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INVITATION TO COMMENT

SPR11-51 (see also SPR11-50)

Title	Action Requested
Juvenile Law: Appearance of Parties in Juvenile Court Proceedings	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; and adopt form JV-451	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507 corby.sturges-t@jud.ca.gov
Hon. Kimberly J. Nystrom-Geist, Cochair	
Hon. Dean Stout, Cochair	

Summary

The proposed amendment of rule 5.530 and adoption of rule 5.531 of the California Rules of Court, the revision of *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450), and the adoption of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) would implement requirements of the Welfare and Institutions Code, including section 388(e) as amended in 2010 by Assembly Bill 12,¹ and Penal Code section 2625, which was amended by Senate Bill 962² and governs the appearance of an incarcerated parent in juvenile court proceedings affecting his or her parental rights. The adoption of rule 5.531 would also would set minimum standards for procedures governing appearances by telephone, videoconference, or other electronic means in a juvenile court proceeding.

Discussion

The Welfare and Institutions Code requires that certain persons, including the child's mother and presumed or alleged father or fathers, be given notice of hearings in juvenile dependency

¹ Assem. Bill 12; Stats. 2010, ch. 559.

² Sen. Bill 962; Stats. 2010, ch. 482. The text of SB 962 follows this invitation to comment at Attachment A.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

proceedings.³ Section 349 grants any person entitled to notice of a hearing the right to be present at that hearing. Certain parties, however, face special challenges to being physically present in court. An incarcerated parent, for example, needs to secure temporary removal from the institution where he or she is confined, transportation to court, and return to the institution. Nonminor foster youth⁴ might miss school or work essential to their transitional independent living case plans if required to appear physically in court for hearings. This proposal would implement statutory efforts to mitigate these challenges and provide additional options for parties to participate in juvenile court hearings.

Background

The California Legislature has long been concerned about the challenges faced by incarcerated parents. In 1974, the Legislature enacted Penal Code section 2625 to address barriers to an incarcerated parent's participation in proceedings affecting his or her parental rights. Section 2625(b) reinforces the general parental notice requirements in the Welfare and Institutions Code. It requires the juvenile court to order that notice of "any court proceeding regarding [a] proceeding"⁵ that seeks to adjudicate the child of a prisoner to be a dependent of the court under section 300 or to terminate the prisoner's parental rights under section 366.26 be transmitted to the incarcerated parent.⁶ Section 2625(d) requires the court to order the parent's temporary removal from the institution where he or she is confined and production before the court for these hearings. Section 2625(d) also prohibits the court from conducting any of the specified hearings in the absence of the incarcerated parent and the parent's attorney without a written waiver of the right to be physically present signed by the parent.

Section 2625(e) authorizes the court to order the parent's temporary removal from the institution and production before the court in any other action or proceeding in which his or her parental rights are at issue, including a hearing for which he or she has failed to submit a statement.⁷

³ See Welf. & Inst. Code §§ 290.1, 290.2, 291, 293, 294. With the exception of Penal Code section 2625, all further unspecified statutory references are to the Welfare and Institutions Code.

⁴ See § 11400(v), added by AB 12, § 38.

⁵ In 2004, the Supreme Court interpreted the phrase "any court proceeding regarding [a] proceeding" to cover a jurisdictional or dispositional hearing on a dependency petition and a hearing under section 366.26 at which termination of parental rights is at issue. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 599 & fn. 2; see also *In re Barry W.* (1993) 21 Cal.App.4th 358.) The court left open the possibility that the phrase might also cover other hearings integral to dependency proceedings.

⁶ Section 2625(c) specifies that notice must be served as required by section 290.2, which applies to detention hearings; section 291, which applies to jurisdictional and dispositional hearings; or section 294, which applies to permanency planning hearings under section 366.26.

