# SENATE COMMITTEE ON PUBLIC SAFETY

**Senator Jesse Arreguín, Chair**
**2025 - 2026 Regular**

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| **Bill No:** | AB 1897 | **Hearing Date:** | June 30, 2026 |
| **Author:** | Haney | | |
| **Version:** | April 29, 2026 | | |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | SJ | | |

**Subject:** ***Mentally disordered offenders: criteria for commitment***

## HISTORY

Source: San Francisco District Attorney's Office

Prior Legislation: AB 2475 (Haney), Ch. 963, Stats. of 2024
SB 1295 (Nielsen), Ch. 430, Stats. of 2016
AB 1065 (Holden), held in Assembly Appropriations, 2014

Support: Los Angeles County District Attorney's Office

Opposition: None known

Assembly Floor Vote: 78 - 0

## PURPOSE

***The purpose of this bill is to require that the incarcerated person being evaluated for commitment as an offender with a mental health disorder (OMHD) undergo the Historical Clinical Risk Management-20, Version 3 (HCR-20) assessment and allow an incarcerated person to file a petition to challenge the OMHD commitment in court in the county of commitment to state prison.***

*Existing law* provides that the Legislature finds that there are incarcerated individuals who have a treatable, severe mental health disorder that was one of the causes of, or was an aggravating factor in, the commission of the crime for which they were incarcerated. Provides that the Legislature finds that if the severe mental health disorders of those incarcerated individuals are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public. Provides that the Legislature finds that in order to protect the public from those persons, it is necessary to provide mental health treatment until the severe mental health disorder that was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission. (Pen. Code, § 2960, subd. (a).)

*Existing law* provides that the Legislature further finds and declares the California Department of Corrections and Rehabilitation (CDCR) should evaluate each incarcerated individual for severe mental health disorders during the first year of the person's sentence, and that incarcerated

individuals with severe mental health disorders should be provided with an appropriate level of mental health treatment while in prison and when returned to the community. (Pen. Code, § 2960, subd. (b).)

*Existing law* allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order an incarcerated person to remain in custody for up to 45 days past the person's scheduled release date for a full OMHD evaluation. Defines good cause to mean circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the incarcerated individual into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the OMHD evaluation. (Pen. Code, § 2963.)

*Existing law* requires incarcerated persons who meet the following criteria to be deemed an OMHD and be treated by the Department of State Hospitals (DSH) as a condition of parole:

- The incarcerated person has a severe mental health disorder that is not in remission or that cannot be kept in remission without treatment.
- The severe mental health disorder was one of the causes of, or was an aggravating factor in, the commission of a crime for which the person was sentenced to prison.
- The incarcerated person has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the person's parole or release.
- The person's severe mental health disorder indicates that the person represents a substantial danger of physical harm to others. (Pen. Code, § 2962, subd. (a)-(d).)

*Existing law* defines "severe mental health disorder" as an illness, disease, or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or that grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. Specifies that "severe mental health disorder" does not include a personality or adjustment disorder, epilepsy, intellectual disability or other developmental disabilities, or addiction to or abuse of intoxicating substances. (Pen. Code, § 2962, subd. (a)(2).)

*Existing law* defines "remission" as a finding that the overt signs and symptoms of the severe mental health disorder are controlled either by psychotropic medication or psychosocial support. (Pen. Code, § 2962, subd. (a)(3).)

*Existing law* provides that a person "cannot be kept in remission without treatment" if during the year prior to the question being before the BPH or a trial court, the person has been in remission and has been physically violent, except in self-defense, or has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for their safety or the safety of their immediate family, or the person has intentionally caused property damage, or has not voluntarily followed the treatment plan. Provides that in determining if a person has voluntarily followed the treatment plan, the standard is whether the person has acted as a reasonable person would in following the treatment plan. (*Ibid*.)

*Existing law* outlines the process by which a person is evaluated to determine whether someone meets the criteria of an OMHD. (Pen. Code, § 2962, subd. (d).)

*Existing law* requires the crime for which the person was sentenced to prison to meet the following criteria:

- The defendant received a determinate sentence.
- The crime is one of the following: voluntary manslaughter; mayhem; kidnapping; a robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon in the commission of that robbery; carjacking if the defendant personally used a deadly or dangerous weapon in the commission of the carjacking; rape; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under 14 years of age; continuous sexual abuse; sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; arson; a felony in which the defendant used a firearm; igniting an explosive or destructive device; attempted murder; any crime not enumerated in which the person used force or violence, or caused serious bodily injury; or a crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in a manner that a reasonable person would believe and expect that the force or violence would be used. (Pen. Code, § 2962, subd. (e).)

