

## LEGISLATIVE BILL 325

Approved by the Governor March 13, 1997

Introduced by Wesely, 26

AN ACT relating to victims; to amend section 81-1850, Reissue Revised Statutes of Nebraska, and section 83-109, Revised Statutes Supplement, 1996; to provide notice of certain mental health commitment petitions and dispositions; to provide duties for the Department of Health and Human Services; and to repeal the original sections.

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

Section 1. Section 81-1850, Reissue Revised Statutes of Nebraska, is amended to read:

81-1850. (1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole the name and address of any victim as defined in section 29-119 of the convicted person. The board shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section by sending a written request to the board any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board or the Department of Correctional Services or, if the person is under the jurisdiction of the Department of Health and Human Services, within the three-year period after the convicted person is no longer under the jurisdiction of the board or the Department of Correctional Services.

(2) A victim whose name appears in the file of the convicted person shall be notified by the Board of Parole:

(a) When a convicted person who is on parole is returned to custody because of parole violations; and

(b) If the convicted person has been adjudged a mentally disordered sex offender or is a convicted sex offender, when such person is released from custody or treatment.

Such notification shall be given in person, by telecommunication, or by certified or registered mail.

(3) A victim whose name appears in the file of the convicted person shall be notified by the Department of Correctional Services:

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer;

(b) When a convicted person is released into community-based programs, including educational release, work release, and extended-leave programs. Such notification shall occur at the beginning and termination of any such program;

(c) When a convicted person escapes or does not return from a granted furlough or release and again when the convicted person is returned into custody; and

(d) When a convicted person is discharged from custody upon completion of his or her sentence.

(4) A victim whose name appears in the file of a convicted person shall be notified by the Department of Health and Human Services:

(a) When a person convicted of an offense listed in subsection (5) of this section becomes the subject of a mental health petition pursuant to the Nebraska Mental Health Commitment Act prior to his or her discharge from custody upon the completion of his or her sentence or within thirty days after such discharge. The county attorney who filed the mental health petition shall notify the Department of Correctional Services of such petition. The Department of Correctional Services shall forward the names and addresses of victims appearing in the file of the convicted person to the Department of Health and Human Services;

(b) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection escapes from an inpatient facility providing board-ordered treatment and again when the person is returned to an inpatient facility;

(c) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is discharged or has a change in disposition from inpatient board-ordered treatment;

(d) When a person under a mental health board commitment pursuant to

subdivision (a) of this subsection is granted a furlough or release for twenty-four hours or longer; and

(e) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is released into educational release programs, work release programs, or extended-leave programs. Such notification shall occur at the beginning and termination of any such program.

(4) (5) Subsection (4) of this section applies to persons convicted of at least one of the following offenses which is also alleged to be the recent act or threat underlying the commitment of such persons as mentally ill dangerous persons:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Kidnapping pursuant to section 28-313;

(d) Assault in the first degree pursuant to section 28-308;

(e) Assault in the second degree pursuant to section 28-309;

(f) Sexual assault in the first degree pursuant to section 28-319;

(g) Sexual assault in the second degree pursuant to section 28-320;

(h) Sexual assault of a child pursuant to section 28-320.01;

(i) Stalking pursuant to section 28-311.03; or

(j) An attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (a) through (i) of this subsection.

(6) The Board of Parole, and the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out this section.

Sec. 2. Section 83-109, Revised Statutes Supplement, 1996, is amended to read:

83-109. The Department of Health and Human Services shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her. A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death, such records to be accessible only (1) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, (2) upon order of a judge or court, (3) in accordance with sections 20-161 to 20-166, or (4) to the Nebraska State Patrol pursuant to section 69-2409.01, or (5) to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification requirements pursuant to subsections (4) and (5) of section 81-1850. In addition, a patient or resident or his or her legally authorized representative may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent. Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers. When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept and the patient accepted at the earliest practicable date. The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act. The department shall have full authority on its own suggestion or upon the application of any interested person to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department considers such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

Sec. 3. Original section 81-1850, Reissue Revised Statutes of Nebraska, and section 83-109, Revised Statutes Supplement, 1996, are repealed.