
THIRD READING

Bill No: AB 1897
Author: Haney (D)
Amended: 8/11/26 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/30/26
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 78-0, 5/26/26 - See last page for vote

SUBJECT: Mentally disordered offenders: criteria for commitment

SOURCE: San Francisco District Attorney's Office

DIGEST: This bill 1) requires a psychiatrist or psychologist, when evaluating an incarcerated person for a commitment as an offender with a mental health disorder (OMHD), to consider specified factors in determining whether the person represents a substantial danger of physical harm to others as a result of a severe mental health disorder; and 2) authorizes a court to conduct the OMHD hearing in the county of commitment to state prison upon stipulation of the petitioner, prosecuting attorney, and defense counsel in the county of commitment to state prison.

Senate Floor Amendments of 8/11/26 add intent language and clarifying language.

ANALYSIS:

Existing law:

- 1) 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. (Penal [Pen.] Code, § 2960, subdivision [subd.] (a).)

- 2) 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).)
- 3) 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.)
- 4) 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:
 - a) The incarcerated person has a severe mental health disorder that is not in remission or that cannot be kept in remission without treatment.
 - b) 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.
 - c) 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.

- d) 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).)
- 5) 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).)
- 6) 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).)
- 7) 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.*)
- 8) Outlines the process by which a person is evaluated to determine whether someone meets the criteria of an OMHD. (Pen. Code, § 2962, subd. (d).)
- 9) Requires the crime for which the person was sentenced to prison to meet the following criteria:
 - a) The defendant received a determinate sentence.
 - b) 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).)

- 10) Provides that “substantial danger of physical harm” does not require proof of a recent overt act. (Pen. Code, § 2962, subd. (g).)
- 11) 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).)
- 12) 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:

- 1) Requires a psychiatrist or psychologist, in determining whether the incarcerated person represents a substantial danger of physical harm to others as a result of their severe mental health disorder, to consider all of the following:

- a) The incarcerated person's history of violence that was related to their severe mental health disorder.
 - b) The incarcerated person's current mental status.
 - c) The incarcerated person's recent behavior and treatment response.
 - d) The incarcerated person's current capacity to inflict physical harm on others, including their age, physical condition, and other present limitations.
 - e) Any clinically relevant factor bearing directly on the risk of physical harm to others.
- 2) Authorizes the court to conduct the OMHD hearing in the county of commitment to state prison upon stipulation of the petitioner, prosecuting attorney, and defense counsel in the county of commitment to state prison.

Background

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.)

This bill requires a psychiatrist or psychologist, in determining whether the incarcerated person represents a substantial danger of physical harm to others as a result of their severe mental health disorder, to consider all of the following:

- The incarcerated person's history of violence that was related to their severe mental health disorder.
- The incarcerated person's current mental status.
- The incarcerated person's recent behavior and treatment response.
- The incarcerated person's current capacity to inflict physical harm on others, including their age, physical condition, and other present limitations.
- Any clinically relevant factor bearing directly on the risk of physical harm to others.

This bill also authorizes the court to conduct the hearing in the county of commitment to state prison upon stipulation of the petitioner, prosecuting attorney, and defense counsel in the county of commitment to state prison.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/11/26)

San Francisco District Attorney's Office (source)

Los Angeles County District Attorney's Office

Riverside County District Attorney

OPPOSITION: (Verified 8/11/26)

None received

ASSEMBLY FLOOR: 78-0, 5/26/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Muratsuchi, Celeste Rodriguez

Prepared by: Stephanie Jordan / PUB. S. /
8/17/26 10:42:59

**** **END** ****