



TRANSPORTATION TO COURT FOR HEARINGS AFFECTING PRISONERS' PARENTAL RIGHTS



This manual (published in July 2013) is written for incarcerated parents in California prisons and jails who want to attend court hearings that affect their parental rights. It provides information about an incarcerated parent's legal right to be present at, and the procedures used to request transportation to, these hearings. It is important to remember that the procedures used may vary by county. **This guide is not intended to replace your attorney.** If you have an attorney, stay in close contact with your attorney and keep him or her informed about all aspects of your case.

This manual provides current information to the best of our ability. However, laws and procedures change frequently. It is your responsibility to check relevant legal cases, codes, court rules and forms when using this manual.

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How are incarcerated parents notified of court hearings about their children?

There are three different courts that might be involved with the custody of children of incarcerated parents. This manual provides information about all three courts:

The **juvenile dependency court** is the court where a Social Services Department, such as Child Protective Services (CPS), works. CPS may cause a “dependency petition” about your child to be filed if it believes that your child is abused or neglected.

The **probate court** hears guardianship petitions filed by private parties, such as relatives or friends, who want to be appointed guardian of your child.

The **family court** is the court where divorces (dissolutions of marriage) are filed, as well as dissolutions of domestic partnerships. It also hears child support cases and “paternity” cases, now known as Petitions to Establish Parental Relationship. If CPS or private

guardianships are *not* involved, then a custody or visitation case will be heard in the family court.

Just like any other parent, incarcerated parents have the right to be notified of court hearings affecting their children. For cases in the juvenile dependency court, social service departments must make reasonable efforts to provide parents with adequate notice and an opportunity to be heard before a parent may be deprived of parental rights. *In re B.G.* (1974) 11 Cal. 3d 679, 690.

In other custody and family law cases, the general legal requirements for notification in civil cases apply. This means that personal service (handing documents to you in person), substituted service (after efforts at personal service have failed, handing documents to an adult in your home, followed by mailing the documents to you at that address), service by publication (after efforts at personal service have failed, publishing a notice in an approved newspaper), etc., must be used.

When do incarcerated parents have the right to be transported to court?

California law gives incarcerated parents the right to be transported to court for a hearing that seeks to **terminate their parental rights**. California Penal Code section 2625(d). This proceeding usually takes place in the juvenile dependency court, but it could come up in other courts.

California law also gives this right to parents for **jurisdictional and dispositional hearings** in dependency court. *In re Jesusa V.*

(2004) 32 Cal. 4th 588, 599, fn. 2. The presence in court of the incarcerated parent’s attorney is not sufficient. *In re Jesusa V.*, at 622.

However, incarcerated parents may waive (give up) their right to attend in person. And the parent’s right to be transported may be considered less important than other rights or rules, such as the rule that dispositional hearings be completed within six months of detention hearings. *D.E. v. Superior Court* (2003) 111 Cal.App.4th 502.

Can incarcerated parents request to be transported to court for other hearings?

Yes. For all other hearings in a juvenile dependency court case (such as detention or review hearings), and hearings in other courts that affect an incarcerated parent’s parental rights (divorce, petition to establish parental relationship, guardianship, child support, etc.), Penal Code section 2625(e) gives an incarcerated parent the

right to request that he or she be transported to the hearing. The judge will make this decision.

Some hearings are more important than others. In important hearings where a parent’s presence could make a difference in the outcome of the case, a parent can assert the constitutional

due process right to access the courts. This means that people must be given a “meaningful opportunity” to be heard. *Payne v. Superior Court*

of Los Angeles (1976) 17 Cal. 3d 908, 914, citing *Boddie v. Connecticut* (1971) 401 U.S. 371, 377.

Which incarcerated parents do these rules cover?

Penal Code section 2625(a) defines “prisoner” as “any individual in custody in a California state prison, the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority.” This definition also includes individuals who have been found “not guilty by reason of insanity” or not competent to stand trial and who are confined in a state hospital or other public or private treatment center. It should also apply to a California state prisoner who has been transferred out-of-state to serve his sentence elsewhere. Penal Code section 11189, Article IV, section (e).

However, prisoners sentenced to death are not covered by these rules. Penal Code section 2625(i).

