

Nebraska State Guidance

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Statutory basis and key terms

Revised Statutes of Nebraska Chapter 71, Article 9

Follow this link to read the Statutes in full here:

<https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=71>

Key definitions

“Mentally ill and dangerous person” refers to someone whose mental illness or substance use creates a substantial risk of serious harm to others within the near future as shown by recent violence, threats, or causing reasonable fear. Also includes substantial risk of harm to themselves within the near future, shown by recent suicide attempts or threats, or an inability to meet basic needs like food, shelter, medical care, or personal safety.

“Mentally ill” means having a psychiatric disorder that involves a severe or substantial impairment of a person’s thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with their ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

“Substance dependent” is a behavioral disorder that involves an unhealthy pattern of repeated use of controlled substances, illegal drugs, or alcohol, usually resulting in increased tolerance, withdrawal, and compulsive using behavior and including a cluster of cognitive, behavioral, and physiological symptoms involving the continued use of such substances despite significant adverse effects resulting from such use.

“Mental health board” means a board appointed by the presiding district court judge in each judicial district to hear civil commitment cases. The judge may appoint up to three boards.

A **“mental health professional”** is someone licensed in Nebraska to practice medicine, psychology, or advanced practice nursing with a psychiatric or mental health certification.

“Convalescent leave” is a temporary, supervised release from a treatment facility when staff believe the person is stable enough to live outside the facility but still needs monitoring or ongoing care. It’s essentially a step-down period: the person is not fully discharged yet, but they are allowed to live in the community under certain conditions while continuing treatment.

Key abbreviation

Law enforcement officer (LEO)

Emergency evaluation

Criteria for emergency evaluation

Mentally ill and dangerous person (see key definitions).

Who can initiate an emergency evaluation?

Law enforcement officers (LEO), mental health professionals, and county attorneys can initiate emergency evaluation, and the process differs based on who initiates.

Law enforcement officer (LEO)

How? Have probable cause the person meets criteria.

What do they initiate? May initiate emergency protective custody and transport by LEO.

Where does the proposed patient go? If someone is taken into emergency protective custody and they are not a convicted sex offender, they should be taken to an appropriate medical facility. However, if no medical facility has space, they may be held in a jail or another facility that has an open mental health bed under the Regional Mental Health Expansion Pilot Program until an appropriate facility becomes available.

A person taken into emergency protective custody who is a convicted sex offender will be admitted to a jail or correctional facility, except if the person has a medical or psychiatric emergency, they will be taken to a medical facility for treatment. Once the emergency is over and it is safe to transport them, the person will be transferred to a jail or correctional facility.

What's the time limit for the response? There is no time limit prescribed for LEO, mental health professional, or the court's response.

What happens? Upon admission, the LEO must write a statement explaining why they believe the person meets the criteria and briefly describe the behavior that led to that belief. A copy must be sent to the county attorney immediately.

What's next? A mental health professional must evaluate the person as soon as reasonably possible, and no later than 36 hours after they are admitted. This evaluator must be someone different from the professional who initiated custody and cannot be a member of the mental health board that might later hear the case. If everyone agrees and the evaluator thinks it's appropriate, the evaluation can be done by video.

After the evaluation:

- If the professional decides the person does not meet the criteria, the person must be released.
- If the person does meet the criteria, the professional must complete a written certificate within 24 hours and send a copy to the county attorney immediately.

Time duration of the hold? Up to 36 hours for evaluation. If a petition for commitment is filed, emergency protective custody may continue until a hearing on the petition, which must occur within seven days of admission.

Who decides whether to continue to a hearing? The county attorney after receiving the evaluating professional's certificate.

Is there a form? Approved forms for use by mental health professionals and LEO in the commitment process may be found here: <https://dhhs.ne.gov/Pages/Mental-Health-Commitment.aspx>.

Mental health professional

How? Have probable cause the person meets criteria.

What do they initiate? May hold the person until police or another authorized official arrives to take them into protective custody and transport them safely.

Where does the proposed patient go? If someone is taken into emergency protective custody and they are not a convicted sex offender, they should be taken to an appropriate medical facility. However, if no medical facility has space, they may be held in a jail or another facility that has an open mental health bed under the Regional Mental Health Expansion Pilot Program until an appropriate facility becomes available.

A person taken into emergency protective custody who is a convicted sex offender will be admitted to a jail or correctional facility, except if the person has a medical or psychiatric emergency, they will be taken to a medical facility for treatment. Once the emergency is over and it is safe to transport them, the person will be transferred to a jail or correctional facility.

What's the time limit for the response? There is no time limit prescribed for LEO, mental health professional, or the court's response.

What happens? It is unclear from the statute whether the mental health professional or the authorized transporter must write a statement of belief that the person meets criteria with a description of behavior that led to that belief, to be provided to the facility upon admission.

What's next? A mental health professional must evaluate the person as soon as reasonably possible, and no later than 36 hours after they are admitted. This evaluator must be someone different from the professional who initiated custody and cannot be a member of the mental health board that might later hear the case. If everyone agrees and the evaluator thinks it's appropriate, the evaluation can be done by video.

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Time duration of the hold? Up to 36 hours for evaluation. If a petition for commitment is filed, emergency protective custody may continue until a hearing on the petition, which must occur within seven days of admission.

Who decides whether to continue to a hearing? The county attorney after receiving the evaluating professional's certificate.

