



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451	January 1, 2012
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 30, 2011
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rule 5.530, adopt rule 5.531, revise form JV-450, and adopt form JV-451 to facilitate the appearance of incarcerated parents in juvenile court proceedings as authorized by law and to guide courts in establishing local procedures to govern any authorized appearance by telephone in a juvenile court proceeding. These actions would implement recently enacted requirements in Welfare and Institutions Code section 388(e),¹ as added in 2010 by Assembly Bill 12 (Stats. 2010, ch. 559), and Penal Code section 2625, which was amended by Senate Bill 962 (Stats. 2010, ch. 482).² Both pieces of legislation require procedures to facilitate the appearance by

¹ All subsequent unspecified statutory references, with the exception of Penal Code section 2625, are to the Welfare and Institutions Code.

² Available at www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0951-1000/sb_962_bill_20100929_chaptered.pdf.

telephone of specific parties—respectively, nonminor former dependents or delinquents and incarcerated parents—in juvenile court proceedings.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

1. Amend rule 5.530 of the California Rules of Court to protect an incarcerated parent's statutory right to appear in person at certain specified hearings in a juvenile dependency proceeding and to affirm the juvenile court's authority to order an incarcerated parent physically produced for any hearing in a juvenile dependency proceeding;
2. Amend rule 5.530 to implement the statutory grant of juvenile court discretion to permit an incarcerated parent to appear at and participate in a hearing in a juvenile dependency proceeding in person or by videoconference or telephone;
3. Adopt rule 5.531 to establish minimum standards for procedures governing remote appearances in a juvenile court proceeding by telephone, videoconference, or any other electronic means authorized by law;
4. Revise *Order for Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450) to clarify the options available to an incarcerated parent; and
5. Adopt *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) to facilitate an incarcerated parent's communication of his or her wishes to the juvenile court and to increase parental access to the courts in dependency proceedings.

The text of the proposed rules and forms is attached at pages 14–22.

Previous Council Action

The Judicial Council adopted rule 5.530 as rule 1410, effective July 1, 1989, to clarify the persons entitled to be present at a juvenile court proceeding. The Judicial Council amended and renumbered the rule as rule 5.530, effective January 1, 2007. This rule, which governs persons present in dependency proceedings, has never addressed the legal options to be present and participate in court available to incarcerated parents.

The Judicial Council approved *Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights* (form JV-450) for optional use, effective January 1, 1993. In response to a recommendation of the Probation Services Task Force, the council adopted the form for mandatory use, effective January 1, 2006.

The Judicial Council has also addressed telephonic appearances in other contexts. Effective March 1, 1988, the council adopted rule 298, now renumbered as rule 3.670, to govern telephonic appearances in general civil cases. Effective July 1, 2005, the council adopted rule 5.324 to govern telephonic appearances in child support actions under title IV-D of the Social Security Act.

Finally, the Judicial Council co-sponsored AB 12, which was enacted in 2010 and takes effect beginning January 1, 2012. Among other things, AB 12 added section 388(e)(3) to require the Judicial Council, by January 1, 2012, to “adopt rules of court to allow for telephonic appearances by nonminor former dependents or delinquents” in proceedings to petition the juvenile court to resume dependency or delinquency jurisdiction over these youth.

Rationale for Recommendation

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 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 dependents⁴ 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

³ See §§ 290.1, 290.2, 291, 293, 294.

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.

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

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.

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.

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.

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

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rule 5.530 of the California Rules of Court, adopt rule 5.531, revise *Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights* (form JV-450), and adopt *Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights* (form JV-451) as a mandatory form to facilitate the appearance of incarcerated parents in juvenile court proceedings as authorized by law and to guide courts in establishing local procedures to govern any authorized appearance by telephone 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 that notice of any hearing in a dependency proceeding, of which a parent is entitled to notice, be sent to an incarcerated parent.¹¹

Subparagraphs (A) and (B) specify that the notice to incarcerated parents must inform them of their rights and option for participating in the hearing. Subparagraph (C) incorporates the requirement in section 361.5(e) that the department use the prisoner locator system to facilitate notice of dependency hearings.

¹⁰ See *Juvenile Law: Extending Juvenile Court Jurisdiction—Nonminor Foster Youth*, SPR11-50 (2011).

¹¹ Sections 290.1–294 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 conform more closely to the language of sections 290.1–294.

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 hearings, as specified. Based on section 2625 as construed by *Jesusa V.*, this requirement cannot depend on the court's prior receipt of a parent's request to appear. Furthermore, 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. For further discussion of these issues, please see *Comments, Alternatives Considered, and Policy Implications, infra*.

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). As discussed more fully on pages 8–9 of this report, this grant of authority encompasses detention and review hearings. 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 submitted to the court a signed, knowing waiver of that right. Paragraph (5) applies the timelines and execution requirements in section 2625(e) to any order issued under rule 5.530(f).

Paragraph (6) incorporates section 2625(g)'s grant of discretion to the court to permit an incarcerated parent who has not been ordered to appear or 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.¹² 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 provide that the presiding judge of the juvenile court should 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 local procedures governing appearances in juvenile court proceedings by telephone, videoconference, or other electronic means authorized by law. Statewide standards will guide local courts, saving them from the need to develop their own procedures from the ground up. 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

¹² Section 2625(g) establishes a strict preference for appearance by videoconference over appearance by telephone.

reporting of the proceeding. 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 should also ascertain 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.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2011 invitation-to-comment cycle from April 21 to June 20. In addition to the standard mailing list for proposals—which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, county counsel, district attorneys, parents’ and children’s attorneys, social workers, probation officers, and other juvenile court professionals—the committee sought comment from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, the legal department of each California state prison, and the California Department of Corrections and Rehabilitation Office of Legal Affairs. Fifteen individuals or organizations submitted comments.¹³ Thirteen commentators agreed with the proposal, with about half suggesting modifications. Two commentators did not state a position; one of these was in general agreement with the proposal, while the other did not comment.

¹³ A chart containing the full texts of the comments and the committee responses is attached at pages 23–49.

The advisory committee considered all of the comments received. Many of the suggestions were incorporated into the proposed rules and forms. The following issues generated the most comments:

1. Whether section 2625(d) and the Supreme Court's opinion in *Jesusa V.* require the court to order a parent's transportation and production for jurisdictional, dispositional, and certain section 366.26 hearings regardless of the court's prior receipt of the parent's request to appear.

Commentators, with one exception, favored requiring the juvenile court to order an incarcerated parent's production for hearing covered by section 2625(d) without waiting for a request to appear. The first sentence of section 2625(d) appears to condition the duty to order the removal, transportation, and production of an incarcerated parent on the court's receipt of a parent's request to be present. If this sentence existed in isolation, no issue would arise. The second sentence of section 2625(d), however, prohibits specific hearings from being held without the physical presence of the parent or parent's attorney unless the parent has knowingly waived the right of physical presence in a signed writing. In *Jesusa V.*, the majority held that this second sentence controls and covers at least jurisdictional, dispositional, and permanency planning hearings, but does not cover hearings to determine parentage. The court, moreover, construed "prisoner or prisoner's attorney" conjunctively, that is, to require that *both* the parent *and* the attorney be present. The court concluded, without qualification, that the parent's physical presence was required at the specified hearings in the absence of a knowing waiver of the right. The committee intends this proposal to be consistent with the court's reading of the statute.

2. Whether the statutory scheme, mandatory timelines, and judicial decisions construing section 2625 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.