*Existing law* provides that "substantial danger of physical harm" does not require proof of a recent overt act. (Pen. Code, § 2962, subd. (g).)

*Existing law* allows the incarcerated person to request a hearing before BPH for the purpose of proving that the person meets the OMHD criteria. Provides that the person may file a petition in the superior court in the county in which the person is incarcerated or being treated. Provides that the burden of proof is on the person or agency who certified the person as an OMHD. Provides that the incarcerated person has the right to a jury trial and the right to be represented by an attorney. Provides that the standard of proof is beyond a reasonable doubt, and if the trial is by jury, the jury verdict must be unanimous. (Pen. Code, § 2966, subds. (a), (b).)

*Existing law* requires CDCR, if the court or jury finds that the person does not meet the OMHD criteria and the person is eligible for release, to notify the probation department of the county of supervision of the pending release within five working days of the court order and work with the county of supervision to coordinate the orderly and safe release of the incarcerated person. (Pen. Code, § 2966, subd. (b).)

*This bill* requires that an incarcerated person being evaluated for commitment as an OMHD undergo the HCR-20 assessment.

*This bill* allows an incarcerated person to file a petition to challenge the OMHD commitment in court in the county of commitment to state prison.

## COMMENTS

### 1. Need For This Bill

According to the author:

> California's Offender with a Mental Health Disorder (OMHD) laws are designed to ensure that individuals with severe mental illness who pose a danger to others receive appropriate treatment while protecting public safety. These determinations are among the most consequential decisions made within our criminal justice and mental health systems, affecting both community safety and the rights of individuals undergoing evaluation. However, current law does not require the use of a standardized violence-risk assessment tool, which can result in inconsistent evaluations and conflicting expert opinions regarding the same individual.
>
> AB 1897 addresses this issue by requiring the use of the Historical Clinical Risk Management-20, Version 3 (HCR-20V3), a widely recognized structured violence-risk assessment tool, as part of OMHD evaluations. By promoting more consistent and evidence-based assessments while preserving clinical discretion and due process protections, this bill strengthens public safety and the integrity of California's commitment process.

### 2. OMHD Commitment

An OMHD commitment, formerly known as a mentally disordered offender commitment, is a post-prison civil commitment to further detain a person with a severe mental health disorder. The OMHD Act is designed to confine a mentally ill individual who is about to be released on parole when it is deemed that that the person's mental illness not only contributed to the commission of a violent crime but also continues to make them dangerous to others. Rather than release the person to the community, CDCR paroles the incarcerated person to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period.

Penal Code section 2962 lists the criteria that must be proven for an initial OMHD certification: the incarcerated person has a severe mental disorder; the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; the disorder is not in remission or capable of being kept in remission without treatment; the incarcerated person was treated for the disorder for at least 90 days in the year before their release; and by reason of the severe mental disorder, the person poses a substantial danger of physical harm to others. (Pen. Code, § 2962, subds. (a)-(d).)

The initial determination that the incarcerated person meets the OMHD criteria is made administratively. The person in charge of treating the incarcerated person and a practicing psychiatrist or psychologist from DSH evaluate the incarcerated person. If it appears that the incarcerated person meets the OMHD criteria, the chief psychiatrist then will certify so to BPH.

The incarcerated person may request a hearing before BPH to require proof that they qualify as an OMHD. If BPH determines that the person meets the criteria of an OMHD, the person may file a petition in the superior court of the county in which they are incarcerated or are being treated for a hearing on whether they, as of the date of the board hearing, meet the criteria. (Pen.

Code, § 2966, subd. (a).) The person is entitled to a jury trial, which can be waived. The jury must unanimously agree that the allegations of the petition were proven beyond a reasonable doubt. If the court or jury reverses the BPH determination, the court must stay the execution of the decision for up to 30 days to allow for an orderly release of the person. (Pen. Code, § 2966, subd. (b).) If the court or jury finds that the person does not meet the OMHD criteria and the person is eligible for release, CDCR must notify the probation department of the county of supervision of the pending release within five working days of the court order and work with the county of supervision to coordinate the release of the incarcerated person. (*Ibid*.)

Under current law, an OMHD must receive inpatient treatment unless there is reasonable cause to believe that the person can be safely and effectively treated on an outpatient basis. (Pen. Code, § 2964.) If the person's severe mental disorder is put into remission during the parole period and can be kept in remission, DSH must discontinue treatment. (Pen. Code, § 2968.) However, if prior to the termination of parole, the person's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital that is treating the person must notify the district attorney who can file a petition in the superior court for continued involuntary treatment for one year. (Pen. Code, § 2970.)

