

LEGISLATIVE BILL 1288

Approved by the Governor April 16, 2024

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

A BILL FOR AN ACT relating to tribal matters; to amend sections 53-167.02, 53-180.06, 69-2404, 69-2430, 71-901, 71-902, 71-903, 71-910, 71-912, 71-919, 71-920, 71-926, 71-929, 71-936, 71-937, 71-939, 71-958, 71-961, 71-1201, 71-1203, 71-1204, 71-1206, 71-1210, 71-1213, 71-1220, 71-1221, and 71-1223, Reissue Revised Statutes of Nebraska, section 83-338, Revised Statutes Cumulative Supplement, 2022, and section 28-1202.03, Revised Statutes Supplement, 2023; to allow the use of tribal enrollment cards for proof of age and identity for certain firearm and alcohol laws; to provide for recognition of tribal mental health and dangerous sex offender commitment orders as prescribed; to provide for tribal law enforcement officers to take a subject into emergency protective custody; to provide for transportation of and commitment of persons committed under tribal law and for payment of related costs; to define and redefine terms; to eliminate obsolete provisions; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 28-1202.03, Revised Statutes Supplement, 2023, is amended to read:

28-1202.03 (1)(a) This section applies to a person who is not otherwise prohibited by state law from possessing or carrying a concealed handgun.

(b) This section does not apply to a qualified law enforcement officer or qualified retired law enforcement officer carrying a concealed handgun pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023.

(2) Except as provided in subsection (3) of this section, any time a person is carrying a concealed handgun, such person shall also carry such person's identification document. The person shall display the identification document when asked to do so by a peace officer or by emergency services personnel.

(3) A person is not required to comply with this section if:

(a) Such person is storing or transporting a handgun in a motor vehicle for any lawful purpose or transporting a handgun directly to or from a motor vehicle to or from any place where such handgun may be lawfully possessed or carried by such person; ~~and~~

(b) Such handgun is unloaded, kept separate from ammunition, and enclosed in a case.

(4) For purposes of this section:

(a) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act or authorized to provide emergency medical services pursuant to the EMS Personnel Licensure Interstate Compact; and

(b) Identification document means a valid:

(i) Driver's or operator's license;

(ii) State identification card;

(iii) Military identification card;

(iv) Alien registration card; ~~or~~

(v) Passport; ~~or~~

(vi) Tribal enrollment card; and

(c) Tribal enrollment card means an identification document:

(i) Issued by a tribe which is recognized by a state or the federal government; and

(ii) Which contains a photograph of the person identified and such person's date of birth.

(5) A violation of this section is a Class III misdemeanor for a first offense and a Class I misdemeanor for any second or subsequent offense.

Sec. 2. Section 53-167.02, Reissue Revised Statutes of Nebraska, is amended to read:

53-167.02 (1) When any person licensed to sell alcoholic liquor at retail sells alcohol for consumption off the premises in a container with a liquid capacity of five or more gallons or eighteen and ninety-two hundredths or more liters, the seller shall record the date of the sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, tribal enrollment card as defined in section 28-1202.03, or military identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months.

(2) The commission shall adopt and promulgate rules and regulations which require the licensee to place a label on the alcohol container, which label shall at least contain a keg identification number and shall be on a form

prescribed by the commission. Such label shall be placed on the keg at the time of retail sale. The licensee shall purchase the forms referred to in this section from the commission. The cost incurred to produce and distribute such forms shall be reasonable and shall not exceed the reasonable and necessary costs of producing and distributing the forms. Any money collected by the commission relating to the sale of such forms shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) The keg identification number for each container shall be registered with the commission. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall, upon conviction, be guilty of a Class III misdemeanor.

Sec. 3. Section 53-180.06, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.06 (1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, state identification card, military identification card, alien registration card, ~~or~~ passport, or tribal enrollment card as defined in section 28-1202.03.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

Sec. 4. Section 69-2404, Reissue Revised Statutes of Nebraska, is amended to read:

69-2404 Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or tribal enrollment card as defined in section 28-1202.03. ~~If or~~ if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Sec. 5. Section 69-2430, Reissue Revised Statutes of Nebraska, is amended to read:

69-2430 (1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, ~~or~~ military identification card, or tribal enrollment card as defined in section 28-1202.03 and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name; motor vehicle operator's license number, or state identification card number, or tribal enrollment card number; address; and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

~~(3)(a) Until January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.~~

~~(3) The (b) Beginning January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within forty-five days after the date an application for the permit has been made by the applicant if the applicant has complied with this section and has met all the requirements of section 69-2433.~~

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Sec. 6. Section 71-901, Reissue Revised Statutes of Nebraska, is amended to read:

71-901 Sections 71-901 to 71-963 and sections 9, 12, 13, and 15 of this

act shall be known and may be cited as the Nebraska Mental Health Commitment Act.