Comment on this issue was divided, but most commentators supported the committee's initial reading of the statute. The decision whether a particular hearing type falls within the mandatory provisions of section 2625(b)–(d) or the grant of discretion under section 2625(e) depends on a reading of the whole of section 2625 as it has been interpreted by the California Supreme Court and the Courts of Appeal. As discussed in footnote 6, *supra*, the California Supreme Court in *Jesusa V.* interpreted the phrase "any court proceeding regarding the proceeding" as used in section 2625(b). The otherwise-divided court agreed unanimously that the term included at least the jurisdictional and dispositional hearings and that the notice, removal, and transportation requirements in section 2625(b)–(d) applied to those hearings. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 599 & fn.2 (maj. opn.); see *id.* at p. 626, fn.1 (dis. opn. of Kennard, J., joined by Werdegar, J.); *id.* at p. 677 (dis. opn. of Chin, J.)) The court did not address hearings under section 366.26 as no such hearing was at issue in the case before it. The majority did, however, quote with

approval the language in *Barry W.* limiting the judicial duty and the parental right under section 2625(d) to those section 366.26 hearings in which termination of parental rights is at issue. (*In re Barry W.* (1993) 21 Cal.App.4th 358, 368–369.) The majority declined to extend the duty or right in section 2625(d) to a hearing on presumed fatherhood held in the context of a dependency proceeding because that hearing usually takes place outside of a dependency proceeding. (*Jesusa V.*, *supra*, 32 Cal.4th at p. 599 & fn. 2.) The dissenting justices would have read “any proceeding regarding the proceeding” to extend the judicial duty to issue a production order and the parental right to be present to all hearings in a dependency proceeding.

The majority did not address the application of section 2625(b)–(d) to detention hearings under section 319, but the statutory language and the majority’s reasoning are informative. First, section 2625(c) requires service of notice as required by sections 290.2, 291, and 294. Section 290.2 governs notice of a detention hearing, section 291 governs notice of jurisdictional and dispositional hearings, and section 294 governs notice of hearings under section 366.26. Because section 290.2 addresses only detention hearings and is listed in section 2625(c), it is reasonable to infer that the Legislature intended that the stricter requirements of subdivisions (b)–(d) would also apply to detention hearings. Second, the majority declined to extend section 2625(d) to a hearing that usually occurs outside of a dependency proceeding. A detention hearing, however, begins dependency proceedings and plays an integral and, often, decisive role in those proceedings. The parties, including parents, appear for the first time to address the issues raised in the petition. The court gathers information critical to all subsequent hearings and decisions. The advisory committee, therefore, reads section 2625(b)–(d) to apply to detention hearings.

Detention hearings, however, are subject to strict statutory time limits. As soon as the department determines that the child must be detained, and no later than 48 hours after the child is initially removed from the home, the department must file a petition with the court to declare the child a dependent. (§§ 311(a), 313.) The court must then hold a detention hearing as soon as possible, but no later than the end of the next judicial day (§ 315) unless the child or parent moves for a continuance, in which case the hearing must take place the following day. (§ 322.) No further continuance of the detention hearing is permitted.¹⁴ Yet section 2625 requires the court to order the removal and transportation of an incarcerated parent no less than 15 days before the hearing. A clear conflict exists. In such cases, courts have consistently held that “the rights of a child to a prompt resolution of his or her dependency proceedings outweigh any right of an incarcerated parent to be present at those proceedings.” (*D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 506 [holding that section 352(b) precludes the court from continuing dispositional hearing to date more than six months from detention hearing to ensure presence of incarcerated parent]; see also *In re Axsana S.* (2000) 78 Cal.App.4th 262, 271–273.) The advisory committee, therefore,

¹⁴ Section 321 permits rehearing of the detention hearing, under certain circumstances, outside these strict time limits. Rehearing, however, presupposes that the detention hearing has already been held.

proposes that rule 5.530(g) leave to the court's discretion whether to order the removal and transportation of an incarcerated parent for a detention hearing.

The advisory committee has also considered whether rule 5.530(g) should apply the mandates in section 2625(b)–(d) or the authorization in section 2625(e) to postdispositional review hearings under section 366.21 or 366.22. The Legislature has set forth the notice requirements for review hearings in section 293. By omitting mention of sections 366.21 and 366.22 as well as section 293 from section 2625(b)–(d), the Legislature declined to expressly grant an incarcerated parent the right to attend these review hearings.

The Legislature's intent to exclude these hearings from the scope of section 2625(d), however, is not clear. In section 361.5(e), for example, the Legislature seems to assume that incarcerated parents *will* attend and participate in review hearings. The court must order reunification services to an incarcerated mother or presumed father unless the court finds that these services would be detrimental to the child. (§ 361.5(e)(1); *In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1343.) Under sections 361.5(a) and 361.5(e)(1), read together, the court may order services for an incarcerated biological father if those services would benefit the child. Section 361.5(e)(2) expressly authorizes the court, in conjunction with its partners, to develop protocols to ensure the “notification, transportation, and presence of an incarcerated parent at all court hearings involving proceedings affecting the child” under section 2625. The bulk of section 361.5 addresses issues primarily considered at review hearings: the provision and adequacy of reunification services and the parent's progress in them. The evidence and testimony at review hearings often determine whether the court terminates reunification services and sets a hearing under section 366.26 to consider termination of parental rights. And, as the Supreme Court recognized in *Cynthia D.*, once reunification services are terminated, no further evidence regarding a parent's conduct is required to terminate parental rights. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249–250, 253.) Reading section 2625(d) to exclude review hearings, then, seems to overlook the role that these hearings play in the juvenile court's decision to reunify a family or to terminate parental rights.

No appellate court has considered whether section 2625(d) or (e) applies to review hearings. The *Jesusa V.* court's analysis, though not directly on point, does shed some light on the matter. First, the court construed section 2625(d) to impose a duty and grant a right only in the context of the hearings specified therein or in subdivision (b). (*In re Jesusa V.*, *supra*, 32 Cal.4th at p. 599 & fn.2.) Review hearings appear expressly in neither of these subdivisions. In considering whether to extend section 2625(d) to hearings not expressly mentioned, the majority found determinative whether the proceeding at issue “seeks to adjudicate the child ... a dependent child of the court.” (*Ibid.*) As discussed above, the majority declined to extend the section 2625(d) duty to a hearing on presumed fatherhood because, in its view, that hearing usually occurs outside of any proceeding. By contrast, a review hearing plays an integral, statutorily required, and, often,

decisive role in those proceedings. At a postdispositional review, however, the juvenile court will have already adjudicated the child a dependent. Second, the *Jesusa V.* court discussed with approval the *Barry W.* court's construction of section 2625(d)'s unrestricted right to attend a section 366.26 hearing as limited by section 2625(b) to those section 366.26 hearings at which termination of parental rights is at issue. (*Ibid.*) As the *Cynthia D.* court recognized, judicial findings at a review hearing can determine whether parental rights are terminated at a section 366.26 hearing. (*Cynthia D.*, *supra*, 5 Cal.4th at pp. 249–50.) On the other hand, so can a denial of presumed-father status, which the *Jesusa V.* court excluded. Third, the court concluded that subdivision (e) is the default provision that governs dependency hearings unless they are specified in subdivisions (b)–(d). (*Ibid.*) In the absence of express statutory or judicial authorization to extend the duty and right under section 2625(d) to review hearings, the advisory committee proposes to treat these hearings as governed by section 2625(e).

Some commentators suggested that the proposed forms were unnecessarily complicated. To the extent possible within the constraints imposed by the law, the committee has modified the proposed form to simplify the information conveyed to an incarcerated parent and to clarify the nature and scope of the decisions solicited by the form. The committee also considered proposing a different number of forms, but decided that one form issued from the court to the parent and the institution and a second form to be returned to the court would be the most helpful to the parties and easiest to administer for the courts.

Alternatives Considered

The committee considered taking no action, but the amendments to section 388(e) enacted in AB 12 and to Penal Code 2625(g) enacted in SB 962, as well as the complexity of the requirements under section 2625 as a whole, persuaded the committee that the proposed changes were both necessary and desirable. The committee concluded that the changes would streamline procedures for local courts and reduce long-term costs while allowing courts the flexibility to tailor implementation of the statutory requirements to local needs, practices, and resources. In particular, a uniform statewide procedure that includes mandatory forms will provide prison staff consistency to prison staff. This consistency of format and substance will facilitate institutional compliance with court orders and, thereby, reduce the number of continuances and the overall time and cost needed for the court to adjudicate a juvenile case.