Is there a form? Approved forms for use by mental health professionals and LEO in the commitment process may be found here: <https://dhhs.ne.gov/Pages/Mental-Health-Commitment.aspx>.

County attorney

How? File a petition for commitment with the clerk of the [district court](#) (see “inpatient and outpatient commitment” below) and include a request for emergency protective custody and evaluation.

What do they initiate? Will initiate review by the court or chairperson of the mental health board for probable cause and potential warrant for protective custody.

Where does the proposed patient go? Nowhere before court or mental health board review the petition.

What's the time limit for the response? There is no time limit prescribed for LEO, mental health professional, or the court's response.

What happens? If the court or mental health board chair finds probable cause to believe the person meets the criteria, they can issue a warrant ordering the sheriff to take the person into custody and bring them to the nearest suitable medical facility for evaluation.

What's next? A mental health professional must evaluate the person as soon as reasonably possible, and no later than 36 hours after they are admitted. This evaluator must be someone different from the professional who initiated custody and cannot be a member of the mental health board that might later hear the case. If everyone agrees and the evaluator thinks it's appropriate, the evaluation can be done by video.

After the evaluation:

- If the professional decides the person does not meet the criteria, the person must be released.
- If the person does meet the criteria, the professional must complete a written certificate within 24 hours and send a copy to the county attorney immediately.

Time duration of the hold? Up to 36 hours for evaluation. If the evaluator finds the individual meets criteria, emergency protective custody may continue until the hearing on the petition, which must occur within seven days of admission.

Who decides whether to continue to a hearing? The county attorney can drop the petition at any time before the commitment hearing begins.

Is there a form? Unclear.

Inpatient and Outpatient Treatment

Criteria for inpatient and outpatient treatment

Mentally ill and dangerous person; *and*

Neither voluntary hospitalization nor other less restrictive alternatives than commitment are available or would suffice to prevent the harm described in “mentally ill and dangerous person.”

Who can initiate an inpatient or outpatient commitment?

Only a county attorney can initiate inpatient or outpatient commitment.

County attorney

How? Anyone can tell the [county attorney](#) if they believe a person meets the criteria for commitment.

If the county attorney finds probable cause to believe the person meets the criteria, they must file a petition in the [district court](#). The petition can be filed in:

- the county where the person is currently located,
- the county where the concerning behavior happened, *or*
- another judicial district in the state, if a judge in the person’s district approves it for good reason.

Required documentation? In the petition, the county attorney must attest to having probable cause to believe that the person meets criteria based upon specific behaviors, acts, attempts, or threats which must be clearly described in the detail of the petition.

When can outpatient be court-ordered? Upon discharge from hospital or from a community setting.

What’s next? The district court clerk schedules the hearing and issues a summons, which the sheriff serves on the person and their guardian or custodian. The sheriff also provides the petition, a rights list, and a list of local mental health evaluators. The mental health board determines whether the person can afford an attorney and notifies the clerk if one must be appointed. The county attorney may withdraw the petition any time before the hearing begins; if so, the board dismisses the case.

At the hearing, the board will decide whether there is clear and convincing evidence that the person meets the required criteria. The board will also ask the person whether they agree with or dispute the statements in the petition.

- If the person agrees with the statements, the board will issue a treatment order.
- If the person disputes the statements, the board will proceed with the full hearing.

After the full hearing:

- If the board finds the person does not meet the criteria*, the case is dismissed and the person is fully released.
- If the board finds the person meets the criteria* but could safely be helped through voluntary or less restrictive treatment, the board may either:
 - dismiss the case and release the person, or
 - pause the case for up to 90 days so the person can get voluntary treatment. During this time, the county attorney may ask the board to restart the case, after notifying the person and their lawyer (and guardian or conservator, if they have one).
- If the person agrees with the statements or the board finds they meet the criteria*, the board must order inpatient or outpatient commitment within 48 hours.

**by clear and convincing evidence*

Who issues the treatment order? The mental health board.

Who makes discharge decisions? The mental health board.

Who supervises the treatment plan? The person or entity designated by the board.

How long can the first treatment order last? The initial order does not have an official end date or time limit but requires board review. The person or organization in charge of the treatment plan must send progress reports to the board at least every 90 days during the first year, and then every six months after that. These reports can result in a review hearing and possibly the person being discharged.

At any point during the treatment order, the person, their lawyer, or their guardian or conservator can ask for a review hearing to decide whether the person still meets the criteria for commitment.

What's the renewal process? The initial order, while periodically reviewed, does not have an official end date, so there is no renewal process.

What's the discharge process? Release by the treatment facility: If the administrator of a treatment facility decides the person can be safely discharged or placed on convalescent leave, they may release the person and must notify the mental health board right away. The board will then immediately notify the county attorney.

Release by the mental health board: The board must discharge the person if, during a review hearing or through the regular treatment reports, it becomes clear that the person no longer meets the legal criteria for commitment.

Review hearings: The mental health board can schedule a review hearing at any time. A hearing may be held when the board receives written notice that the treatment facility has released the person or any of the following request one:

- the committed person
- the person's lawyer
- the person's guardian or conservator, if they have one
- the county attorney
- the person or organization overseeing the treatment plan
- the mental health professional carrying out the treatment plan, or
- the board itself decides to hold one.

Is there a form? Unclear.