⁷ See *In re Jesusa V.*, *supra*, 32 Cal.4th 588, 598–599; *In re Barry W.*, *supra*, 21 Cal.App.4th 358, 368–370. Section 2625(e) also requires that a copy of any order for removal and transportation be sent to the person in charge of the parent's institution no less than 15 days before the order is to be executed; that the sheriff of the county in which the order is made is responsible for executing the order by transporting the parent to court, keeping the parent safely, and returning the parent to the institution; and that the county in which the order is issued be responsible for the expenses necessary to execute the order.

Until recently, section 2625 has proven inadequate in securing the participation of incarcerated parents in dependency proceedings. For example, institutional authorities have been reluctant to release prisoners for hearings even under an order of the court. In 2005, the Court of Appeal in *Iris R.* criticized “the habitual and willful disobedience” by institutional authorities of these legislatively mandated court orders to transport parents to dependency hearings. The court “implored” the Legislature to explore whether mandating cooperation and addressing fiscal concerns would solve this problem.⁸

Even if removal and transportation could be arranged, many incarcerated parents would nevertheless waive their right to appear in person. Attorneys contend that many have done so not because they were unwilling to appear, but because their absence from the institution would have resulted in the loss of privileges or eligibility for treatment, educational, or work programs. Parents would often need to participate in these same programs to accrue credits leading to sentence reduction⁹ or to comply with their court-ordered family reunification plans. Attorneys stated that incarcerated parents felt as if they could not take steps toward reunifying with their children without simultaneously jeopardizing those efforts.

To increase access to the courts for incarcerated parents by allowing them to appear at dependency hearings without jeopardizing their eligibility for institutional job placements, privileges, or programs, the Legislature in 2010 enacted SB 962. This bill authorizes the juvenile court to allow an incarcerated parent who has waived the right to be physically present at a dependency hearing under section 2625(d) or who has not been ordered to be brought into court under section 2625(e) to appear by videoconference or, if suitable video technology is unavailable, by telephone. The bill also emphasizes the Legislature’s preference that parents physically attend dependency court hearings and its intent not to limit that right.

The Legislature has also shown concern for the well-being of former foster youth who have left the foster care system on reaching the age of 18. In AB 12, the Legislature created a new class of persons under the jurisdiction of the juvenile court: nonminor foster youth or dependents. A separate proposal addresses most of the amendments to the California Rules of Court and revisions to Judicial Council forms required by AB 12.¹⁰ That proposal incorporates by reference and applies the standards proposed in rule 5.531 to telephonic appearances by nonminor former dependents and delinquents. Together, the two proposals implement section 26 of AB 12, which

⁸ *In re Iris R.*, *supra*, 131 Cal.App.4th at p. 343; see also *D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 505; *In re Axsana S.* (2000) 78 Cal.App.4th 262, 266.

⁹ Pen. Code, § 2933.05. These credits should be distinguished from credits earned under Penal Code section 2933 for continuous incarceration without disciplinary infractions. Section 2625(f) makes clear that a prisoner removed from an institution under section 2625 “remains in the constructive custody” of the person in charge of the institution and, thus, is continuously incarcerated.

¹⁰ See *Juvenile Law: Extending Juvenile Court Jurisdiction–Nonminor Foster Youth*, Invitation to Comment SPR11-50 (2011), available at www.courts.ca.gov/policyadmin-invitationstocomment.htm.

amended section 388(e)(3) to require the Judicial Council to adopt rules providing for telephonic appearance by nonminor former dependents or delinquents.

Proposed Changes

The Family and Juvenile Law Advisory Committee proposes amending rule 5.530 of the California Rules of Court, revising *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450), and adopting *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) to unify and implement the statutory requirements governing notice, appearance, and participation by an incarcerated parent to increase parental access to the courts in dependency proceedings. The committee also proposes adopting rule 5.531 to establish uniform standards for procedures governing appearances by telephone, videoconference, or other electronic means in a juvenile court proceeding.

