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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 2475                      **Hearing Date:** June 25, 2024  
**Author:** Haney  
**Version:** April 1, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Parole*

## HISTORY

**Source:** San Francisco Mayor London Breed  
**Prior Legislation:** AB 1065 (Holden), held in Assembly Appropriations 2014  
**Support:** California Association of Psychiatric Technicians  
**Opposition:** None known  
**Assembly Floor Vote:** 72 - 0

## PURPOSE

***The purpose of this bill is to requires a court to stay the execution of a decision determining an incarcerated person is not an offender with a mental health disorder (OMHD) for up to 30 days, instead of the current five working days, in order to allow for the person’s orderly release.***

*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. (Pen. Code, § 2963, subd. (a).)

*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, as defined, 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* requires an OMHD to receive inpatient treatment unless there is reasonable cause to believe that the person can be safely and effectively treated on an outpatient basis. Provides that

if DSH has not placed the person on outpatient treatment within 60 days after receiving custody of the parolee, the person may request a hearing before BPH to determine whether outpatient treatment is appropriate. Provides that the burden is on DSH to establish that the person requires inpatient treatment. (Pen. Code, § 2964.)

*Existing law* allows the incarcerated person to request a hearing before BPH for the purpose of proving that the prisoner meets the OMHD criteria. Provides that the burden of proof is on the person or agency who certified the person as an OMHD. Requires the incarcerated person to be informed at the hearing of the right to request a trial. (Pen. Code, § 2966, subd. (a).)

*Existing law* allows the incarcerated person to challenge BPH's OMHD determination by filing a petition for a hearing in the superior court of the county in which the person is incarcerated. Requires the court to conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or the petitioner's counsel or good cause is shown. (Pen. Code, § 2966, subd. (b).)

*Existing law* 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. Requires that the trial be by jury unless waived by both the person and the district attorney. (Pen. Code, § 2966, subd. (b).)

*Existing law* requires the court to stay the execution of the decision for five working days to allow for an orderly release of the person if the OMHD determination made by BPH is reversed by a judge or jury. (Pen. Code, § 2966, subd. (b).)

*Existing law* requires DSH to discontinue treatment if the person's severe mental disorder is put into remission during the parole period and can be kept in remission. (Pen. Code, § 2968.)

*Existing law* requires the medical director of the state hospital that is treating the parolee, or the community program director in charge of the parolee's outpatient program, or the Secretary of the CDCR to notify the district attorney not later than 180 days before the termination of parole, if the person's severe mental disorder is not in remission or cannot be kept in remission without treatment. (Pen. Code, § 2970, subd. (a).)

*Existing law* allows the district attorney to file a petition in the superior court for continued involuntary treatment for one year. (Pen. Code, § 2970, subd. (b).)

*Existing law* requires the following persons released from prison be subject to parole under the supervision of CDCR:

- A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
- A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
- A person serving a Three-Strikes sentence;
- A high-risk sex offender;
- A mentally disordered offender;

- A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
- A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released.  
(Pen. Code, §§ 3000.08, subd. (a) & 3451, subd. (b).)

*Existing law* requires all other offenders released from prison to be placed on post-release community supervision by the probation department. (Pen. Code, §§ 3000.08, subd. (b) & 3451, subd. (a).)

*This bill* requires the court to stay the execution of the decision determining an incarcerated person is not an OMHD for up to 30 days, instead of five work days, in order to allow for their orderly release.

*This bill* provides that the court may require the parties to return to court during those 30 days to ensure that the parties involved in the release of the person have coordinated an exit plan for the incarcerated person.

*This bill* requires CDCR to notify the probation department of the county of supervision of the pending release within five working days of the court order.

*This bill* requires CDCR to work with the county of supervision to coordinate the orderly and safe return of the prisoner.

*This bill* makes technical, non-substantive changes.

## COMMENTS

### 1. Need For This Bill

According to the author:

People who have a history of violent behavior and suffer from severe mental disorders need an effective support and transition plan to help them safely come back to the community. AB 2475 will increase the mental health treatment planning window from five days to up to thirty days, by stay of the court for these parolees. This additional time will allow the Department of State Hospitals, State Parole, and local agencies to coordinate housing, supervision, medication, and mental health services they need for their safety and the safety of the community.

These individuals often need intensive care and supervision and have complex treatment plans. They deserve adequate time and attention from state and local agencies to help plan for their success and reintegration back into the community. We know that rushed decisions can lead to tragic outcomes. The current system is setting up parolees for failure and also threatens public safety.

## 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, namely, whether: 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, subs. (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 the DSH evaluate the incarcerated person. If it appears that the incarcerated person qualifies, the chief psychiatrist then will certify to BPH that the person meets the criteria of an OMHD.

The incarcerated person may request a hearing before BPH to require proof that they qualify as an OMHD. If the 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 superior court or jury reverses the BPH determination, the court is required to stay the execution of the decision for five working days to allow for an orderly release of the prisoner. (Pen. Code, § 2966, subd. (b).)

## 3. Timeframe for Notice of Release

If the court determines that an individual does not meet the criteria of an OMHD and must be released, the order is stayed for five working days to allow time for the person's orderly release. The author of this bill asserts that the current timeframe—five working days—is not a reasonable amount of time for all of the relevant agencies to coordinate the safe release of the person back into the community. This bill extends the timeframe for release from 5 working days to up to 30 days.

## 4. Argument in Support

According to the California Association of Psychiatric Technicians:

As the representative body for approximately 5,000 licensed psychiatric technicians (PT) employed across various state agencies such as the CDCR and the DSH that treats offenders with mental disorders, we are keenly aware of the

challenges faced when an inmate/patient is set to be released into the community. AB 2475 increases the number of planning days that a state hospital must hold a parolee who has committed a violent crime because of a severe mental disorder. Increasing preparation days from five to up to thirty days ensures that our staff have the time to develop treatment plans that can be followed upon an individual's release.

Under current law, the five-day planning time is simply not enough to coordinate all the necessary services to ensure someone with a mental disorder and a propensity for violence can be safely released into an unsuspecting community. The thirty-day time frame, as proposed in this bill, is much more realistic and gives the inmate/patient a greater chance of success as resources and supervision will be addressed in their conditional release plan.

**-- END --**