

AMENDED IN ASSEMBLY JUNE 17, 2010

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, and repeal Section 2626 of,~~ 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~~

This bill would permit the Department of Corrections and Rehabilitation to ~~establish~~ accept donated materials and services in order to implement 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.~~ The bill would require the donors of materials and services that support the pilot program to report to the Legislature within 2 years after the pilot program is initiated, as provided. The bill would repeal the pilot program provisions on January 1, 2014.

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

1 of the county in which the proceeding is pending, or a judge
2 thereof, shall order notice of any court proceeding regarding the
3 proceeding transmitted to the prisoner.

4 (c) Service of notice shall be made pursuant to Section 7881 or
5 7882 of the Family Code or Section 290.2, 291, or 294 of the
6 Welfare and Institutions Code, as appropriate.

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

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

39 The order shall be to the following effect:

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

1 The people of the State of California to the warden of ____:
 2 An order having been made this day by me, that (name of
 3 prisoner) be produced in this court as a party in the case of ____,
 4 you are commanded to deliver (name of prisoner) into the custody
 5 of ____ for the purpose of (recite purposes).

6 Dated this ____ day of ____, 20__.

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

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

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

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

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

1 2626. (a) The Department of Corrections and Rehabilitation
2 is authorized to ~~establish~~ *accept donated materials and services*
3 *in order to implement* a pilot project to facilitate the participation
4 of incarcerated parents in dependency court hearings regarding
5 ~~their children. The costs of the pilot project shall be funded with~~
6 ~~private funds and shall be implemented only after a determination~~
7 ~~is made by the Department of Finance that private donations,~~
8 ~~sufficient to fully support the activities of the project, have been~~
9 ~~deposited with the state.~~ *their children. The donors of materials*
10 *and services that support the pilot program shall, within two years*
11 *after the pilot program is initiated, make a report to the Legislature*
12 *regarding the program and provide any data collected pursuant*
13 *to the program.*

14 (b) *The report submitted pursuant to subdivision (a) shall be*
15 *submitted in compliance with Section 9795 of the Government*
16 *Code.*

17 (c) *This section shall remain in effect only until January 1, 2014,*
18 *and as of that date is repealed, unless a later enacted statute, that*
19 *is enacted before January 1, 2014, deletes or extends that date.*