The committee considered and now recommends the amendment of rule 5.530 of the California Rules of Court, the adoption of rule 5.531, the revision of form JV-450 (currently an mandatory form), and the adoption of form JV-450 for mandatory use as outlined and for the reasons discussed above in the recommendation and rationale for recommendation.

The committee also considered recommending that the proposed forms be approved for optional rather than adopted for mandatory use, but determined that mandatory forms would better serve the courts. In addition to relieving courts of the costs of developing and producing a set of forms

consistent with the requirements of state and federal law, statewide mandatory forms will promote more effective communication between the 58 juvenile courts, on the one hand, and the 33 state adult correctional institutions, 58 county jails, and unknown number of civil institutions, on the other. If each court issues orders for removal on its own form, a given institution could receive dozens of different forms seeking the same action and would be hard-pressed to process them all in a timely and effective manner. The court is more likely to secure compliance with its order if the institution receives the order on a standard form that staff can quickly recognize and understand. As discussed above, a uniform statewide procedure that includes mandatory forms will lead to consistent judicial orders easily understood by prison staff no matter their location. This consistency of format and substance will, in turn, facilitate institutional compliance with court orders and, thereby, reduce the number of continued hearings and the overall time and cost needed for the court to adjudicate a juvenile case.

Implementation Requirements, Costs, and Operational Impacts

The committee does not foresee significant implementation requirements or costs. The proposal clarifies statutory requirements. Most, if not all, of the costs associated with implementation will be due more to the legislative mandates than to the rules and forms. The Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees identified several potential operational impacts, but recognized that most of these will be minimal and voted to agree with the proposed rules and forms as circulated for comment. The working group thought that courts might incur costs associated with long-distance telephone charges and the purchase of equipment required to comply with the rules' requirements of fairness and confidentiality. The committee recognizes that courts will incur as yet undetermined costs associated with telephone charges. These charges would accrue without regard to whether the council establishes a procedure as recommended by this proposal, takes no action, or takes different action. The committee anticipates, however, that these costs will be low and, further, that most courts will be able to implement the proposal with existing staff and technology. Court staff might experience a small increase in workload from attaching and mailing forms to required notices of hearings and from facilitating telephonic appearances. The former increase should be incidental to their existing workload. The proposal requires clerks to attach forms only to notices that they are currently required by law to issue. The latter should be relatively minor compared to the workload of facilitating telephonic appearances in general civil cases. Finally, because the court would not need more than either a computer equipped with a videoconference application such as Skype™ or a telephone with a loudspeaker in the courtroom, the committee does not anticipate that lack of technology will pose a financial or logistical barrier to implementation for most courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal promotes three strategic goals. First, by working to eliminate barriers to access faced by incarcerated parents and facilitating their access to court, the proposal furthers Goal I:

Access, Fairness, and Diversity. Second, by promoting practices to foster the fair, timely, and efficient processing and resolution of juvenile dependency cases, the proposal furthers Goal III: Modernization of Management and Administration. Third, by promoting services that meet the needs and protect the rights of incarcerated parents and nonminor dependents, the proposal furthers Goal IV: Quality of Justice and Service to the Public.

Attachments

1. Cal. Rules of Court, rules 5.530 and 5.531, at pages 14–17
2. Forms JV-450 and JV-451, at pages 18–22
3. Chart of Comments, at pages 23–49

Rule 5.530 of the California Rules of Court is amended and rule 5.531 is 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 dependent;

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 known;

15
16 (A) ~~Any~~ any adult relatives residing within the county or, if none;

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 (§§ 290.1–294,**
25 **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) Notice must be sent to an incarcerated parent of a detention hearing under
32 section 319 as required by sections 290.1 and 290.2; a jurisdictional hearing
33 under section 355 or a dispositional hearing under section 358 or 361 as
34 required by section 291; a review hearing under section 366.21, 366.22, or
35 366.25 as required by section 293; or a permanency planning hearing under
36 section 366.26 as required by section 294.

37
38 (A) Notice to an incarcerated parent of a jurisdictional hearing, a
39 dispositional hearing, or a section 366.26 permanency planning hearing
40 at which termination of parental rights is at issue must inform the
41 incarcerated parent of his or her right to be physically present at the
42 hearing and explain how the parent may secure his or her presence or,

1 if he or she waives the right to be physically present, appearance and
2 participation.

3
4 (B) Notice to an incarcerated parent of a detention hearing, a review
5 hearing, or any other hearing in a dependency proceeding must inform
6 the incarcerated parent of his or her options for requesting physical or
7 telephonic appearance at and participation in the hearing.

8
9 (C) The county welfare department must use the prisoner location system
10 developed by the Department of Corrections and Rehabilitation to
11 facilitate timely and effective notice of hearings to incarcerated parents.

12
13 (2) The court must order an incarcerated parent's temporary removal from the
14 institution where he or she is confined and production before the court at the
15 time appointed for any jurisdictional hearing held under section 355 or
16 dispositional hearing held under section 358 or 361, and any permanency
17 planning hearing held under section 366.26 in which termination of parental
18 rights is at issue.

19
20 (3) For any other hearing in a dependency proceeding, including but not limited
21 to a detention hearing or a review hearing, the court may order the temporary
22 removal of the incarcerated parent from the institution where he or she is
23 confined and the parent's production before the court at the time appointed
24 for that hearing.

25
26 (4) No hearing described in (2) may be held without the physical presence of the
27 incarcerated parent and the parent's attorney unless the court has received:

28
29 (A) A knowing waiver of the right to be physically present signed by the
30 parent; or

31
32 (B) A declaration, signed by the person in charge of the institution in which
33 the parent is incarcerated, or his or her designated representative,
34 stating that the parent has, by express statement or action, indicated an
35 intent not to be physically present at the hearing.

36
37 (5) When issuing an order under (2) or (3), the court must require that *Order for*
38 *Prisoner's Appearance at Hearing Affecting Parental Rights* (form JV-450)
39 and a copy of *Prisoner's Statement Regarding Appearance at Hearing*
40 *Affecting Parental Rights* (form JV-451) be attached to the notice of hearing
41 and served on the parent, the parent's attorney, the person in charge of the
42 institution, and the sheriff's department of the county in which the order is

1 issued by the person responsible for giving notice of the hearing at issue not
2 less than 15 days before the date of the hearing.

3
4 (6) The court may, at the request of any party or on its own motion, permit an
5 incarcerated parent, who has waived his or her right to be physically present
6 at a hearing described in (2) or who has not been ordered to appear before the
7 court, to appear and participate in a hearing by videoconference consistent
8 with the requirements of rule 5.531. If video technology is not available, the
9 court may permit the parent to appear by telephone consistent with the
10 requirements of rule 5.531. The court must inform the parent that, if no
11 technology complying with rule 5.531 is available, the court may proceed
12 without his or her appearance and participation.

13
14 (7) The presiding judge of the juvenile court in each county should convene
15 representatives of the county welfare department, the sheriff's department,
16 parents' attorneys, and other appropriate entities to develop:

17
18 (A) Local procedures or protocols to ensure an incarcerated parent's
19 notification of, transportation to, and physical presence at court
20 hearings involving proceedings affecting his or her child as required or
21 authorized by Penal Code section 2625 and this rule unless he or she
22 has knowingly waived the right to be physically present; and

23
24 (B) Local procedures or protocols, consistent with (f)(6) and rule 5.531, to
25 facilitate the appearance and participation by videoconference or
26 telephone of an incarcerated parent who has knowingly waived the
27 right to be physically present.

28
29
30 **Rule 5.531. Appearance by telephone (§ 388; Pen. Code § 2625)**

31
32 **(a) Application**

33
34 The standards in (b) apply to any appearance or participation in court by telephone,
35 videoconference, or other digital or electronic means authorized by law.

