

AMENDED IN SENATE APRIL 20, 2010

AMENDED IN SENATE MARCH 11, 2010

SENATE BILL

No. 962

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.

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 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.

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: 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
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
24 Welfare and Institutions Code, as appropriate.

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

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

33 The order shall be to the following effect:

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

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

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

40 Dated this ____ day of ____, 20__.

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

5 (g) A prisoner who is a parent of a child involved in a
6 dependency hearing described in this section and who has either
7 waived his or her right to physical presence at the hearing pursuant
8 to subdivision (d) or who has not been ordered before the court
9 may, at the court's discretion, in order to facilitate the parent's
10 participation, be given the opportunity to participate in the hearing
11 by videoconference, if that technology is available, and if that
12 participation otherwise complies with the law. If videoconferencing
13 technology is not available, teleconferencing may be utilized to
14 facilitate parental participation. Because of the significance of
15 dependency court hearings for parental rights and children's
16 long-term care, physical attendance by the parent at the hearings
17 is preferred to participation by videoconference or teleconference.
18 *This subdivision shall not be construed to limit a prisoner's right*
19 *to physically attend a dependency hearing as provided in this*
20 *section.* This section does not authorize the use of videoconference
21 or teleconference to replace in-person family visits with prisoners.

22 (h) A prisoner subject to this section shall not lose internal job
23 placement opportunities, be removed from a court-ordered course,
24 or be denied any earned privileges as a result of his or her
25 participation in the proceedings described in this section, whether
26 in person or by videoconference or teleconference, unless the
27 prisoner is absent from the institution for this purpose for more
28 than 10 days.

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

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

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

- 1 sufficient to fully support the activities of the project, have been
- 2 deposited with the state.

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