

AMENDED IN ASSEMBLY AUGUST 2, 2010

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 ~~and repeal Section 2626~~ *of 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 state the intent of the Legislature to preserve internal job placement opportunities and earned privileges of prisoners, and to prevent the removal of prisoners from court-ordered courses, as a result of participation in child dependency proceedings.

This bill would permit the Department of Corrections and Rehabilitation to accept donated materials and services *related to videoconferencing and teleconferencing* in order to implement a ~~pilot~~ program, *at a prison to be determined by the department*, to facilitate the participation of incarcerated parents in dependency court hearings. ~~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. The bill would specify that the implementation of the program is contingent upon the receipt of sufficient donations of materials and services by the department.~~

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.

1 (b) In any proceeding brought under Part 4 (commencing with
2 Section 7800) of Division 12 of the Family Code, and Section
3 366.26 of the Welfare and Institutions Code, where the proceeding
4 seeks to terminate the parental rights of any prisoner, or any
5 proceeding brought under Section 300 of the Welfare and
6 Institutions Code, where the proceeding seeks to adjudicate the
7 child of a prisoner a dependent child of the court, the superior court
8 of the county in which the proceeding is pending, or a judge
9 thereof, shall order notice of any court proceeding regarding the
10 proceeding transmitted to the prisoner.

11 (c) Service of notice shall be made pursuant to Section 7881 or
12 7882 of the Family Code or Section 290.2, 291, or 294 of the
13 Welfare and Institutions Code, as appropriate.

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

31 (e) In any other action or proceeding in which a prisoner's
32 parental or marital rights are subject to adjudication, an order for
33 the prisoner's temporary removal from the institution and for the
34 prisoner's production before the court may be made by the superior
35 court of the county in which the action or proceeding is pending,
36 or by a judge thereof. A copy of the order shall be transmitted to
37 the warden, superintendent, or other person in charge of the
38 institution not less than 15 days before the order is to be executed.
39 The order shall be executed by the sheriff of the county in which
40 it shall be made, whose duty it shall be to bring the prisoner before

1 the proper court, to keep the prisoner safely, and when the
2 prisoner's presence is no longer required, to return the prisoner to
3 the institution from which he or she was taken. The expense of
4 executing the order shall be a proper charge against, and shall be
5 paid by, the county in which the order shall be made.

6 The order shall be to the following effect:

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

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

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

13 Dated this ____ day of ____, 20__.

14 (f) When a prisoner is removed from the institution pursuant to
15 this section, the prisoner shall remain in the constructive custody
16 of the warden, superintendent, or other person in charge of the
17 institution.

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

35 ~~(h) A prisoner subject to this section shall not lose internal job
36 placement opportunities, be removed from a court-ordered course,
37 or be denied any earned privileges as a result of his or her
38 participation in the proceedings described in this section, whether
39 in person or by videoconference or teleconference, unless the~~

1 ~~prisoner is absent from the institution for this purpose for more~~
2 ~~than 10 days.~~

3 *(h) It is the intent of the Legislature to maintain internal job*
4 *placement opportunities and preserve earned privileges for*
5 *prisoners, and prevent the removal of prisoners subject to this*
6 *section from court-ordered courses as a result of their participation*
7 *in the proceedings described in this section.*

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

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

13 2626. (a) The Department of Corrections and Rehabilitation
14 is authorized to accept donated materials and services *related to*
15 *videoconferencing and teleconferencing* in order to implement a
16 ~~pilot project program, at a prison to be determined by the~~
17 ~~department, to facilitate the participation of incarcerated parents~~
18 ~~in dependency court hearings regarding their children. The donors~~
19 ~~of materials and services that support the pilot program shall,~~
20 ~~within two years after the pilot program is initiated, make a report~~
21 ~~to the Legislature regarding the program and provide any data~~
22 ~~collected pursuant to the program.~~

23 ~~(b) The report submitted pursuant to subdivision (a) shall be~~
24 ~~submitted in compliance with Section 9795 of the Government~~
25 ~~Code.~~

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

29 *(b) The implementation of this program is contingent upon the*
30 *receipt of sufficient donations of materials and services by the*
31 *department.*