the notice onto the county attorney. The board will then conduct a hearing to determine whether the person is mentally ill and dangerous. Neb. Rev. Stat. §§71-936, 71-937 (2004).

In the hearing, the board will determine whether the person is complying with the conditions of their release from treatment, including taking their medications. If the board finds through clear and convincing evidence that the person is mentally ill and dangerous, the board must enter an order of final disposition within 48 hours. Neb. Rev. Stat. §71-938 (2004). If the need for treatment no longer exists or if treatment can be provided in a less restrictive manner, the mental health board must order an immediate discharge of the person or change the treatment. If a change in treatment occurs, due process protection will apply to the person. Neb. Rev. Stat. §§71-935 (2004).

What are the rights of persons in need of treatment?

Under the Nebraska Mental Health Commitment Act, a person who is in custody or receiving treatment has the right to:

- Be considered legally competent for all purposes unless he or she has been declared legally incompetent. The mental health board does <u>not</u> have the power to declare someone incompetent.
- Receive prompt and adequate evaluations and treatment for any mental illness, personality disorders, and physical ailments. They must also be given the opportunity to participate in the planning of their treatment to the extent that the mental health professional in charge of the person's treatment deems such input appropriate.
- Refuse treatment medication, except:
  - In an emergency, such medication as is essential in the judgment of the mental health professional in charge of the person's treatment to prevent the person from causing harm to himself, herself, or others.
  - Communicate freely with others by sealed mail, personal visitation, and private telephone conversations.

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- Have reasonably private living conditions, including private storage space for personal belongings.
- Engage or refuse to engage in religious worship and political activity.
- Be compensated for his or her labor as stated in the federal Fair Labor Standards Act, 29 U.S.C. 206.
- Have access to a patient grievance procedure.
- File, either personally or through counsel, petitions or applications for writs of habeas corpus in order to challenge the legality of his or her custody or treatment. Neb. Rev. Stat. §71-959 (2006).

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