36
37 **(b) Standards for local procedures or protocols**

38
39 Local procedures or protocols must be developed to ensure the fairness and
40 confidentiality of any proceeding in which a party is permitted by statute, rule of
41 court, or judicial discretion to appear by telephone. These procedures or protocols
42 must, at a minimum:

- 1 (1) Ensure that the party appearing by telephone can participate in the hearing in
2 real time, with no delay in aural or, if any, visual transmission or reception;
3
- 4 (2) Ensure that the statements of participants are audible to all other participants
5 and court staff and that the statements made by a participant are identified as
6 being made by that participant;
7
- 8 (3) Ensure that the proceedings remain confidential as required by law;
9
- 10 (4) Establish a deadline of no more than three court days before the proceeding
11 for notice to the court by the party or party's attorney (if any) of that party's
12 intent to appear by telephone, and permit that notice to be conveyed by any
13 method reasonably calculated to reach the court, including telephone, fax, or
14 other electronic means;
15
- 16 (5) Permit the party, on a showing of good cause, to appear by telephone even if
17 he or she did not provide timely notice of intent to appear by telephone;
18
- 19 (6) Permit a party to appear in person for a proceeding at the time and place for
20 which the proceeding was noticed, even if that party had previously notified
21 the court of an intent to appear by telephone;
22
- 23 (7) Ensure that any hearing at which a party appears by telephone is recorded and
24 reported to the same extent and in the same manner as if he or she had been
25 physically present;
26
- 27 (8) Ensure that the party appearing by telephone is able to communicate
28 confidentially with his or her attorney (if any) during the proceeding and
29 provide timely notice to all parties of the steps necessary to secure
30 confidential communication; and
31
- 32 (9) Provide for the development of the technological capacity to accommodate
33 appearances by telephone that comply with the requirements of this rule.
34

35 **(c) No independent right**

36
37 Nothing in this rule confers on any person an independent right to appear by
38 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 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 (date):	at (time):	in Dept.:	Room:	Phone:
------------	------------	-----------	-------	--------

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 (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:
---------------------	---------------------	-----------	-------	--------

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:
--------------------	----------------------

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: _____
-------------------------	---------------------------

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.

SPR11-51**Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings** (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Children's Law Center of Los Angeles Martha Matthews, Supervising Attorney	A	<p>We are supportive of this change, which may be helpful in resolving problems getting jails and prisons to transport incarcerated parents to dependency hearings, and also to give such parents the option of appearing by phone or video conferencing so they don't lose 'good time' credits, etc.</p> <p>The proposal specifically asks for comments on whether the court should be required to order the institution to transport the parent, even if the court has not received a request from the parent to appeal.</p> <p>We support the position taken by the proposal—that the court's duty to order an in & out for the parent should not depend on receiving a request from the parent. Too often, the parent may want to appear but not manage to get a timely request to the court. It seems like a better practice to always order the in & out—and then the parent can waive appearance if they do not wish to appear.</p> <p>We also have one minor comment on the forms. The check-box format for an incarcerated person to indicate whether she/he wants to appear by phone or video seemed confusing, and should be formatted in a simpler manner.</p>	<p>The committee hopes that this legislatively mandated proposal will increase access to the courts for incarcerated parents and will increase the quality of service to this segment of the public.</p> <p>No response required.</p> <p>The committee agrees with the comment and has developed the proposal in accordance with this position.</p> <p>The committee agrees with this comment and has simplified the pertinent section of proposed form JV-451.</p>
2.	East Bay Children's Law Office Joy Ricardo, Managing Attorney Oakland	AM	The committee should seriously consider applying Section 2625(d) to review hearings and detention hearings, particularly when the parents are held in local county facilities. It	The committee has considered at some length the suggestion to apply section 2625(d) to detention hearings and review hearings. The committee believes, however, that the language of the statute

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>would reduce the number of continuance requests submitted at review hearings. It would also allow the court to make paternity and ICWA inquiries in a more timely and meaningful way.</p> <p>Parties in state prisons present a larger issue as the state institutions will refuse to comply with the court's removal order.</p>	<p>and the relevant case law preclude that application. The committee has revised the proposal to make clear that the incarcerated parent must receive notice of all dependency hearings as required by Welfare and Institutions Code sections 290.1–294 and that the court has discretion under section 2625(e) to order the production of an incarcerated parent before the court for any hearing in a dependency case. The court and parents’ attorneys should take advantage of these provisions to reduce delays in dependency cases.</p>
3.	<p>Legal Advocates for Children & Youth Andrew Cain, Supervising Attorney Santa Clara</p>	A	<p>JV-451: Paragraph 4 concerning the right to an attorney, as currently worded, risks confusing the parent and giving the court inaccurate information. For example, 4(a) asks the parent to verify that they have an attorney that will represent them at the hearing. Some parents will feel this applies to their criminal attorney, particularly in the early stages of the dependency cases. Should this remain as currently worded, both the parents and court may rely on bad information. This paragraph can be strengthened through re-wording to contain an advisement that the parent should distinguish between their dependency and criminal attorneys.</p>	<p>The committee agrees with this suggestion and has incorporated it, with minor alterations, into its recommendation.</p>
4.	<p>Legal Services for Prisoners With Children Carol Strickman, Staff Attorney San Francisco</p>	NI	<p>Generally, these seem good.</p> <p>I like that the judge issues the order to transport automatically, without a request. I like that the burden then falls on the prisoner to be transported or chose a phone/video option.</p>	<p>No response required.</p> <p>No response required.</p>

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>My questions are:</p> <p>1. Who will be required to notify the prisoner? (f)(1) says the court must order that notice be sent;</p> <p>JV 451 “notice” says that the clerk, social worker OR parent’s attorney must provide a copy of it to the parent and warden. It seems that that the court can delegate this to the attorney, but will the attorney do it?</p>	<p>The relevant notice requirements in the Welfare and Institutions Code, which are incorporated by reference into proposed rule 5.530(f)(1), specify the persons responsible for giving notice to parents. Penal Code section 2625(b) requires the court to order notice of certain hearings transmitted to an incarcerated parent. Section 2625(c) directly references section 290.2, which requires the clerk of the court to issue notice of a detention hearing; section 291, which requires the clerk of the court to issue notice of a jurisdictional hearing or a dispositional hearing; and section 294, which requires the social worker or probation officer to give notice of a selection and implementation hearing under section 366.26. Section 290.1, which requires the social worker or probation officer to give notice of the detention hearing, and sections 293, 295, and 297, which require the social worker or probation officer to give notice of statutory review hearings, also mandate notice to certain parents without reference to whether those parents are incarcerated.</p> <p>Form JV-451, the parent’s statement, is required by proposed rule 5.530(f)(5) to be attached to the notice of a hearing at which the court has ordered the incarcerated parent’s presence on form JV-450. In those cases, the person responsible for giving notice must provide both forms to the</p>

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>Shouldn't the clerk be required to send the order and info to both the prisoner and the prison?</p> <p>2. What about the detention and review hearings? How will the parent be informed that he or she can request a court order for transport, or for video or phone appearance? f(3) says the court may order these things, but I don't see any provision for the parent to be notified and asked if he or she wants it.</p> <p>We have spoken with incarcerated mothers who are left in the dark about what is going on with their children. They want to be informed. They don't seem to be receiving written review</p>	<p>parent. For hearings at which the court does not order the parent to be present, the clerk has no duty to attach the form to the notice of hearing. The notice of hearing itself, however, must, under proposed rule 5.530(f)(1)(A)–(B), include information regarding the parent's options for appearing at and participating in the hearing. The committee has inserted language into the notice box on page three of proposed form JV-451 to clarify that the duty of the parent's attorney, as a specification of the attorney's broader fiduciary duty to his or her client, arises only in the absence of a court order to appear.</p> <p>If the court has issued an order to appear on form JV-450, the person responsible for giving notice must ensure that both forms JV-450 and JV-451 are attached to the notice of hearing and transmitted to the incarcerated parent and the prison under proposed rule 5.530(f)(5).</p> <p>The committee recommends that proposed rule 5.530(f)(1)(B) require notice of these hearings to inform the incarcerated parent of his or her options to appear and participate.</p> <p>Section 366.21(c) requires the social worker to provide the parent with a copy of the review hearing report at least 10 calendar days before the hearing. The parent may, on receipt of the report,</p>