**3. Risk Assessments**

The U.S. Department of Justice (DOJ), Bureau of Justice Assistance provides the following description of risk assessments:

> Local, state and federal criminal justice agencies have increasingly adopted data-driven decision making to supervise, manage, and treat justice-involved populations. As a cornerstone of this movement, risk assessment is used across various stages of the legal process to assess an individual's risk of reoffending (or noncompliance with justice requirements) and identify areas for intervention. For example, risk assessments are used pretrial to inform decisions about release pending adjudication or jail detention. Risk assessments are also used by correctional departments to determine the appropriate programming for incarcerated individuals. Probation and parole departments use risk assessment to set the level of supervision, including home confinement and electronic monitoring. Further, risk assessments are used by case managers and treatment providers to identify needs and link individuals to appropriate services as part of reentry and supervision plans. Once risk and needs are properly and timely identified, criminal justice agencies can then be more effective in ensuring public safety through the appropriate management and rehabilitative programming of justice-involved individuals.
>
> Although risk assessments take various forms and require differing sets of information, most are actuarial rather than clinical, meaning they systematically quantify an individual's risk of reoffending. These quantified "risk scores" help practitioners make operational decisions regarding the classification, management, and treatment of justice-involved populations. Generally, individuals with higher risk scores are assigned more restrictive conditions or referred to more intensive services (interventions), while those with lower risk scores are supervised under less restrictive conditions or receive minimal intervention. Similarly, for risk assessments that include criminogenic needs (i.e.,

> dynamic factors linked directly to criminal behavior), individuals with higher scores in needs domains receive more intensive case management and treatment planning and services than those with lower scores. (U.S. DOJ, *Bureau of Justice Assistance, What is Risk Assessment, Public Safety Risk Assessment Clearinghouse* available at <https://bja.ojp.gov/program/psrac/basics/what-is-risk-assessment>.)

The utility of risk assessments for criminal justice purposes is outlined as follows:

> Risk assessments can help practitioners systematically synthesize information about justice populations and more efficiently distribute limited justice resources. Criminal justice systems lack the resources to provide intense supervision and treatment to everyone who comes into contact with the justice system and must instead decide on whom to target available resources. Further, research has shown that individuals at low risk of reoffending can be successfully managed with minimum or no supervision and may even be harmed by more intensive monitoring and treatment. It thus makes sense to assess individuals' risk and needs systematically and focus limited resources on those with the greatest risks and needs.
>
> Ultimately, the importance of using actuarial risk assessment tools across criminal justice settings and stages is defined by improved consistency, efficiency, and effectiveness. (U.S. DOJ, *What is Risk Assessment*, *supra*).

This bill requires the use of a specific risk assessment, the HCR-20, during the initial OMHD screening. The HCR-20 is a violence risk assessment designed to assist structured decisions about risk of violence. The HCR-20 is currently used by the Board of Parole Hearings psychologists who prepare comprehensive risk assessments of incarcerated individuals for use by the parole hearing panels. (Cal. Code Regs, tit. 15, § 2240.)

**4. Effect of This Bill**

This bill requires that an incarcerated person being evaluated for commitment as an OMHD undergo a specific risk assessment, the HCR-20. This bill also allows an incarcerated person to file a petition to challenge the OMHD commitment in court in the county of commitment to state prison. Under current law, an incarcerated person may challenge the OMHD commitment by filing a petition in the superior court of the county in which they are incarcerated or are being treated.

**5. Argument in Support**

Th Los Angeles County District Attorney's Office writes:

> AB 1897 provides that an incarcerated person who disagrees with a Board of Parole Hearings' (BPH) determination that the person qualifies as an offender with a mental health disorder may file a petition for a hearing on the matter in the superior court of the county of commitment to state prison, rather than in the county in which the person is incarcerated or being treated.

AB 1897 also addresses the inconsistent application of the determination standard whether or not an inmate who because of their severe mental health disorder represents a substantial danger of physical harm to others. To ensure more consistent determinations of the risk posed by an inmate, AB 1897of requires the use of a structured risk assessment tool to support more consistent and evidence-based decisions.

…

AB 1897 is consistent with the procedures in California law relating to Sexually Violent Predators (SVP). California recently enacted a statute that requires offenses committed by a SVP in a DSH facility to be tried in the county of commitment rather than the county where the DSH facility was located. This was done to relieve the burden on counties like Fresno who were forced to prosecute offenders who but for their SVP status had no connection to Fresno County.

AB 1877 will help ensure that dangerous mentally ill offenders are not unnecessarily released back into our communities by improving the reliability of the OMHD determination while still preserving due process protections.

**-- END --**