Individuals incarcerated in federal prisons, immigration detention centers, or California residents serving an out-of-state sentence in an out-of-state prison are not covered either. A parent in one of these facilities can request that the court *continue* (postpone) the proceedings until he or she is released. This request is more likely to succeed if the parent’s release is coming up soon. *In re Maria S.* (1997) 60 Cal. App. 4th 1309.

Who is responsible for transporting incarcerated parents to court?

The sheriff’s department in the county where the hearing will take place is responsible for

making arrangements to transport an incarcerated parent to a court hearing.

How do incarcerated parents *assert their right* to be transported to court?

When an incarcerated parent has a **right to be transported** to a hearing in dependency court, the court will automatically issue an order for the parent’s transportation to court. The incarcerated parent, the parent’s attorney, the superintendent or warden, and the sheriff of the county where the hearing will occur, must receive the order at least 15 days before the hearing. Cal. Rule of Court section 5.530(f)(2).

This order, called an “Order for Prisoner’s Appearance at Hearing Affecting Parental Rights”, is form JV-450. A copy is attached to this manual. It notifies the parent of the time, place, and nature of the hearing and of the parent’s right to be physically present at the hearing.

JV-450 also informs the parent whether the court can provide the parent’s appearance by **telephone** or **videoconference**, or not. It orders the warden to inform the parent whether the jail or

prison has the ability to provide a **telephone** or **videoconference appearance**, or not.

Form JV-450 asks the parent to fill out form JV-451. Form JV 451 is called “Prisoner’s Statement Regarding Appearance at Hearing Affecting Parental Rights.” On JV-451, a parent can check a box to tell the court whether the parent (1) wants to be physically present at the hearing; (2) wants to appear at the hearing by videoconference or telephone; or (3) does not want to participate in the hearing. A parent should not ask to appear by videoconference or phone unless **both** the court and the institution have the **ability** to provide that kind of appearance.

JV-451 also informs the parent of the right to be represented by an attorney at the hearing. On JV-451, the parent can check a box to tell the court whether the parent (1) already has an attorney; (2) wants an attorney to be appointed; or

(3) wants to give up the right to be represented by an attorney at the hearing.

It is very important that prisoners fill out

How do incarcerated parents *request* to be transported to *juvenile dependency court*?

If a parent does not have the right to attend a hearing, the parent will have to request to be transported. In the dependency court, these could be detention hearings or review hearings.

If the incarcerated parent has an attorney, he or she should tell the attorney that he/she want to be transported to the hearing. The attorney should then file a motion with the court.

Incarcerated parents who do not have an attorney should file a motion on their own behalf with the court as soon as possible. The motion should state the reasons why it is important for the parent to attend the hearing. A sample motion is attached to this manual along with samples of the kinds of facts to include in your motion.

If the court denies the motion for transportation to court, the court can still allow the

How do incarcerated parents *request* to be transported to the *family or probate courts*?

In most instances, incarcerated parents do not have an absolute right to be transported to the family or probate court to attend child custody hearings. But these parents may *request* to attend, and the judge can order it.¹

If you are the petitioner: If you are the party who has filed the family law case (the petitioner in a dissolution of marriage or petition to establish parental relationship, for example) or the probate court guardianship case (as a petitioner to establish a guardianship), then you can include a request that you be transported to court in the

¹ In some cases, such as an adoption in family court, an incarcerated parent would have the *absolute right* to attend the hearing terminating that parent's rights. If this is your situation and you want to attend that hearing, you will have to file a motion. Judges do not issue this order automatically—you have to ask for it. You can use the sample motion and other information in this manual to do so.

form JV-451 and give it to the warden for delivery to the court. The facility where you are housed is required to help you understand and fill out this form if you need assistance.

parent to attend via videoconference or telephone, if the court and the prison or jail have the necessary equipment. Cal. Penal Code section 2625(g). Your motion can ask for these procedures in the alternative.

A sample court order is also attached to this manual. You can fill out the blank areas and send it to the court with your motion.

A parent can also write to the case social worker and explain that he or she wants to attend the hearing and has asked the court to issue an order for his or her transportation to the hearing.