Rule 5.530(f)

New subdivision (f) clarifies the rules governing the appearance of an incarcerated parent in juvenile court proceedings. Paragraph (1) requires the juvenile court to order that notice of specified hearings in dependency proceedings be sent to an incarcerated parent.¹¹ Paragraph (2) requires the court to order the parent's temporary removal from the institution where he or she is confined and production before the court for certain specified hearings. Based on its reading of the statutory scheme and *Jesusa V.*, the committee has proposed that this judicial duty be independent of the court's receipt of a parent's request to appear. The committee is particularly interested in comments on this aspect of the proposal. Paragraph (2) also clarifies that the judicial duty would arise only in the event of a jurisdictional hearing, a dispositional hearing, or a hearing under section 366.26 in which termination of parental rights is at issue. Based on its interpretation of the dependency scheme, section 2625, and relevant judicial decisions, the committee has not proposed applying the requirements of section 2625(d) to detention hearings under section 319 or review hearings under section 366.21 or 366.22. The committee welcomes particular comment on the applicability of section 2625(d) to these hearings.

Paragraph (3) restates section 2625(e)'s grant of authority to the court to order an incarcerated parent removed from an institution and produced before the court in any proceeding not covered by paragraph (2). Paragraph (4) emphasizes and clarifies an incarcerated parent's statutory right to be physically present at hearings within the scope of paragraph (2) unless he or she has waived that right. Paragraph (5) applies the timing and execution requirements in section 2625(e) to any order issued under the rule.

¹¹ Sections 290.2–295 require notice of hearings at various stages of a dependency proceeding to be sent to parents, incarcerated or not, if their whereabouts are known. Rule 5.530(f)(1) weaves these general notice requirements into the requirements of section 2625(b) and (c) as they apply specifically to incarcerated parents. The committee also recommends amending rule 5.530(b) to clarify who is entitled to receive notice of and be present at dependency proceedings consistent with sections 290.2–295.

Paragraph (6) incorporates section 2625(g)'s grant of discretion to the court to permit an incarcerated parent who has waived the right to be physically present at a hearing to appear and participate in that hearing by videoconference or, if that technology is not available, by telephone. Paragraph (6) also requires the court to inform the parent that, if suitable technology is not available, the court may proceed with the hearing without the parent's participation.

Paragraph (7) draws on section 361.5(e)(2) to urge the presiding judge of the juvenile court to convene stakeholders to establish procedures or protocols to ensure the ability of an incarcerated parent to participate in dependency hearings in person, by videoconference, or by telephone.

Rule 5.531

Proposed rule 5.531 establishes minimum standards of fairness and confidentiality for procedures governing appearances in juvenile court proceedings by telephone, videoconference, or other electronic means. These standards address, among other things, the ability of all those present to hear and participate in the proceeding, the confidentiality of attorney-client communications during the proceeding, the deadlines and exceptions for notice that a person wishes to appear by telephone, and the reporting of the proceeding. The committee invites comment on these standards. The rule makes clear that it does not confer an independent right to appear by telephone in a proceeding.

Order for Prisoner's Appearance at Hearing Affecting Parental Rights (form JV-450)

The committee recommends revising form JV-450 to provide a mechanism with which the court can order an incarcerated parent's temporary removal from the institution and physical production for the hearing. The revised form allows the court to specify the type of hearing, affirm the parent's right to be physically present if applicable, and instruct the parent to complete and return the attached copy of form JV-451.

Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights (form JV-451)

The committee recommends adopting form JV-451 to enable an incarcerated parent to state his or her desire to be physically present at the hearing or to request to participate by video or teleconference. This form also elicits from a translator, if the parent is unable to read English, a declaration that the translator has read forms JV-450 and JV-451 to the parent in the parent's primary language. Finally, the form requires the appropriate prison official to complete a declaration regarding the institution's ability to provide telephonic technology that complies with rule 5.531. When the parent is unable or unwilling to complete the form, the official must also determine the parent's preference and declare that the parent has expressly indicated that he or she does not want to attend the hearing, wants to appear by video or telephone, or does not want to appear at the hearing at all.

