

**Introduced by Senator Liu**February 5, 2010

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An act to amend Section 2625 of the Penal Code, relating to prisoners.

## LEGISLATIVE COUNSEL'S DIGEST

SB 962, as introduced, Liu. Prisoners: adjudication of parental rights: participation.

(1) Existing law requires notice of, and the opportunity for an incarcerated parent to be physically present in, proceedings terminating his or her parental rights or seeking to adjudicate the child of a prisoner a dependent child of the court. These proceedings may not be adjudicated without the physical presence of the parent unless the court receives a knowing waiver from the parent of his or her right to be physically present at the proceedings, or an affidavit signed by a person in charge of the incarcerating institution that the prisoner does not intend to appear at the proceeding.

This bill would require that an incarcerated parent who has waived the right to be physically present at the proceeding be given the opportunity to participate in the proceeding by videoconference, if that technology is available.

(2) Existing law provides that for all other kinds of actions not specified above in which an incarcerated parent's parental rights are adjudicated that the court may order the physical presence of the parent at the proceeding.

This bill would require, if the court does not order the physical presence of the parent at one of those proceedings, that the parent be allowed to participate by videoconference, if that technology is available, and so long as the parent's participation otherwise complies with the law. This bill would require the Judicial Council to specify a process

whereby incarcerated parents are informed of dependency court hearings and of their right to participate by videoconference.

(3) Because this bill would require county jails to allow inmates to participate in proceedings via videoconference, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 2625 of the Penal Code is amended to  
2 read:

3 2625. (a) For the purposes of this section only, the term  
4 “prisoner” includes any individual in custody in a state prison, the  
5 California Rehabilitation Center, or a county jail, or who is a ward  
6 of the Department of the Youth Authority or who, upon a verdict  
7 or finding that the individual was insane at the time of committing  
8 an offense, or mentally incompetent to be tried or adjudged to  
9 punishment, is confined in a state hospital for the care and  
10 treatment of the mentally disordered or in any other public or  
11 private treatment facility.

12 (b) In any proceeding brought under Part 4 (commencing with  
13 Section 7800) of Division 12 of the Family Code, and Section  
14 366.26 of the Welfare and Institutions Code, where the proceeding  
15 seeks to terminate the parental rights of any prisoner, or any  
16 proceeding brought under Section 300 of the Welfare and  
17 Institutions Code, where the proceeding seeks to adjudicate the  
18 child of a prisoner a dependent child of the court, the superior court  
19 of the county in which the proceeding is pending, or a judge  
20 thereof, shall order notice of any court proceeding regarding the  
21 proceeding transmitted to the prisoner.

22 (c) Service of notice shall be made pursuant to Section 7881 or  
23 7882 of the Family Code or Section 290.2, 291, or 294 of the

1 Welfare and Institutions Code, as appropriate *and shall inform the*  
2 *prisoner of his or her right to participate by videoconference.*

3 (d) Upon receipt by the court of a statement from the prisoner  
4 or his or her attorney indicating the prisoner's desire to be present  
5 during the court's proceedings, the court shall issue an order for  
6 the temporary removal of the prisoner from the institution, and for  
7 the prisoner's production before the court. No proceeding may be  
8 held under Part 4 (commencing with Section 7800) of Division 12  
9 of the Family Code or Section 366.26 of the Welfare and  
10 Institutions Code and no petition to adjudge the child of a prisoner  
11 a dependent child of the court pursuant to subdivision (a), (b), (c),  
12 (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions  
13 Code may be adjudicated without the physical presence of the  
14 prisoner or the prisoner's attorney, unless the court has before it  
15 a knowing waiver of the right of physical presence signed by the  
16 prisoner or an affidavit signed by the warden, superintendent, or  
17 other person in charge of the institution, or his or her designated  
18 representative stating that the prisoner has, by express statement  
19 or action, indicated an intent not to appear at the proceeding.

20 (e) In any other action or proceeding in which a prisoner's  
21 parental or marital rights are subject to adjudication, an order for  
22 the prisoner's temporary removal from the institution and for the  
23 prisoner's production before the court may be made by the superior  
24 court of the county in which the action or proceeding is pending,  
25 or by a judge thereof. A copy of the order shall be transmitted to  
26 the warden, superintendent, or other person in charge of the  
27 institution not less than 15 days before the order is to be executed.  
28 The order shall be executed by the sheriff of the county in which  
29 it shall be made, whose duty it shall be to bring the prisoner before  
30 the proper court, to keep the prisoner safely, and when the  
31 prisoner's presence is no longer required, to return the prisoner to  
32 the institution from which he or she was taken. The expense of  
33 executing the order shall be a proper charge against, and shall be  
34 paid by, the county in which the order shall be made.

35 The order shall be to the following effect:

36 County of \_\_\_\_ (as the case may be).

37 The people of the State of California to the warden of \_\_\_\_:

38 An order having been made this day by me, that (name of  
39 prisoner) be produced in this court as a party in the case of \_\_\_\_\_,

1 you are commanded to deliver (name of prisoner) into the custody  
2 of \_\_\_\_ for the purpose of (recite purposes).

3 Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

4 (f) When a prisoner is removed from the institution pursuant to  
5 this section, the prisoner shall remain in the constructive custody  
6 of the warden, superintendent, or other person in charge of the  
7 institution.

8 (g) *A prisoner who is a parent of a child involved in a*  
9 *dependency hearing described in subdivision (b) who has waived*  
10 *his or her right to physical presence at the hearing pursuant to*  
11 *subdivision (d) shall be given the opportunity to participate in the*  
12 *hearing by videoconference if that technology is available. The*  
13 *notice of the hearing required by subdivision (c) shall include*  
14 *notice of the prisoner's right to participate in the hearing by*  
15 *videoconference.*

16 (h) *In any other action involving the adjudication of a prisoner's*  
17 *parental rights, as described in subdivision (e), in which the court*  
18 *has not ordered the prisoner's production before the court, the*  
19 *prisoner shall be given the opportunity to participate in the hearing*  
20 *by video-conference if that technology is available and that*  
21 *participation otherwise complies with the law. Because of the*  
22 *significance of dependency court hearings for parental rights and*  
23 *children's long-term care, physical attendance by the parent at*  
24 *the hearings is preferred to participation by videoconference. The*  
25 *Judicial Council shall specify a clear process whereby incarcerated*  
26 *parents are informed of dependency court hearings held pursuant*  
27 *to subdivision (e) and of their right to participate by*  
28 *videoconference so long as participation by the prisoner otherwise*  
29 *complies with the law.*

30 (i) *A prisoner subject to this section shall not lose internal job*  
31 *placement opportunities, be removed from a court-ordered course,*  
32 *or be denied any privilege as a result of his or her participation*  
33 *in the proceedings described in this section, whether in person or*  
34 *by videoconference. This section only applies to an incarcerated*  
35 *parent's participation in court proceedings involving parental*  
36 *rights and does not replace in-person family visits with telephone*  
37 *calls or videoconferencing.*

38 ~~(g)~~

39 (j) Notwithstanding any other law, a court may not order the  
40 removal and production of a prisoner sentenced to death, whether

1 or not that sentence is being appealed, in any action or proceeding  
2 in which the prisoner's parental rights are subject to adjudication.  
3 SEC. 2. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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