For more information, see the section below called, "Instructions for Filling Out, Filing and Serving the Forms."

court papers that you file. For example, in family court, this request can be made in your Request for Order (FL-300) under the section for "Other Relief." You can make a "back-up" request to appear by videoconference or telephone, if the court and the facility where you are housed have the necessary equipment.

If you are the petitioner in a guardianship case, you can request to be transported to the court hearing in section 10c. of your guardianship petition.

In any of these cases, you can prepare and send the court a proposed order for your transportation. A sample court order is attached to this manual.

If you are the respondent: If you are the party who is responding to someone else's

petition, then you will probably have to file your own motion to request a court order for your

transportation to court. A sample Motion and Order are attached to this manual.

Instructions for filling out, filing and serving the forms

Filling out the forms

At the end of this manual are a sample Motion and Order that have been filled out with instructions so that you can see how it should be done.

You can use these samples as worksheets. Just cross out the information in the brackets and substitute it with your own personal information.

The most important part of the Motion is your supporting declaration. This is where you tell your story about who you are, what your relationship with your child is like, and why it is important for you to attend the court hearing in person. Plan to spend some time writing and rewriting it. The statement could be one or two pages in length. Typically, each sentence or paragraph is numbered.

After you have finished writing your rough draft of the Motion and Order, you can prepare the final copy. Using blank paper, type up your completed forms, or print them by hand. If printing, print as clearly as possible, using blue or black ink. Do not use pencil.

You will also need to prepare a Proof of Service form, because you will be “serving” (by mail) a copy of your Motion and Proposed Order on other parties.² Since you are a party to the lawsuit, you are not allowed to serve/mail your

documents. Any adult over the age of eighteen can do this for you. This person must then sign the Proof of Service.

A sample Proof of Service form with instructions is attached to this manual. You should staple your Proof of Service to the back of your Motion.

Filing and serving the forms

When the forms are completed, make at least 3 copies of the Motion and at least 4 copies of the Order:

- * Mail one copy of each to the social worker (if in juvenile dependency court) or to the other party or party’s lawyer if represented (if in family or probate court).

- * Mail the original and one copy of the Motion, and the original and three copies of the Order to the court clerk. Ask that the court file-stamp and return one copy of each to you. The other copies of the Order are for the clerk to give to the sheriff in the county where the court is, and/or to your institution, depending on what the judge orders. Be sure to include an addressed stamped envelope for yourself and for your institution.

- * Keep one copy of each for your records. When the court clerk returns the file-stamped copy to you, the file-stamped copy will become your official copy.

² Whether you are required to serve other parties of your Motion may vary by county. In the interest of caution and to prevent delays, we recommend that you serve other parties in all cases.

Enforcing your court order

Getting transported to court from prison or jail

If you got a court order to appear in court for your hearing, you may have to be pro-active at your institution to make sure you are transported in time. Be polite but persistent! The judge has ordered that you be brought to court, but *you* will have to make it happen.

Appearing by telephone or videoconference

If you got an order to appear in court by telephone or video-conference, be sure that you understand what you need to do on your end to make this happen. It may take several steps, over several days, to arrange this. On the day of the hearing, allow yourself plenty of time to get yourself and your paperwork to the office where the phone or video equipment is located.

Can an incarcerated person appeal a decision that was made in his or her absence due to lack of transportation?

Yes, this issue can be appealed. Unfortunately, an incarcerated parent's lack of transportation is not always enough reason to overturn a court proceeding. The court looks at many factors, such as: whether or not you asked to be transported; whether or not you appeared by phone or videoconferencing; whether or not you had an attorney who was present; whether or not your attorney objected to the hearing going

forward in your absence; what the impact of a delay in the proceedings would have been; and the harm ("prejudice") to your case from your absence.

A case is more likely to be overturned if the incarcerated parent has not received adequate notice of a hearing that he or she has the right to be transported to.

Will prisoners lose good time credit by going to hearings concerning their children?

No. California law requires that state prisoners who are "removed to out-to-court status" . . . "shall receive sentence-reducing credit" that would have been earned if they had been able to work. These prisoners will also keep their

existing work group status "unless otherwise impacted by a classification committee or disciplinary action." California Code of Regulations, Title 15, section 3045.3.

Conclusion

We hope that this information is helpful to you. The court system can be overwhelming. We believe that the courts should make it easier, and not harder, for incarcerated parents, and parents returning to the community from prisons and jails, to develop and maintain relationships with their children.