Specific Comments Requested

In addition to inviting comment on all aspects of the proposal, the committee requests specific feedback on the following issues:

1. Whether the statutory scheme and the Supreme Court's opinion in *Jesusa V.* require the court to order a parent's production in hearings that fall under section 2625(d) irrespective of the court's receipt of the parent's request to appear.
2. Whether the overall dependency scheme, the federally mandated timelines, section 2625 as a whole, and relevant judicial decisions preclude, both legally and practically, the application of section 2625(d) to detention hearings under section 319 or to review hearings under section 366.21 or 366.22.
3. Whether the standards articulated in rule 5.531(b) are sufficient to establish a framework on which local courts can build procedures to govern appearances by telephone.

Attachments

1. Cal. Rules of Court, rules 5.530 and 5.531, at pages 7–10
2. Forms JV-450 and JV-451, at pages 11–15
3. Attachment A: Senate Bill 962, at pages 16–18

Rule 5.530 of the California Rules of Court would be amended and rule 5.531 would be adopted, effective January 1, 2012, to read:

1 **Rule 5.530 Persons present**

2
3 (a) * * *

4
5 (b) **Persons present (§§ 280, 290.1, 290.2, 332, 347, 349, 353, 656, 658, 677, 679,**
6 **681, 700; 25 U.S.C. §§ 1911, 1931–1934)**

7
8 The following persons are entitled to be present:

9
10 (1) The child or nonminor foster youth;

11
12 (2) All parents, de facto parents, Indian custodians, and guardians of the child or,
13 if no parent or guardian resides within the state or, ~~if~~ if their places of residence
14 are not known₂;

15
16 (A) ~~Any~~ any adult relatives residing within the county or, if none₂;

17
18 (B) ~~Any~~ the adult relatives residing nearest the court;

19
20 (3)–(11) * * *

21
22 (c)–(e) * * *

23
24 (f) **Participation of incarcerated parent in dependency proceedings (§§ 290.2, 291,**
25 **294, 296, 316.2, 349, 361.5(e); Pen. Code § 2625)**

26
27 The incarcerated parent of a child on behalf of whom a petition under section 300
28 has been filed may appear and participate in dependency proceedings as provided
29 in this subdivision.

30
31 (1) The court must order notice sent to an incarcerated parent of a jurisdictional
32 hearing under section 355 or a dispositional hearing under section 358 or 361
33 as required by section 291, or a permanency planning hearing under section
34 366.26 as required by section 294.

35
36 (A) The notice must inform the incarcerated parent of the right to be
37 physically present at the hearing and explain how the parent may secure
38 his or her presence or, if he or she waives the right to be physically
39 present, appearance and participation.

1 (B) The county welfare department must use the prisoner location system
2 developed by the Department of Corrections and Rehabilitation to
3 facilitate timely and effective notice of hearings to incarcerated parents.
4

5 (2) The court must order an incarcerated parent’s temporary removal from the
6 institution where he or she is confined and production before the court at the
7 time appointed for any jurisdictional hearing held under section 355 or
8 dispositional hearing held under section 358 or 361, and any permanency
9 planning hearing held under section 366.26 in which termination of parental
10 rights is at issue.

11
12 (3) With respect to any other hearing in a dependency proceeding, the court may
13 order the temporary removal of the incarcerated parent from the institution
14 where he or she is confined and production before the court at the time
15 appointed for that hearing.

16
17 (4) No hearing described in (2) may be held without the physical presence of the
18 incarcerated parent and the parent’s attorney unless the court has received:

19
20 (A) A knowing waiver of the right to be physically present signed by the
21 parent; or

22
23 (B) An affidavit, signed by the person in charge of the institution in which
24 the parent is incarcerated, or his or her designated representative,
25 stating that the parent has, by express statement or action, indicated an
26 intent not to be physically present at the proceeding.

27
28 (5) When issuing an order under (2) or (3), the court must require that *Order for*
29 *Prisoner’s Appearance at Hearing Affecting Parental Rights* (form JV-450)
30 and a blank copy of *Prisoner’s Statement Regarding Appearance at Hearing*
31 *Affecting Parental Rights* (form JV-451) be attached to the notice of hearing
32 and served on the parent, the parent’s attorney, the person in charge of the
33 institution, and the sheriff’s department of the county in which the order is
34 issued not less than 15 days before the date of the hearing.