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>hearing reports on a routine basis. If things are going okay, the moms probably do not want to be transported for a review hearing, but they might very well want to be on a phone or video connection in order to stay informed and to demonstrate their continuing interest and concern.</p> <p>3. How about motions for court ordered-visits to the prison? Many incarcerated parents would like their children to be brought to the prison for visits. We get many requests from both incarcerated fathers and mothers about this. Will a dependency court entertain an oral motion for a court-ordered visit at one of these hearings, including at a review hearing?</p> <p>In response to the comments requested:</p> <p>1. I don't know if automatic transport orders are technically required, but I think it is a very practical solution to effectuating the right to appear. Without such a provision, the right is often meaningless. A right is not a right if the court system does not have a mechanism to implement it. On this theory, the order is required.</p> <p>2. I don't know if 2625 is "legally" precluded from detention and review hearings. I don't think 2625 is "practically" precluded from review hearings, as they are often noticed a long time in advance, nor for detention hearings</p>	<p>request to appear at the hearing by phone or video if he or she has not already done so. Recourse is available to the parent if the social worker does not provide the report as required.</p> <p>The committee believes that this issue is beyond the scope of the law underlying this proposal.</p> <p>The committee agrees with the comment and has drafted the proposal accordingly.</p> <p>The committee recommends that the court have the option to order an incarcerated parent's appearance for detention and review hearings under section 2625(e) as long as the delay for the parent's appearance would not run afoul of</p>

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>where parents are incarcerated at the county level, because transportation within a county is often arranged on short notice (in criminal cases, for example). Under “realignment,” we may be seeing many more incarcerated parents remaining at the county level, so this may become a bigger issue as time goes on.</p> <p>I believe, at a minimum, that parents incarcerated at the county level should be given a automatic court order for transportation to any court hearing involving their child;</p> <p>that parents incarcerated out of the county should be provided notice and an opportunity to request a personal appearance and that it should be granted for good cause; and, if a personal appearance is denied, that they should get a phone or video appearance without a showing of good cause.</p> <p>3. Sufficiency of standards in (b): they sound good, but I do not have practical experience in this area. I do note that none of these standards is directed to the warden or institution where the parent is incarcerated. We have heard stories about how difficult it is for incarcerated parents to get information about how to access a</p>	<p>section 322 or 352.</p> <p>The committee does not recommend that parents incarcerated in the county in which the dependency proceeding is held be given an automatic order for transportation for hearings outside the scope of section 2625(d). The court has discretion under section 2625(e) to order these parents transported to other hearings and under 2625(g) to permit them to appear by video or telephone.</p> <p>Under current law and this proposal, parents incarcerated out of county must be provided notice of all hearings in a dependency proceeding. The committee recommends that the proposal require that notice inform the parent of his or her options for appearing at and participating in the hearing.</p> <p>The committee does not recommend imposing mandates by rule of court on correctional institutions apart from their or their inmates’ involvement in the judicial process. If institutions do not respect inmates’ rights, the Legislature and parents’ attorneys may take action to redress the harm suffered.</p>

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Juvenile Law: Appearance by Incarcerated Parents and Other Parties in Juvenile Court Proceedings (amend Cal. Rules of Court, rule 5.530; adopt rule 5.531; revise form JV-450; adopt form JV-451)

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	Commentator	Position	Comment	Committee Response
			<p>telephonic appearance where one has been ordered. There are apparently many steps that incarcerated parents must go through. One mother at Valley State Prison for Women told me that these were the steps she had to go through to get a phone appearance in a family law case:</p> <ol style="list-style-type: none">1. Obtain a fee waiver2. Fax the fee waiver to the “court call” number (not sure who gave her this number)3. “Court call” faxes back the phone number she will call and her access code4. Three days before the court hearing, she calls “court call” and reports the information about her court hearing5. She faxes to “court call” confirmation of her court appearance6. On the day before the hearing, she obtained a ducat from her counselor to go to counselor’s office7. Day of hearing, she goes to counselor’s office and uses her phone. <p>However, she only figured this out through trial and error, and may have missed one court hearing because no one at the prison could tell her what she had to do. Apparently, there may be different procedures for the different counties, as other women described different procedures.</p>	

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			It would be great if the standards could address the obligation of the custodial institutions to cooperate with the courts in this endeavor by, among other things, providing written notice to incarcerated parents about how to access the phone or video-conferencing option. Also, many prisons go on “lockdowns” – will a prisoner be allowed to get to the phone or video-conferencing equipment during a lockdown? (Many lockdowns are for somewhat minor reasons, such as a missing tool, necessitating everyone’s cell to be searched, taking a week; or for a power outage; or for staff training.) If not, will the prison at least inform the court that this is the reason for the parent’s non-appearance? It is important that courts realize that an incarcerated parent’s inability to get to the phone on time is usually not a reflection of any lack of diligence on her part and should not be held against her.	
5.	Los Angeles Dependency Lawyers, Inc. Marlene Forth, Law Firm Director	A	On September 29, 2010, SB 962, which amended Penal Code 2625, was filed with the secretary of state. Los Angeles Dependency Lawyers, Inc., urges the proposed changes, to reflect the statutory amendments. Waivers are needed that enable an incarcerated parent the opportunity provided by the legislation.	No response required.
6.	Orange County Bar Association John Hueston, President	A	No specific comment.	No response required.
7.	Orange County Public Defender's Office Deborah A. Kwast, Public Defender	AM	Comments re Specific Questions: 1. Whether the statutory scheme and the	

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			<p>Supreme Court's opinion in <i>Jesusa V.</i> require the court to order a parent's production in hearings that the full under section 2625(d) irrespective of the court's receipt of the parent's request to appear.</p> <p>The California Supreme Court ruled "the statute requires both the prisoner and the prisoner's attorney be present." (<i>In re Jesusa V.</i> (2004) 32 Cal.4th 588, 622.) Subdivision (d) of section 2625 also references "the right of physical presence...." Section 2625, subdivisions (b) and (c) both compel notice to the prisoner-parent of juvenile court proceedings. Neither statute, however, directs that the notice advise the prisoner-parent of his or her rights to be transported to attend the proceedings. As a practical matter, an order compelling production of the parent-prisoner would serve both to notice the parent-prisoner of this right as well as permit the parent-prisoner to attend or waive his or her appearance.</p> <p>2. Whether the overall dependency scheme, the federally mandated timelines, section 2625 as a whole, the relevant judicial decision 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.</p> <p><i>In re Jesusa V.</i> made clear that 2625 compels a parent-prisoner's appearance for 3 hearings:</p>	<p>The committee agrees with the comment and has strengthened the notice requirements in the proposal.</p> <p>The committee agrees with the comment. Because an incarcerated parent's appearance at a detention</p>

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			<p>jurisdiction, disposition, and the 366.26 hearing (when termination of rights is at issue). However, nothing in the language of 2625 precludes parent-prisoner attendance at detention hearings or review hearings during reunification.</p> <p>Section 2625, subdivision (c), compels notice to the prisoner-parent of the detention hearing (by virtue of the reference to section 290.2). This would appear inconsistent with an intention to preclude presence at such hearings. As a practical matter, given that there may be only a few days between initial removal and the detention hearing (Welf. & Inst. Code, §§ 311, 315), securing the timely attendance of the prisoner-parent may be impossible when he or she is located outside the county in which the juvenile petition has been filed.</p> <p>However, the language in 2625, subdivision (e), is broad enough ("any other action or proceeding in which a prisoner's parental or marital rights are subject to adjudication") as to arguably include any dependency proceeding. Subdivision (e) vests the trial court with the discretion to order a parent-prisoner's production for the hearings described by that subdivision. There may be some review hearings at which the parent-prisoner's attendance is so important or critical that it would constitute an abuse of discretion and due process violation not to order production.</p>	<p>hearing or review hearing is neither mandated nor precluded, the committee has drafted the proposal to affirm the court's discretion under section 2625(e) to order a parent's appearance for those hearings.</p>