Being incarcerated does not make someone a bad parent. In most cases, children want to

know their parents and want their parents to be a part of their lives.

As more and more incarcerated and released parents petition the courts to be heard in cases involving their children, we believe the courts will become more understanding of your perspective. We wish you success in your efforts to remain in your children's lives.

California Penal Code section 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.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
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 Welfare Institutions Code section 355, 358, or 361, the clerk of the court must attach this form and a 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 291 on the parent; the parent's attorney (if any); the warden, superintendent, or other person in charge of the institution where the parent is confined; and the sheriff of the county in which this order is issued not less than 15 days before the date of the scheduled hearing.
- For a hearing under Welfare Institutions Code section 366.26 at which termination of parental rights is at issue, the social worker or probation officer must attach this form and a 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); the warden, superintendent, or other person in charge of the institution where the parent is confined; and the sheriff of the county in which this order is issued not less than 15 days before the date of the scheduled hearing.
- For any other hearing in a dependency proceeding for which the court orders an incarcerated parent to be produced, the clerk of the court or the social worker, as appropriate, must attach this form and a copy of *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) to the Notice of Hearing and serve them as legally prescribed on the parent; the parent's attorney (if any); the warden, superintendent, or other person in charge of the institution where the parent is confined; and the sheriff of the county in which this order is issued 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 (<i>date</i>):	at (<i>time</i>):	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.

CASE NAME: _____	CASE NUMBER: _____
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- 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 2a or 2b. 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.

ORDER

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 the right to be physically present at the hearing, you are not required to release the prisoner.
- b. If the prisoner waives the right to be physically present at the hearing and requests to appear by videoconference or telephone 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 waives 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 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 a meaningful opportunity to complete the attached *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) and must provide, consistent with sections 3002, 3130–3146, and 3160–3165 of title 15 of the California Code of Regulations, whatever assistance is reasonably necessary, including but not limited to reading or translating, to allow the prisoner to understand the form and to make knowing and informed decisions regarding the options it presents.

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

Date: _____

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
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 a juvenile dependency attorney who will represent me at this hearing.
 - b. I want a juvenile dependency 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 either 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.
 I will need the assistance of an interpreter (*specify language*):
- 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 let you appear and participate in the hearing by videoconference or 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 or telephone.
 I will need the assistance of an interpreter (*specify language*):
- d. **I do not want to participate** in the hearing by videoconference or telephone.

Date:

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE OF PARENT)

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)

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: 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 or teleconference.
- c. 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)

IMPORTANT: PLEASE READ

A copy of this form must be provided by the clerk, social worker, or, if the court has not ordered the parent's appearance, parent's attorney of record to the parent and the warden or other person in charge of the institution where the parent is confined not less than 15 days before the scheduled hearing. This form must then be completed by the parent, interpreter, and person in charge of the institution, as appropriate, then filed with the court by the person in charge of the institution and returned to the parent's attorney of record not less than 8 court days before the scheduled hearing.

[your name and CDCR/jail number]
[name of prison/jail]
[street address]
[city, state, zip code]

In Pro Per

SUPERIOR COURT, COUNTY OF [insert name of county]

Name of Case)
)
)
)
)
)

Case No. [insert case number]

**MOTION TO TRANSPORT PRISONER
TO COURT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION IN SUPPORT.**

PLEASE TAKE NOTICE that the undersigned, [your name here], moves the Court under California Penal Code § 2625 for an order transporting [her/him] to the above-entitled court for the hearing in this case now set for [date of hearing].

The court is located at [address for court].

This Motion is based on the attached documents and exhibits including the declaration of [your name], dated [date of declaration], the Memorandum of Points and Authorities Supporting Petitioner's Motion, and on all papers filed and records in this action, and on any evidence received at the hearing.

Dated: [insert date here].

[sign on the above line; type or print your
name directly below the line]
In Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

Under California Penal Code § 2625, a prisoner has an absolute right to be present at any court proceeding brought under Family Code §§ 7800 et.seq. and Welfare & Institutions Code § 366.26 which may terminate the prisoner's parental rights, or any proceeding under Welfare & Institutions Code § 300, where the prisoner's child may be adjudicated a dependent of the court. In any other action in which a prisoner's parental or marital rights are subject to adjudication, the court **may** order that the prisoner be brought before the court.