35
36 (6) The court may, at the request of any party or on its own motion, permit an
37 incarcerated parent, who has waived his or her right to be physically present
38 at a hearing described in (2) or who has not been ordered to appear before the
39 court, to appear and participate in a hearing by videoconference consistent
40 with the requirements of rule 5.531. If video technology is not available, the
41 court may permit the parent to appear by telephone consistent with the
42 requirements of rule 5.531. The court must inform the parent that, if no

1 technology complying with rule 5.531 is available, the court may proceed
2 without his or her appearance and participation.

3
4 (7) The presiding judge of the juvenile court in each county should convene
5 representatives of the county welfare department, the sheriff’s department,
6 parents’ attorneys, and other appropriate entities to develop:

7
8 (A) Procedures or protocols for ensuring an incarcerated parent notification
9 of, transportation to, and physical presence at all court hearings
10 involving proceedings affecting his or her child under Penal Code
11 section 2625;

12
13 (B) Procedures or protocols for facilitating the appearance and participation
14 by videoconference or telephone of an incarcerated parent who has
15 waived his or her right to be physically present consistent with (6) and
16 the requirements of rule 5.531.

17
18
19 **Rule 5.531. Appearance by telephone (§ 388; Pen. Code § 2625)**

20
21 **(a) Application**

22
23 The standards in (b) apply to any appearance or participation in court by telephone,
24 videoconference, or other digital or electronic means.

25
26 **(b) Standards for procedures and protocols**

27
28 The court must establish a set of procedures or protocols to ensure the fairness and
29 confidentiality of any proceeding in which a person is permitted by statute, rule of
30 court, or judicial discretion to appear by telephone. These procedures or protocols
31 must, at a minimum:

32
33 (1) Ensure that the person appearing by telephone can participate in the hearing
34 in real time, with no delay in aural or, if any, visual transmission or reception;

35
36 (2) Ensure that the statements of participants are audible to all other participants
37 and court staff and that the statements made by a participant are identified as
38 being made by that participant;

39
40 (3) Ensure that the proceedings remain confidential as required by law;

41
42 (4) Establish a deadline of no more than two court days before the proceeding for
43 notice to the court by the person or person’s attorney (if any) of that person’s

1 intent to appear by telephone, and permit that notice to be conveyed by any
2 method reasonably calculated to reach the court, including telephone, fax, or
3 other electronic means;

4
5 (5) Permit the person, on a showing of good cause, to appear by telephone even
6 if he or she did not provide timely notice of intent to appear by telephone;

7
8 (6) Permit a person to appear in person for a proceeding at the time and place for
9 which the proceeding was noticed, even if that person had previously notified
10 the court of an intent to appear by telephone;

11
12 (7) Ensure that any hearing at which a person appears by telephone is recorded
13 and reported to the same extent and in the same manner as if he or she had
14 been physically present;

15
16 (8) Ensure that the person appearing by telephone is able to communicate
17 confidentially with his or her attorney (if any) during the proceeding and
18 provide timely notice to that person of the steps necessary to secure
19 confidential communication; and

20
21 (9) Provide for the development of the technological capacity to accommodate
22 appearances by telephone that comply with the requirements of this rule.

23
24 **(c) No independent right**

25
26 Nothing in this rule confers on any person an independent right to appear by
27 telephone, videoconference, or other electronic means in any proceeding.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER FOR PRISONER'S APPEARANCE AT HEARING AFFECTING PARENTAL RIGHTS	CASE NUMBER:

- For a hearing under section 355, 358, or 361, the clerk of the court must attach this form and a blank copy of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) to the Notice of Hearing and serve them as prescribed in section 290.2 or 291 on the parent, the parent's attorney (if any), and the warden, superintendent, or other person in charge of the institution where the parent is confined not less than 15 days before the date of the scheduled hearing.
- For a hearing under section 366.26 at which termination of parental rights is at issue, the social worker or probation officer must attach this form and a blank copy of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) to *Notice of Hearing on Selection of a Permanent Plan* (form JV-300) and serve them as prescribed in section 294 on the parent, the parent's attorney (if any), and the warden, superintendent, or other person in charge of the institution where the parent is confined not less than 15 days before the date of the scheduled hearing.