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			<p>Moreover, review hearings during reunification are scheduled 6 months apart. There should be no practical impediment to producing a parent-prisoner for such a proceeding.</p> <p>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.</p> <p>The problem of non-cooperation between county jail facilities in transporting prisoners underscores the need for jail facilities to utilize telephonic/video equipment. "[W]e note that the juvenile court and counsel in the present case were apparently resigned to the fact that, as is often the situation, the jail authorities in another county (here, Riverside) simply refuse to obey a juvenile court's order directing that the sheriff remove and transport the prisoner-parent from the county jail to the juvenile court [of Los Angeles] for the scheduled hearing. This habitual and willful disobedience of a court order, which the legislature has mandated that the court issue (Pen. Code, § 2625, subd. (d)), not only undermines a parent's potential statutory and constitutional rights, but fosters disrespect for the judiciary and its lawful orders. To the extent this problem can be solved by mandated cooperation which addresses fiscal concerns among the counties for the expenses incurred in the transportation of prisoners, we implore the Legislature to address this matter."</p>	

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			<p data-bbox="800 321 1354 354"><i>(In re Iris R. (2005) 131 Cal.App.4th 337, 343)</i></p> <p data-bbox="800 386 1354 586">We agree with the adoption of rule 5.531; however, the provision in 5.531(b)(4) establishing the two day notice requirement in order to utilize telephone conferencing is arguably imbalanced. First, the provision does not appear in the amendment to 2625.</p> <p data-bbox="800 756 1354 1084">Second, the two-day notice requirement is set in motion by obliging an administrator at the custodial facility to "return" the notice 2 days prior to the hearing. (Form JV-450, 2nd page, bottom.) It may be unclear to the individual executing the form that this means the notice must be in the hands of parent's counsel 2 days prior to the hearing; an alternative reading would suggest it must be in the mail 2 days prior to the hearing.</p> <p data-bbox="800 1125 1354 1417">In addition, the conduct of the custodial administrator executing the form is beyond the control of the parent-prisoner or her counsel. Depriving a parent-prisoner of telephonic attendance because of an error committed by another individual would appear fundamentally unfair. While this provision may be waived for "good cause" (5.531(b)(5)), how would the prisoner-parent know why, for example, the</p>	<p data-bbox="1394 386 1984 716">The committee recognizes that two days' notice may be insufficient. The committee recommends requiring three days' notice. This is consistent with the notice requirement in rule 3.670(g)(1)(B) for telephonic appearances in civil cases and with the Legislature's broad affirmation of the Judicial Council's authority to adopt rules of practice and procedure for telephonic appearances in noncivil cases in section 367.5(e) of the Code of Civil Procedure.</p> <p data-bbox="1394 756 1984 956">The committee agrees that the language on form JV-450 requiring the custodial administrator to return the form is ambiguous. The committee recommends clarifying that the form must be filed with the court no later than three days before the scheduled date of the hearing.</p> <p data-bbox="1394 1125 1984 1325">The committee agrees with this comment and has incorporated into its recommendation language that clarifies that the failure of the prison official to file the form in a timely manner constitutes good cause to waive the notice requirement in rule 5.531(b)(4).</p>

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			custodial administrator failed to timely perform his or her duty? In other words, the prisoner-parent would not ordinarily be able to establish a "good cause" basis for events in which he or she did not participate or control.	
8.	Prison Law Office Corene Kendrick, Staff Attorney Berkeley	A	No specific comment.	No response required.
9.	State Bar of California Family Law Section Saul Bercovitch, Legislative Counsel	AM	<p>FLEXCOM suggests the following modifications:</p> <p>A. Rule 5.530: Persons Present in Juvenile Dependency.</p> <p>1. 5.530(b): The proposed rule uses the term “Nonminor foster youth.” FLEXCOM believes the Judicial Council should use a consistent term throughout all court rules that address the new statutory classification created by AB 12. Therefore, FLEXCOM suggests changing the term in this rule to “Nonminor dependent.”</p> <p>2. 5.530(f)(1)(B): The rule places, in certain instances, a heightened burden on child welfare agencies to complete notice. For example, at a hearing held under section 366.26, the agency is required to provide notice only by first-class mail to the parent’s usual place of residence if that parent was present when the hearing was set. This proposal can be interpreted to impose a requirement upon the agency to review the prison locator system, even if they are unaware that the parent has been incarcerated. In all other</p>	<p>The committee agrees with the comment and has incorporated it into its recommendation.</p> <p>The committee reads section 361.5(e)(2) of the Welfare and Institutions Code to require the county welfare department to use the prisoner locator system to facilitate notice of hearings for incarcerated parents. Indeed, proposed rule 5.530(f)(1)(B) tracks the statute almost verbatim. Neither the statute nor the proposed rule creates an exception to the requirement that the parent notify court or counsel of a change of mailing address. The committee has incorporated clarifying language into its recommendation for</p>

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			<p>instances, a parent is required to notify their counsel or otherwise submit a change of address form to the court. It is concerning that otherwise proper notice may be thwarted due to the parent failing to inform counsel or the court of a recent incarceration.</p> <p>Most child welfare agencies use the prisoner location system when conducting a diligent search if the parent's whereabouts are unknown. Therefore, imposing this requirement is not necessary. This requirement should either be stricken or amended to include a provision that failure to use the system does not constitute a defect in notice for parents that have previously designated a different address.</p> <p>3. 5.530(f)(2) – The Judicial Council specifically asked for feedback as to whether the statutory scheme and <i>Jesusa V.</i> require the court to order production of incarcerated parents in hearings governed under Penal Code section 2625(d), irrespective of the parent filing a request to appear. FLEXCOM believes neither the case law nor the statutory scheme impose such a requirement. The issues from <i>Jesusa V.</i> relevant to this discussion surrounded an incarcerated parent's right to attend hearings on paternity, jurisdiction and disposition. The Supreme Court held that holding the paternity hearing without the presence of the incarcerated parent did not constitute a violation of Penal Code section 2625. However, a violation was</p>	<p>rule 5.530(F)(1)(B).</p> <p>The committee does not recommend adopting the reading of <i>Jesusa V.</i> suggested by the commentator. The Supreme Court did not predicate its holding that the juvenile court violated section 2625 on the parent's request to appear. Rather, the court held that the second sentence in section 2625(d) conferred a statutory right upon the parent <i>and</i> the parent's attorney to appear in person in the absence of a knowing waiver. For a more complete analysis, please see the accompanying Report to the Judicial Council.</p>

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			<p>found based on conducting the other two hearings. The violations were analyzed under the harmless error test and found not to warrant reversal of the trial court’s decision. The court based its decision on a literal read of the language in section 2625. The <i>Jesusa V.</i> court did not go further to place an affirmative duty on the trial court to order the production of incarcerated parents without first determining their desire to appear.</p> <p>Further, mandating this order will result in case delays at the outset. An order to produce generally requires a minimum of three weeks. The time period is longer if the parent is placed in a prison outside the state. Whereas jurisdictional hearings must be held within 15 days of the detention order, in most instances, moving toward a system that requires automatic production will lead to delay. For these reasons, this provision should either be stricken in its entirety or amended to require an order to produce upon request from the parent or counsel.</p> <p>4. 5.530(f)(5): As mentioned above, it generally takes three weeks to order the production of a prisoner. This proposal would allow for service of the order to occur 15 days or more before the hearing. Allowing service to be accomplished less than three weeks before the hearing may not be enough time to ensure compliance of the institution holding the incarcerated parent.</p>	<p>The committee does not recommend modifying the proposal in response to this comment. The proposal does not mandate the order at the outset, that is, for detention hearings. It simply affirms the court’s discretion to order production for detention hearings, discretion which is constrained by the independent timelines for detention hearings mandated by sections 311, 313, 315, 321, and 322 of the Welfare and Institutions Code.</p> <p>The committee does not recommend modifying the proposal in response to this comment. The proposal’s requirement that an order be transmitted to the custodial official derives not from the Welfare and Institutions Code, but from the express language of Penal Code section 2625(e). Given this clear expression of legislative intent, the committee recommends retaining the</p>