The California Supreme Court has held that an indigent prisoner seeking to defend a civil suit has a due process right of access to the courts. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 919). A trial court must exercise its discretion to determine whether access is best provided through a personal appearance by the prisoner, representation by counsel, or both. (*Payne, supra*, 17 Cal.3d at 924-925). Because incarceration creates unusual obstacles to effective communication between attorney and client even when counsel has been appointed, a personal appearance by the prisoner is often essential to safeguard the prisoner's marital and parental interests in actions which will affect those interests.

Payne supports the granting of such access to the courts, while Penal Code § 2625 not only encourages such appearances by prisoners, but actually requires that they be permitted in certain actions at the prisoner's request.

This Court must issue its order transporting the undersigned to court based on the facts as set forth in the attached declaration and incorporated here. In the alternative, this Court must issue its order for the undersigned to appear by videoconference and/or telephone, if the necessary equipment is available in this courthouse and in the institution where the undersigned

is incarcerated.

I am also seeking that this Court order the clerk of this court to deliver the Order to (a) the county sheriff if this Court orders my transportation to court, and/or (b) to the institution in which I am incarcerated, if this Court orders me to appear in person or by videoconference or telephone.

Dated: [insert date here].

Respectfully submitted,

[sign your name on line above; type or print your name directly below the line]

In Pro Per

DECLARATION OF [insert your name here]

The undersigned declares:

1. My name is [insert your name here]
2. I am the natural [father/mother] of [name of child]
3. I am presently incarcerated at [name of prison/jail]
4. I am deeply concerned with the welfare and legal status of my child. I desire to be present at any and all court proceedings affecting [name of child] and my parental rights as is my right under California Penal Code § 2625.

5. [Add additional facts as suggested in the sample examples. Continue numbering them by sentence or paragraph.]

6.

7.

8.

9. I understand that the institution at which I am housed [has] [does not have] the equipment to allow me to appear and participate in the hearing by [videoconference] [telephone].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was made on [date] at [city], California.

[sign your name on line above; print or type your name directly below the line]

PROOF OF SERVICE

I, the undersigned, say:

I live in the County of _____. My address is [insert signer’s address here]. I am over the age of eighteen years and not a party to the above-entitled action.

On [date this document is being placed in the mail], I served the attached Motion on the parties below by placing a true copy of it enclosed in a sealed envelope with postage thereon fully prepaid, in the [describe outgoing mailbox] in [name of prison/jail] at [name of city], CA, addressed as follows:

[List the name, title and mailing address of each of the people you are mailing a copy to. In the juvenile dependency court, this could be a CPS social worker. In family court or probate court, this would be the attorney for the other party or parties (such as the other parent, present custodian of your child, proposed guardian). If the other party does not have an attorney, you would mail it to him or her directly.]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on [date of signing this Proof of Service] at [name of city], CA.

[You must find someone else to mail the motion and sign this document; you cannot mail or sign because you are a party in the case. Have this other person sign his or her name on line above, and print or type that name directly below that line.]

Examples of Fact Statements

The following are some examples of the sorts of facts that you may be include in your Declaration in support of your Motion seeking transportation to court for a hearing affecting your parental rights.

These “fact patterns” are meant to be examples only. The court needs basic background information on your case. The court will also be looking for proof that you are making an effort to keep in regular contact with your child(ren) through phone calls, letters, cards and/or visits. If you have been unable to attend earlier hearings that affected your parental rights, you should also explain why you did not attend them.

If you have a family member who is willing and able to care for your child during your incarceration, it is very important that social services be notified; the longer a child remains in foster care, the more difficult it is to have the child placed with that family member. Even if you do not object to your child’s placement with a family member or other person, you may still want to attend a hearing to advocate for a court order giving you visiting rights.