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

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

Sec. 8. Section 71-903, Reissue Revised Statutes of Nebraska, is amended to read:

71-903 For purposes of the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections 71-904 to 71-914 and sections 9, 12, and 13 of this act shall apply.

Sec. 9. Indian country has the same meaning as in 18 U.S.C. 1151, as such section existed on January 1, 2024.

Sec. 10. Section 71-910, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) Peace officer or law enforcement officer includes a member of a tribal police department or federal law enforcement officer duly authorized to assert law enforcement powers by a tribe in the State of Nebraska.

Sec. 11. Section 71-912, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) Subject also includes a person who is a member of a tribe or eligible for membership in a tribe, who is domiciled within Indian country in Nebraska, and concerning whom mental health involuntary commitment or emergency protective custody proceedings have been initiated under tribal law.

Sec. 12. Tribe or tribal means an Indian tribe or band which is located in whole or in part within Nebraska and which is recognized by federal law or formally acknowledged by the state.

Sec. 13. Tribal court means a court or tribunal authorized by a tribe to adjudicate legal disputes and carry out the administration of justice in accordance with tribal law.

Sec. 14. Section 71-919, Reissue Revised Statutes of Nebraska, is amended to read:

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

(i) Such person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person; or

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

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

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

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

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

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

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

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

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

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

Sec. 15. (1) With respect to a subject domiciled in Indian country, the State of Nebraska recognizes tribal hold orders, commitment orders, and emergency protective custody orders to the same extent as those initiated by any county in the state or as otherwise provided in the Nebraska Mental Health Commitment Act. This recognition applies only for purposes of treatment of the subject's mental illness or substance dependence, including, but not limited to, commitment to and acceptance for treatment at a regional center or any other treatment facility.

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

(3) The tribal court shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the tribal court and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with law and policies of the treatment facility.

(4) In the case of a subject domiciled within Indian country in Nebraska who is committed for treatment under tribal law as provided in this section, the tribe shall make arrangements for payment of the cost of such treatment services.

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

Sec. 16. Section 71-920, Reissue Revised Statutes of Nebraska, is amended to read:

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

forwarded to the county attorney.

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

- (a) The subject's name and address, if known;
- (b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;
- (c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;
- (d) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence who may be called as a witness at a mental health board hearing with respect to the subject, if known;
- (e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;
- (f) The name and work address of the certifying mental health professional;
- (g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and
- (h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is mentally ill and dangerous and the clinical basis for such opinion.

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

Sec. 17. Section 71-926, Reissue Revised Statutes of Nebraska, is amended to read:

71-926 (1) At the conclusion of a mental health board hearing under section 71-924 and prior to the entry of a treatment order by the board under section 71-925, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in section 71-908 and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

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

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

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

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

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

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

Sec. 18. Section 71-929, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking

his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

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

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

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

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

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

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

Sec. 19. Section 71-936, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(2) In the case of a subject who is domiciled in Indian country and committed for treatment as provided in section 15 of this act, the tribal court shall be notified in writing of the release by the treatment facility of any such subject committed by the tribal court.

Sec. 21. Section 71-939, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2)(a) When any person receiving treatment at a treatment facility or program for persons with mental illness or substance dependence pursuant to an order of a tribal court as provided in section 15 of this act is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the appropriate tribal prosecutor or official.

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

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

(4) Pending the issuance of ~~such the~~ warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in this section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described

in section 71-919 until he or she can be returned to such treatment facility or program.

Sec. 22. Section 71-958, Reissue Revised Statutes of Nebraska, is amended to read:

71-958 Any qualified mental health professional, upon being authorized by the administrator of the treatment facility having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except that a subject shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or, for a subject who is domiciled in Indian country and committed for treatment as provided in section 15 of this act, a hearing held under the equivalent tribal law, as will substantially impair his or her ability to assist in his or her defense at such hearing.

