

Senate Bill No. 962

CHAPTER 482

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

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 962, 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 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 program, at a prison to be determined by the department, to facilitate the participation of incarcerated parents in dependency court hearings. 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.

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

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

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

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

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

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

(e) In any other action or proceeding in which a prisoner’s parental or marital rights are subject to adjudication, an order for the prisoner’s temporary removal from the institution and for the prisoner’s production before the court may be made by the superior court of the county in which the action or proceeding is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 15 days before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner’s presence is no longer required, to return the prisoner to the institution from which he

or she was taken. The expense of executing the order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of ____ (as the case may be).

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

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

Dated this ____ day of ____, 20__.

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

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

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

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

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

2626. (a) The Department of Corrections and Rehabilitation is authorized to accept donated materials and services related to videoconferencing and teleconferencing in order to implement a program, at a prison to be determined by the department, to facilitate the participation of incarcerated parents in dependency court hearings regarding their children.

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