

AMENDED IN SENATE MAY 1, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 162

Introduced by Senator Lieu

February 1, 2013

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 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 authorize the order to be issued, at the discretion of the court, 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, *period in which the prisoner is in the exclusive control of a local law enforcement agency.*

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 may be issued,
9 at the discretion of the court, upon a finding of good cause in an
10 affidavit by the requesting district attorney or peace officer stating
11 that the law enforcement purpose is legitimate and necessary. The
12 order for the temporary removal of a prisoner to a county or city
13 jail shall not exceed 30 days. Extensions of an order may be
14 granted, but only upon application for an extension made in
15 accordance with this section. The period of extension shall be no
16 longer than the authorizing judge deems necessary to achieve the
17 purposes for which it was granted, and shall not exceed an
18 additional 30-day period beyond the initial period specified in the
19 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.

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

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

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

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

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

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

1 *in the exclusive control of a local law enforcement agency pursuant*
2 *to this section.*

3 ~~(1) The temporary removal of a prisoner from a state prison~~
4 ~~facility pursuant to this section.~~

5 ~~(2) The transportation of a prisoner by a local law enforcement~~
6 ~~agency for the purpose of temporary removal from a state prison~~
7 ~~facility pursuant to this section.~~