Sec. 23. Section 71-961, Reissue Revised Statutes of Nebraska, is amended to read:

71-961 (1) All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, (h) individuals authorized to receive notice of the release of a sex offender pursuant to section 83-174, (i) the Nebraska State Patrol or the department pursuant to section 69-2409.01, ~~or~~ (j) the Division of Parole Supervision if the subject meets the requirements for lifetime community supervision pursuant to section 83-174.03, and (k) any tribal court having jurisdiction over a subject who is domiciled in Indian country and committed for treatment as provided in section 15 of this act.

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

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

Sec. 24. Section 71-1201, Reissue Revised Statutes of Nebraska, is amended to read:

71-1201 Sections 71-1201 to 71-1226 and section 26 of this act shall be known and may be cited as the Sex Offender Commitment Act.

Sec. 25. Section 71-1203, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) The definitions found in sections 71-905, 71-906, 71-907, 71-910, 71-911, and 83-174.01 and sections 9, 12, and 13 of this act apply;

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

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

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

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

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

Sec. 26. (1) With respect to a subject domiciled in Indian country, the State of Nebraska recognizes tribal hold orders, commitment orders, and emergency protective custody orders to the same extent as those initiated by any county in the state or as otherwise provided in the Sex Offender Commitment Act. This recognition applies only for purposes of treatment of the subject's mental illness, including, but not limited to, commitment to and acceptance for

treatment at a regional center or any other treatment facility.

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

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

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

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

(4) If the tribal court finds a subject living within Indian country to be a dangerous sex offender and the tribal court orders the subject committed to receive inpatient treatment at a treatment facility, the tribal court shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the tribal court and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with law and policies of the treatment facility.

(5) In the case of a subject domiciled within Indian country in Nebraska who is committed for treatment under tribal law as provided in this section, the tribe shall make arrangements for payment of the cost of such treatment services.

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

Sec. 27. Section 71-1204, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

Sec. 28. Section 71-1206, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is a dangerous sex offender as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody, including pursuant to tribal law as provided in section 26 of this act, shall be held in an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility.

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

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

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

Sec. 29. Section 71-1210, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

Sec. 30. Section 71-1213, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

Sec. 31. Section 71-1220, Reissue Revised Statutes of Nebraska, is amended to read:

71-1220 When the administrator of any regional center or treatment facility for the treatment of dangerous sex offenders determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed. In the case of a subject who is domiciled in Indian country and committed for treatment as provided in section 26 of this act, such administrator shall immediately notify the tribal court from which such patient was committed.

Sec. 32. Section 71-1221, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) In the case of a subject who is domiciled in Indian country and committed for treatment as provided in section 26 of this act, the tribal court shall be notified in writing of the release by the treatment facility of any such subject committed by the tribal court.

Sec. 33. Section 71-1223, Reissue Revised Statutes of Nebraska, is amended to read:

71-1223 (1)(a) When any person receiving treatment at a treatment facility or program for dangerous sex offenders pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others.

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

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

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

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

(4) Pending the issuance of such the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has

probable cause to believe that the person is reported to be absent without authorization as described in this ~~the~~ section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

Sec. 34. Section 83-338, Revised Statutes Cumulative Supplement, 2022, is amended to read:

83-338 (1) If at any time it becomes necessary, for lack of capacity or other cause, to establish priorities for the admission of patients into the state hospitals for the mentally ill, admission shall be limited to: (a) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (b) defendants who are determined by a court to be incompetent to stand trial and who remain lodged in the county jail; (c) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, ~~or~~ by a district court, or by a tribal court as provided in section 15 or 26 of this act; (d) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a mental health board or whether such patients seek voluntary admission to one of the state hospitals; and (e) when cases are equally meritorious, in all other respects, patients who are indigent.

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

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

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

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

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

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

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

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

Sec. 35. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36 of this act become operative on October 1, 2024. The other sections of this act become operative on their effective date.

Sec. 36. Original sections 71-901, 71-902, 71-903, 71-910, 71-912, 71-919, 71-920, 71-926, 71-929, 71-936, 71-937, 71-939, 71-958, 71-961, 71-1201, 71-1203, 71-1204, 71-1206, 71-1210, 71-1213, 71-1220, 71-1221, and 71-1223, Reissue Revised Statutes of Nebraska, and section 83-338, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 37. Original sections 53-167.02, 53-180.06, 69-2404, and 69-2430, Reissue Revised Statutes of Nebraska, and section 28-1202.03, Revised Statutes Supplement, 2023, are repealed.