

Introduced by Senator Liu

February 5, 2010

An act to amend Section 2625 of, *and to add Section 2626 to*, the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

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

~~(1) Existing~~

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.

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

This bill would ~~require~~ *provide* that an incarcerated parent who has either waived the right to be physically present at the proceeding *or who has not been ordered by the court to be present at the proceeding* may be given the opportunity, *at the discretion of the court*, to participate in the proceeding by videoconference *or teleconference*, if that

technology is available, *as long as the parent's participation otherwise complies with the law.*

~~(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.~~

This bill would provide that a prisoner may only lose job placement opportunities, be removed from a court-ordered course, or be denied earned privileges if the prisoner's participation in the proceedings causes the prisoner to be absent from the custodial institution for more than 10 days. This bill would permit the Department of Corrections and Rehabilitation to establish a pilot program to facilitate the participation of incarcerated parents in dependency court hearings, provided that the project is funded by private funds, as specified.

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

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

1 California Rehabilitation Center, or a county jail, or who is a ward
2 of the Department of the Youth Authority or who, upon a verdict
3 or finding that the individual was insane at the time of committing
4 an offense, or mentally incompetent to be tried or adjudged to
5 punishment, is confined in a state hospital for the care and
6 treatment of the mentally disordered or in any other public or
7 private treatment facility.

8 (b) In any proceeding brought under Part 4 (commencing with
9 Section 7800) of Division 12 of the Family Code, and Section
10 366.26 of the Welfare and Institutions Code, where the proceeding
11 seeks to terminate the parental rights of any prisoner, or any
12 proceeding brought under Section 300 of the Welfare and
13 Institutions Code, where the proceeding seeks to adjudicate the
14 child of a prisoner a dependent child of the court, the superior court
15 of the county in which the proceeding is pending, or a judge
16 thereof, shall order notice of any court proceeding regarding the
17 proceeding transmitted to the prisoner.

18 (c) Service of notice shall be made pursuant to Section 7881 or
19 7882 of the Family Code or Section 290.2, 291, or 294 of the
20 Welfare and Institutions Code, as appropriate ~~and shall inform the~~
21 ~~prisoner of his or her right to participate by videoconference.~~

22 (d) Upon receipt by the court of a statement from the prisoner
23 or his or her attorney indicating the prisoner's desire to be present
24 during the court's proceedings, the court shall issue an order for
25 the temporary removal of the prisoner from the institution, and for
26 the prisoner's production before the court. No proceeding may be
27 held under Part 4 (commencing with Section 7800) of Division 12
28 of the Family Code or Section 366.26 of the Welfare and
29 Institutions Code and no petition to adjudge the child of a prisoner
30 a dependent child of the court pursuant to subdivision (a), (b), (c),
31 (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions
32 Code may be adjudicated without the physical presence of the
33 prisoner or the prisoner's attorney, unless the court has before it
34 a knowing waiver of the right of physical presence signed by the
35 prisoner or an affidavit signed by the warden, superintendent, or
36 other person in charge of the institution, or his or her designated
37 representative stating that the prisoner has, by express statement
38 or action, indicated an intent not to appear at the proceeding.

39 (e) In any other action or proceeding in which a prisoner's
40 parental or marital rights are subject to adjudication, an order for

1 the prisoner's temporary removal from the institution and for the
2 prisoner's production before the court may be made by the superior
3 court of the county in which the action or proceeding is pending,
4 or by a judge thereof. A copy of the order shall be transmitted to
5 the warden, superintendent, or other person in charge of the
6 institution not less than 15 days before the order is to be executed.
7 The order shall be executed by the sheriff of the county in which
8 it shall be made, whose duty it shall be to bring the prisoner before
9 the proper court, to keep the prisoner safely, and when the
10 prisoner's presence is no longer required, to return the prisoner to
11 the institution from which he or she was taken. The expense of
12 executing the order shall be a proper charge against, and shall be
13 paid by, the county in which the order shall be made.