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			<p>FLEXCOM recognizes that the 15 day timeline is in accordance with the various notice provisions of the Welfare and Institutions Code. In order to avoid direct conflict with the relevant statutes, FLEXCOM would support a change to this proposal that requires a separate mailing of the JV-450 and JV-451 forms no later than 25 days before the hearing. The child welfare agency could choose to include the notice of hearing in the mailing with these forms.</p> <p>FLEXCOM provides feedback as follows:</p> <p>5. 5.530 (f): Specific feedback was requested on the question of whether the overall dependency scheme, the federally mandated time lines, 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. FLEXCOM believes application of section 2625 to detention hearings is legally permissible, but practically impossible when the prisoner is not in local custody. Within the relevant time lines, a child welfare worker should be able to provide telephone notice to an incarcerated parent and determine whether the parent wishes to appear. In many instances, the local custodian will arrange for the parent to appear. If that does not happen, the court can continue the matter for one day and issue an order that the parent be</p>	<p>15-day deadline. The juvenile court would, of course, be free to issue the order as far in advance of the hearing as practicable.</p> <p>The committee agrees with the comment and has developed its recommendation in accordance with the view expressed.</p>

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			<p>produced. However, applying 2625(d) when a prisoner is in state or federal custody is impractical due to the timelines referenced above for ordering production of the prisoner.</p> <p>Similarly, there are no legal considerations that preclude application of 2625(d) to review hearings under 366.21 or 366.22. The practical consideration of timeliness associated with detention hearings is not existent for the family reunification review hearings, as those hearings are generally set with many months advance notice. FLEXCOM is concerned with getting notice of the JV-450 and JV-451 to incarcerated parents in a timely fashion for the reasons set forth above.</p> <p>6. Specific feedback was requested on the question of whether the standards articulated in rule 5.531(b) are sufficient to establish a framework by which local courts can build procedures to govern appearances by telephone. FLEXCOM believes the framework is sufficient. The various standards set out provide the trial courts with enough guidance of what to consider when developing their local protocols.</p>	<p>The committee does not recommend modifying the proposal in response to this comment. As a practical matter, the committee agrees that it would be no more difficult to arrange timely production of the parent for review hearings than for the hearings expressly addressed by section 2625(d). Given the absence of a clear mandate and the juvenile court’s extant authority under section 2625(e) to order the parent’s appearance at a review hearing, the committee believes that the proposal provides sufficient tools to local courts to enable them to ensure that parental rights are protected. For a more complete analysis of the legal considerations underlying the committee’s recommendation, please see the accompanying Report to the Judicial Council.</p> <p>No response required.</p>

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10.	Superior Court of Monterey County Eva Mihi Operations Manager	A	No specific comment.	No response required.
11.	Superior Court of Riverside County Staff	AM	<p>On the JV-451 under 5a it states, “I want to be physically present at that hearing.” It would be beneficial to have the individual indicate under this section that they will also need the assistance of an interpreter and state the language requested.</p> <p>Under the Declaration of Translator; Translator needs to be changed to read "Interpreter".</p> <p>Under 7b it states “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.” It is recommended that the wording be changed to, “I certify that I [interpreted] 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.”</p> <p>It is recommended to include a place for the interpreter's certification number. If no</p>	<p>The committee agrees with the comment and has incorporated the suggestion into its recommendation.</p> <p>The committee does not recommend the suggested change because <i>translation</i> is the proper term for rendering written text into another language. The committee anticipates that the personnel charged with translation of the forms will be are prison employees or contractors not subject to the requirements of Cal. Rules of Court, rules 2.890–2.894.</p> <p>The committee does not recommend the suggested change because <i>translation</i> is the proper term for rendering written text into another language. The committee anticipates that the personnel charged with translation of the forms will be are prison employees or contractors not subject to the requirements of Cal. Rules of Court, rules 2.890–2.894.</p> <p>The committee does not recommend the suggested change because <i>translation</i> is the proper term for</p>

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			certification number than a box that states the interpreter is non-certified / non-registered.	rendering written text into another language. The committee anticipates that the personnel charged with translation of the forms will be are prison employees or contractors not subject to the requirements of Cal. Rules of Court, rules 2.890–2.894.
12.	Superior Court of Sacramento County Robert Turner, ASO II	N/I	No specific comment.	No response required.
13.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	<p>The current proposal is a workload impact to the court as well as a cost impact due to service requirements and the additional pages added by the extended forms.</p> <p>The courts recently implemented a much simpler process that generally meets the goals of the telephonic appearances. The court is currently using JV-450, as is, when the parent has no option for a telephonic appearance. If the hearing requires the telephonic appearance option, then an extra form is attached that gives the parent the option to request it as wells as the prison staff to complete a declaration. The forms are routed to the prison through the sheriff’s. If there is a telephonic or a waiver of appearance, the forms are faxed back to the court; otherwise the parent is produced.</p>	<p>The committee has discussed whether less costly alternatives exist for protecting the legal rights of incarcerated parents to participate in dependency proceedings, but has discovered none adequate to the purpose.</p> <p>The committee does not recommend modifying the proposal in response to this comment. The committee is not aware of any hearing at which a parent is required to be given the option to appear by telephone. Neither does the committee know of a hearing type at which that option is legally foreclosed. Section 2625(g) gives the court the authority to permit, on a case-by-case basis, an incarcerated parent to appear by telephone in any type of dependency hearing. This proposal establishes a process to assist the court in arranging telephonic appearances in accordance with the law when it wishes to permit them. It does not require the court to permit telephonic appearances. Furthermore, it is not clear to the committee that a process requiring the use of an additional form, the insertion of one or more additional steps, and the action of an additional agency would be less costly for the court to</p>

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			<p>The new process adds to the workload for staff at a time when resources are limited and adds costs to the courts as well.</p> <p>Specific issues:</p> <p>Proposed Revisions to Rule 5.530</p> <p>Subd. (b)(1) – Suggest changing “foster youth” to “dependent” because all of the statutes and proposed rules resulting from AB 12 use the term “nonminor dependent” (see, e.g., Welf. & Inst. Code § 11400(v), defining “nonminor dependent”; rules and forms in SPR11-50)).</p>	<p>implement than the process recommended in this proposal.</p> <p>The increase to staff workload is the result of the legislative mandate. The committee, therefore, does not recommend modifying the proposal in response to this comment. The committee hopes that statewide standards will reduce workload for local court staff because each state prison will receive the same paperwork from each county. Furthermore, the proposal does not require the court to permit any telephonic appearances. It appears to the committee that the recommended process is less cumbersome than the one suggested by the commentator. In addition, permitting has tried to minimize workload impact by developing a process that is carried out as part of existing processes and by personnel already legally responsible for those processes.</p> <p>The committee agrees with this suggestion and has incorporated it into its recommendation. The committee notes, however, that the statute authorizing telephonic appearances by nonminors petitioning the juvenile court to resume jurisdiction over their cases, section 388(e)(3), refers to these young adults as “nonminor former dependents or delinquents.” It is only after the court has resumed jurisdiction that they fall under the definition of “nonminor dependent” in section</p>