1. A hearing regarding the custody of the following children (names):

will be held

on (date):	at (time):	in Dept.:	Room:	Phone:
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located at court address above other (specify address):

- This court can accommodate the parent's appearance by videoconference in a manner that complies with Cal. Rules of Court, rule 5.531.
- can accommodate the parent's appearance by telephone in a manner that complies with Cal. Rules of Court, rule 5.531.
- cannot accommodate the parent's appearance by videoconference or telephone in a manner that complies with Cal. Rules of Court, rule 5.531.

2. The hearing will be held under:

- a. **Welfare and Institutions Code section 355, 358, or 361** to adjudicate a petition to declare the child a dependent of the court under Welfare and Institutions Code section 300.
- b. **Welfare and Institutions Code section 366.26** to terminate parental rights and select and implement a permanent plan of adoption.
- c. Other (specify code section and hearing purpose):

3. **To the parent:** You have a right to be physically present at the hearing described in 1 and 2. You must fill out the attached *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) and tell the court whether you want to be physically present at this hearing.

CASE NAME: _____	CASE NUMBER:
-------------------------	----------------------

4. To the Warden, Superintendent, or other person in charge of (name of institution):

You are ordered to deliver prisoner (name and identification number): _____, who is a party, into the custody of the sheriff of the county in which the order is issued or the sheriff's delegate so that the prisoner may be produced before this court for the hearing described in item 1 **unless** the prisoner executes a knowing waiver of his or her right to be physically present on the attached *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451). The sheriff is ordered to return the prisoner to (name of institution): _____ when the prisoner's presence in court is no longer necessary.

- a. If the prisoner waives his or her right to be physically present at the hearing, you are not required to release the prisoner.
- b. If the prisoner waives his or her right to be physically present at the hearing and requests to appear by videoconference or teleconference and the institution can provide the prisoner with the means to appear by videoconference, you are ordered to provide the prisoner with the means to appear by videoconference on the date and time specified in item 1 in a manner that complies with Cal Rules of Court, rule 5.531.
- c. If the prisoner waives the right to be physically present and requests to appear by videoconference or telephone and the institution cannot provide the means to appear by videoconference, but can provide the means to appear by telephone, you are ordered to provide the prisoner with the means to appear by telephone on the date and at the time specified in item 1 in a manner that complies with Cal. Rules of Court, rule 5.531.
- d. If the prisoner chooses to waive the right to be physically present and requests to appear by videoconference or telephone, but the institution cannot provide the means to appear by videoconference or telephone, you must notify the prisoner that the institution cannot provide those means and must then give the prisoner an opportunity to reconsider, in light of this institutional incapacity, whether to waive the right to be physically present.

You must give the prisoner an opportunity to complete the attached *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451).

Whether the prisoner completes form JV-451 or not, you must complete items 8 and 9 on page 3 of form JV-451. After form JV-451 is completed, you must return one copy to the court and one copy to the parent's attorney of record not less than two court days before the scheduled hearing.

Date: _____

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
PRISONER'S STATEMENT REGARDING APPEARANCE AT HEARING AFFECTING PARENTAL RIGHTS	CASE NUMBER:

1. I have read and understand, or I have had explained to me and I understand, the *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450) that accompanies this form.

