

**Introduced by Senator Lieu**

February 1, 2013

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An act to add Section 2690.5 to the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 162, as amended, Lieu. Prisoners: temporary removal.

Under existing law, the Secretary of the Department of Corrections and Rehabilitation may authorize the temporary removal of any inmate from prison or any other institution for the detention of adults under the jurisdiction of the department.

Existing law authorizes the superior court, when it is necessary to have a prisoner brought before any court to be tried for a felony, or for other limited purposes, to order the prisoner's temporary removal from prison, and the prisoner's production before the court, grand jury, or magistrate. Existing law additionally authorizes the superior court, when the testimony of a material witness is required in a criminal action, as specified, and the witness is a prisoner in ~~a~~ *the* state prison, to order the prisoner's temporary removal from prison, and the prisoner's production before the court, grand jury, or magistrate.

This bill would authorize the superior court to order the temporary removal of a prisoner from a state prison facility, and his or her transportation to a county or city jail, if a legitimate law enforcement purpose exists to move the prisoner. The bill would ~~require~~ *authorize* the order to be ~~made issued~~, at the discretion of the court, ~~and only upon the affidavit of~~ *upon a finding of good cause in an affidavit by* the requesting district attorney or peace officer, *as specified*. The bill would make the expense of executing the order a proper charge against, and

require payment by, the county in which the order is made. *The bill would provide that the state is not liable for any claim of damage, or for the injury or death of any person, including a prisoner, that occurs during the temporary removal of a prisoner, or the transportation of a prisoner by a local law enforcement agency for the purpose of temporary removal, from a state prison facility pursuant to these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2690.5 is added to the Penal Code, to  
2 read:

3 2690.5. (a) The superior court of the county in which a  
4 requesting district attorney or peace officer has jurisdiction may  
5 order the temporary removal of a prisoner from a state prison  
6 facility, and his or her transportation to a county or city jail, if a  
7 legitimate law enforcement purpose exists to move the prisoner.  
8 An order for the temporary removal of a prisoner ~~shall~~ *may* be  
9 issued, at the discretion of the court, ~~and only upon the affidavit~~  
10 ~~of upon a finding of good cause in an affidavit~~ by the requesting  
11 district attorney or peace officer stating that the law enforcement  
12 purpose is legitimate and necessary. *The order for the temporary*  
13 *removal of a prisoner to a county or city jail shall not exceed 30*  
14 *days. Extensions of an order may be granted, but only upon*  
15 *application for an extension made in accordance with this section.*  
16 *The period of extension shall be no longer than the authorizing*  
17 *judge deems necessary to achieve the purposes for which it was*  
18 *granted, and shall not exceed an additional 30-day period beyond*  
19 *the initial period specified in the order for temporary removal.*

20 (b) An order for the temporary removal of a prisoner shall  
21 include all of the following:

22 (1) A recitation of the purposes for which the prisoner is to be  
23 brought to the county or city jail.

24 (2) The affidavit of the requesting district attorney or peace  
25 officer stating that the law enforcement purpose is legitimate and  
26 necessary. *The affidavit shall be supported by facts establishing*  
27 *good cause.*

28 (3) The signature of the judge or magistrate making the order.

29 (4) The seal of the court, if any.

1 (c) Upon the request of a district attorney or peace officer for  
2 a court order for the temporary removal of a prisoner from a state  
3 prison facility pursuant to this section, the court may, for good  
4 cause, seal an order made pursuant to this section, unless a court  
5 determines that the failure to disclose the contents of the order  
6 would deny a fair trial to a charged defendant in a criminal  
7 proceeding.

8 (e)

9 (d) An order for the temporary removal of a prisoner shall be  
10 executed *presumptively* by the sheriff of the county in which the  
11 order is issued. It shall be the duty of the sheriff to bring the  
12 prisoner to the proper county or city jail, to safely retain the  
13 prisoner, and to return the prisoner to the state prison facility when  
14 he or she is no longer required for the stated law enforcement  
15 purpose. *The prisoner shall be returned no later than 30 days after*  
16 *his or her removal from the state prison facility or no later than*  
17 *30 days after the date of an order authorizing an extension*  
18 *pursuant to subdivision (a).* The expense of executing the order  
19 shall be a proper charge against, and shall be paid by, the county  
20 in which the order is made. *The presumption that the transfer will*  
21 *be effectuated by the sheriff of the county in which the transfer*  
22 *order is made may be overcome upon application of the*  
23 *investigating officer or prosecuting attorney stating the name of*  
24 *each peace officer who will conduct the transportation of the*  
25 *prisoner.*

26 (d)

27 (e) If a prisoner is removed from a state prison facility pursuant  
28 to an order in accordance with this section, the prisoner shall  
29 remain at all times in the constructive custody of the warden of  
30 the state prison facility *from which the prisoner was removed.*  
31 During the temporary removal, the prisoner may be ordered to  
32 appear in other felony proceedings as a defendant or witness in  
33 the superior court of the county from which the original order for  
34 the temporary removal was issued. A copy of the written order  
35 directing the prisoner to appear before the superior court shall be  
36 forwarded by the district attorney to the warden of the prison  
37 having custody of the prisoner.

38 (f) *The state is not liable for any claim of damage, or for the*  
39 *injury or death of any person, including a prisoner, that occurs*  
40 *during either of the following:*

- 1     *(1) The temporary removal of a prisoner from a state prison*
- 2     *facility pursuant to this section.*
- 3     *(2) The transportation of a prisoner by a local law enforcement*
- 4     *agency for the purpose of temporary removal from a state prison*
- 5     *facility pursuant to this section.*