Example 1: Dependency Court review hearing

1. On August 15, 2010, I was arrested by the San Jose Police Department for robbery and taken into custody. I was eventually sentenced to five years in prison.
2. I am the parent of a six-year-old daughter, Bernice. Bernice lived with me for her first three years, until I was arrested. I took good care of her.
3. Since then, she has been living with my aunt. My parental rights have not been terminated.
4. I have tried to stay in contact with her while I have been incarcerated. I have written letters to her every month. I called my aunt’s house collect to speak with Bernice many times, but my aunt only accepted the calls a few times. My aunt brought Bernice to visit me only one time since I have been in prison.
5. I am worried about Bernice. I have been told by other relatives that my aunt has a new boyfriend who is mean to Bernice.
6. I want to attend the next review hearing so that I can ask some questions and get some answers about what is going on.
7. Also, I want a court order for more regular visits and phone calls with Bernice.
8. I expect to be released in about a year. I want to resume custody of Bernice when I get out, once I get settled.
9. I have been participating in self-help programs to help me get ready for my release. I attend AA and NA. I have received my G.E.D. and am now enrolled in college classes. I am signed up to take a parenting class. I want to appear in court so that I can personally explain to the court how I have changed and why I should have regular visits with my daughter now.

Example 2: Family Court motion hearing

1. I am the father of a 12 year old boy Jamal. My girlfriend and I were living together when she got pregnant. We did not get married, but we did live together for six years after Jamal was born.
2. When we broke up, Jamal mainly lived with her, but he stayed with me and with my mother sometimes, and I paid child support when I could.
3. When Jamal was 10, I got arrested and convicted of burglary and was sent to prison. Jamal's mother has brought him to visit me several times and I am very grateful for this. Jamal and I have always been close, and still are.
4. Now my ex-girlfriend has a new boyfriend who lives in Oregon. She wants to move there with Jamal. She has filed this Petition to Establish Parental Relationship and is trying to get a court order that she can leave California with Jamal.
5. I want to be transported to court to oppose her request in person. My family members will also be in court. We would be very sad to lose contact with Jamal. If I could be brought back to the county, I might be able to talk to my ex-girlfriend about making other arrangements, such as letting Jamal stay in California and live with my relatives, or at least allowing summer visits for Jamal with my family and regular visits with me.
6. I do not have an attorney, so if I cannot be present in court, I will not have effective representation.

Example 3: Probate Guardianship case

1. I am the mother of twin girls, who are ten years old. I was sent to prison in 2010 for assaulting their father, who was abusive to me.
2. Until then, I was their primary caregiver. I took them to school, to all medical appointments, and to their activities as best I could. I was also working full-time as a clothing store sales clerk.
3. When I was arrested, I asked my sister Maria to take care of my girls. I signed a Power of Attorney for Temporary Custody over to her. I have kept in contact with them by writing letters and they write me back. They say that they miss me.
4. Recently, Maria has petitioned the probate court to be their guardian.
5. I want to attend the hearing to tell the court in person that I want to regain custody of my girls when I get released in a few years. I think Maria is doing a good job taking care of my girls, but I want everyone to understand that I am still their mother. I want her to contact me if the girls are having any problems and if there are any important decisions to be made about them. I want to be kept informed and I want to have a voice.
6. I also want court-ordered visitation rights.
7. My girls are very important to me so it is important for me to be in court if and when a guardianship is going to be set up.

[your name and CDCR/jail number]
[name of prison/jail]
[street address]
[city, state, zip code]

In Pro Per

SUPERIOR COURT, COUNTY OF [insert name of county]

Name of Case)
_____))
_____))
_____))
_____)

Case No. [insert case number]

**[PROPOSED] ORDER FOR PRISONER'S
APPEARANCE AT HEARING
AFFECTING PARENTAL RIGHTS.**

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

will be held on [date] at [time] in Dept.: [number] Room: [number] Phone [number]
located at [address].

2. 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.

ORDER

3. To the Sheriff, County of _____:
- [] You are ordered to pick up prisoner [name and identification number] from [name of institution] and transport him/her to _____ County so that he/she may be produced before this court for the hearing described in item 1.
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.
- [] You are ordered to provide the prisoner with the means to appear by videoconference on the date and at the time specified in item 1 in a manner that complies with Cal. Rules of Court, rule 5.531.
- [] 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.
5. To the clerk of this court:
- [] You are ordered to provide a copy of this order to:
- [] the Sheriff of this county
- [] the Warden, Superintendent or other person in charge of [institution]

Dated: _____

Judicial Officer