2. I understand that a hearing regarding my rights, responsibilities, and relationship to the following children (*names*):

will be held

on (<i>date</i>):	at (<i>time</i>):	in Dept.:	Room:	Phone:
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located at the court address above other (*specify address*):

3. I understand that the hearing is set to
 - a. consider a petition to declare the child a dependent of the court under Welfare and Institutions Code section 300, which may limit my rights to the care, custody, and control of my child.
 - b. terminate my parental rights and select and implement a permanent plan of adoption for my child.
 - c. Other (*specify code section and hearing purpose*):

Right to attorney

4. I understand that I have a right to be represented by an attorney at the hearing.
 - a. I already have an attorney who will represent me at this hearing.
 - b. I want an attorney appointed to represent me at this hearing.
 - c. I do not want to be represented, and I give up my right to be represented by an attorney at this hearing.

CASE NAME: _____	CASE NUMBER: _____
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Right to be physically present

You have the right to be physically present at the hearing described in items 2 and 3. **If you give up the right to be physically present at that hearing, and the court does not permit you to appear and participate by videoconference or telephone or the institution cannot accommodate your appearance and participation by videoconference or telephone, the court may proceed without you.**

- 5. I understand that I have a right to be physically present at the hearing described in items 2 and 3.
 - a. I want to be physically present at that hearing.
 - b. I do not want to be physically present at the court and I give up that right.

Request to appear by videoconference or telephone

If you have given up the right to be physically present at the hearing described in items 2 and 3, you may ask the court to permit you to appear and participate in the hearing by videoconference. If either the institution or the court lacks the equipment to allow you to appear and participate by videoconference, you may ask the court to permit you to appear and participate by telephone. **If either the institution or the court lacks the equipment necessary to allow you to appear and participate by telephone, you will not be able to appear and participate by telephone.**

- 6. I do not want to be physically present at the hearing described in items 2 and 3, and *(check all that apply)*:
 - a. I understand that both the institution and the court have the equipment to allow me to appear and participate in the hearing by videoconference or telephone.
 - b. I understand that either the institution or the court does **not** have the equipment to allow me to appear and participate by videoconference or telephone. **I understand that this means that I will not be able to appear and participate by telephone.**
 - c. I want to participate in the hearing by videoconference.
 - d. If no adequate video technology is available, I want to participate by telephone.
 - e. **I do not want to participate** in the hearing by videoconference or telephone.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PARENT)
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DECLARATION OF TRANSLATOR

(To be completed if prisoner does not understand English sufficiently to read this form.)

- 7. a. The prisoner's primary language is Spanish other *(specify)*:
 b. I certify that I translated *Order for Prisoner's Appearance at Hearing Affecting Parental Rights (JV-450)* and this form for the prisoner in the prisoner's primary language to the best of my ability.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF INTERPRETER)
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CASE NAME: _____	CASE NUMBER: _____
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DECLARATION OF OFFICIAL

8. This institution
- a. can provide the prisoner with videoconference technology that complies with Cal. Rules of Court, rule 5.531.
 - b. can provide the prisoner with telephonic technology that complies with Cal. Rules of Court, rule 5.531.
 - c. **cannot** provide the prisoner with videoconference or telephonic technology that complies with Cal. Rules of Court, rule 5.531.

To the official: *You must complete item 9 only if the prisoner has not completed items 1–6, above.*

9. The prisoner (*name*):
- has expressly stated to me
 - has by the following conduct expressly indicated to me (*describe conduct*):

that he or she (*check all that apply*):

- a. does not want to attend the hearing and waives the right to be physically present.
- b. wants to appear and participate by videoconference.
- c. wants to appear and participate by telephone.
- d. does not want to participate in the hearing in any way.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE)
		(TITLE OF OFFICIAL)

NOTICE

A copy of this form must be provided by the clerk, social worker, or parent's attorney of record to the parent and the warden or other person in charge of the institution where the parent is confined. This form must be completed by the parent, translator, and person in charge of the institution, as appropriate, and returned by the person in charge of the institution to the court **and** the parent's attorney of record not less than two court days before the scheduled hearing.

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.

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Item SPR11-51 Response Form

Title: **Juvenile Law: Participation of Incarcerated Parents in Hearings in Juvenile Dependency Proceedings** (amend Cal. Rules of Court, rule 5.530; adopt form JV-451; revise form JV-450)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.