14 The order shall be to the following effect:

15 County of ____ (as the case may be).

16 The people of the State of California to the warden of ____:

17 An order having been made this day by me, that (name of
18 prisoner) be produced in this court as a party in the case of ____,
19 you are commanded to deliver (name of prisoner) into the custody
20 of ____ for the purpose of (recite purposes).

21 Dated this ____ day of ____, 20__.

22 (f) When a prisoner is removed from the institution pursuant to
23 this section, the prisoner shall remain in the constructive custody
24 of the warden, superintendent, or other person in charge of the
25 institution.

26 (g) A prisoner who is a parent of a child involved in a
27 dependency hearing described in ~~subdivision (b)~~ *this section and*
28 who has *either* waived his or her right to physical presence at the
29 hearing pursuant to subdivision (d) ~~shall~~ *or who has not been*
30 *ordered before the court may, at the court's discretion, in order*
31 *to facilitate the parent's participation, be given the opportunity*
32 *to participate in the hearing by videoconference if that technology*
33 *is available. The notice of the hearing required by subdivision (e)*
34 *shall include notice of the prisoner's right to participate in the*
35 *hearing by videoconference.*

36 (h) ~~In any other action involving the adjudication of a prisoner's~~
37 ~~parental rights, as described in subdivision (e), in which the court~~
38 ~~has not ordered the prisoner's production before the court, the~~
39 ~~prisoner shall be given the opportunity to participate in the hearing~~
40 ~~by videoconference if that technology is available and that hearing~~

1 *by videoconference, if that technology is available, and if that*
2 *participation otherwise complies with the law. If videoconferencing*
3 *technology is not available, teleconferencing may be utilized to*
4 *facilitate parental participation. Because of the significance of*
5 *dependency court hearings for parental rights and children's*
6 *long-term care, physical attendance by the parent at the hearings*
7 *is preferred to participation by videoconference or teleconference.*
8 *This section does not authorize the use of videoconference or*
9 *teleconference to replace in-person family visits with prisoners.*
10 ~~The Judicial Council shall specify a clear process whereby~~
11 ~~incarcerated parents are informed of dependency court hearings~~
12 ~~held pursuant to subdivision (c) and of their right to participate by~~
13 ~~videoconference so long as participation by the prisoner otherwise~~
14 ~~complies with the law.~~

15 (i)

16 (h) A prisoner subject to this section shall not lose internal job
17 placement opportunities, be removed from a court-ordered course,
18 or be denied any ~~privilege~~ *earned privileges* as a result of his or
19 her participation in the proceedings described in this section,
20 whether in person or by videoconference. ~~This section only applies~~
21 ~~to an incarcerated parent's participation in court proceedings~~
22 ~~involving parental rights and does not replace in-person family~~
23 ~~visits with telephone calls or videoconferencing.~~ *by*
24 *videoconference or teleconference, unless the prisoner is absent*
25 *from the institution for this purpose for more than 10 days.*

26 (j)

27 (i) Notwithstanding any other law, a court may not order the
28 removal and production of a prisoner sentenced to death, whether
29 or not that sentence is being appealed, in any action or proceeding
30 in which the prisoner's parental rights are subject to adjudication.

31 *SEC. 2. Section 2626 is added to the Penal Code, to read:*

32 *2626. The Department of Corrections and Rehabilitation is*
33 *authorized to establish a pilot project to facilitate the participation*
34 *of incarcerated parents in dependency court hearings regarding*
35 *their children. The costs of the pilot project shall be funded with*
36 *private funds and shall be implemented only after a determination*
37 *is made by the Department of Finance that private donations,*
38 *sufficient to fully support the activities of the project, have been*
39 *deposited with the state.*

1 ~~SEC. 2.—If the Commission on State Mandates determines that~~
2 ~~this act contains costs mandated by the state, reimbursement to~~
3 ~~local agencies and school districts for those costs shall be made~~
4 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
5 ~~4 of Title 2 of the Government Code.~~

O