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		<p>Subd. (f)(2) - “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 <i>Jesusa V.</i>, 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.”</p> <p><i>Comment</i> - The committee’s reading of the statute completely ignores the explicit language in Penal Code § 2625(d), which is highlighted: “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.” The Judicial Council is authorized to “adopt rules for court administration, practice, and procedure, <i>not inconsistent with statute, ...</i>” (Cal. Const., art. VI, § 6, italics added.) Moreover, there is nothing in <i>Jesusa V.</i> that requires the court to order the parent’s temporary removal regardless of whether the parent requests an appearance.</p> <p>Rule 5.530(f)4, there is a requirement that the JV-450, JV-451, and notice of hearing be served</p>	<p>11400(v).</p> <p>The committee does not recommend modifying the proposal in response to this comment. Based on the analysis set forth in the accompanying Report to the Judicial Council and other comments received, the committee maintains its original reading of the statute, as construed by the <i>Jesusa V.</i> court. The committee recognizes that the first sentence of section 2625(d) appears to condition the court duty on receipt of a request. If this sentence existed in isolation, no issue would arise. The second sentence of section 2625(d), however, prohibits specific hearings from being held without the physical presence of the parent or parent’s attorney unless the parent has knowingly waived the right of physical presence in a signed writing. In <i>Jesusa V.</i>, the majority held that this second sentence comprised at least jurisdictional, dispositional, and permanency planning hearings, but did not encompass hearings to determine parentage. The court, moreover, construed “prisoner or prisoner’s attorney” conjunctively, that is, to require that <i>both</i> the parent <i>and</i> the attorney must be present. The court concluded that the parent’s physical presence was required at the specified hearings in the absence of a knowing waiver of the right. The committee intends this proposal to be consistent with this reading of the statute.</p> <p>The committee does not recommend modifying the proposal in response to this comment. Under</p>

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			<p>on the attorney, parent, prison institution and sheriff’s which poses a significant impact to us. Currently, the attorney completes the forms, not the clerk. Also, our minute order serves as our notice of hearing. Attaching this to the order to produce forms sending them to the prison and sheriff would not comply with Juvenile confidentiality rules. The proposal should state that the JV-450 and the JV-451 (in a different format) should be sent to the sheriff’s as well as the prison (and eliminate the term “served”). Currently, we provide the orders to produce to our sheriff’s who in turn submit them to the prison. Changing this process will be a significant workload impact to courts like us who have this working relationship with the sheriff.</p> <p>Proposed Revisions to Rule 5.531</p> <p>Rule 5.531(b)(1) & (2) - There are noted requirements for the court regarding reception, etc. Telephonic appearances are challenging as it is and the only option available to us is a polycom.</p> <p>Also, the court needs more than a 2 day notice of a telephonic appearance. Currently, we usually receive approximately 5 days notice.</p>	<p>the circulated proposal, the court is free to require the attorneys to complete forms JV-450 and JV-451. The court must still sign form JV-450, as it is a court order. And because form JV-450 is a court order requiring the custodial official and the sheriff to perform certain actions (actions required by statute), it is appropriate that the form be served on those parties. The proposed forms do not require the disclosure of confidential information. Nothing in the proposal requires the court to use the minute order as the notice of hearing.</p> <p>The committee does not recommend modifying the proposal in response to this comment. As circulated, the proposal does not require anything more than a telephone with speaker capacity. The requirements in proposed rule 5.531(b)(1) & (2) are no more than the minimum required by due process to facilitate meaningful participation in the hearing.</p> <p>The committee recommends modifying the proposal to require at least three days’ notice of a request to appear by telephone. This amount of time is consistent with the notice requirements in</p>

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Rule 5.5.31(b) (8) & (9) - Due to limited technology, the court does not have ability to meet this proposed requirement. The only option we have are polycoms that allow an incoming call to be heard by all present. Will funds be provided to the courts to improve their phone technology to meet this requirement?</p> <p>Proposed Revisions to Form JV-450</p> <p>The first two check boxes do not state that forms JV-450 and JV-451 must be served on “the sheriff’s department of the county in which the order is issued,” as is required under rule 5.530(f)(5). This omission may result in some confusion or oversight.</p> <p>Right Footer – Add citation to Cal. Rules of Court, rules 5.530, 5.531.</p> <p>Changes to JV-450 are very confusing because this form will be used when a custody needs to be produced (no option to appear by telephone) as well as when the custody has an option to appear by telephone. The proposed changes make it appear as if the custody will always have a telephonic appearance option.</p>	<p>rule 3.670, which governs telephonic appearances in general civil cases.</p> <p>The committee does not recommend modifying the proposal in response to this comment. Other courts that use Polycom phones simply clear the courtroom if the party appearing by phone wishes to speak confidentially to his or her attorney. The committee anticipates that all courts would be able to implement this procedure. The committee believes that Polycom phones would comply with the legislative mandate and proposed rule 5.531.</p> <p>The committee agrees with this comment and has modified its recommendation in accordance with it.</p> <p>The committee agrees with this comment and has modified its recommendation, with minor alterations, in accordance with it.</p> <p>The committee does not recommend modifying the proposal in response to this comment. The prisoner may request to appear by telephone in any dependency hearing. The court need not grant that request in any dependency hearing. The committee is not aware of any hearing at which section 2625(g) grants an incarcerated parent the</p>

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			<p>Recommendation is for the current JV-450 to remain as is and if the hearing type is one that applies to a telephonic appearance, then an attachment can be submitted. Otherwise, this form will not be usable in both instances.</p> <p>Additional issues with JV-450:</p> <p>Page 2 #4, there is not enough room provided for the institution name as well as the prisoner name.</p> <p>Also, at #4, the options listed makes it appear as if it is the prisoner’s exclusive decision to appear by phone which is not the case. They have the right to a telephonic appearance for specific hearings only.</p> <p>On page 2, there is a requirement for the prison staff to complete the form, whether the or not the prisoner completes it as well as a requirement to notice the court and the attorney. Who will pay for the mailing of the notice? There should also be the option to return the form to the court via a fax number. Also, the notice time of 2 days is not sufficient. Currently we request 5 days notice from the prison.</p>	<p>right to appear by telephone.</p> <p>The committee has increased the amount of room provided.</p> <p>The committee does not recommend modifying the proposal in response to this comment. The prisoner may request to appear by telephone in any dependency hearing. The court need not grant that request in any dependency hearing. The committee is not aware of any hearing at which section 2625(g) grants an incarcerated parent the right to appear by telephone.</p> <p>The committee recommends modifying the proposal to specify that the prison official must complete only item 8 on form 451 whether or not the parent has completed the form. As circulated, the form requires only that the prison official “return” the form. The prison official may return the form by mail, fax, or other means. The committee has modified the proposal to recommend a deadline of three days for notifying the court of a request to appear by telephone. As noted above, this is consistent with the deadline in rule 3.670, which governs telephonic appearances</p>

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			<p>The prisoner’s option to waive appearance should be part of the JV-450 as exists today so it can be used when a telephonic is not an option.</p> <p>Comment Regarding Form JV-451</p> <p>New form JV-451 is very lengthy and provides information that should have already been provided to the parent. The form requires the parent to complete several sections that may be confusing. Inaccurate responses may cause more delays in processing when received by the court as the intent of the parent may not be clear.</p> <p>Also, it makes it appear that the parent has an option for a telephonic appearance at any hearing type which is not accurate.</p>	<p>in general civil cases.</p> <p>The committee does not recommend modifying the proposal in response to this comment. Because the incarcerated parent always has the option of requesting to appear by telephone, the committee views forms JV-450 and JV-451 as adequate for all types of hearing in dependency proceedings.</p> <p>The committee agrees that much of the information on the form should have already been provided to the parent. Nevertheless, the committee views this information as of sufficient import to bear repeating. The committee has simplified the proposed form in several respects to reduce the potential for confusion.</p> <p>The committee does not recommend modifying the proposal in response to this comment. An incarcerated parent always has the option of requesting to appear by telephone. The court has discretion under section 2625(g) to grant or deny the request.</p>
14.	TCPJAC/CEAC Joint Rules Working Group	A	<p>The TCPJAC/CEAC Joint Rules Working Group agrees with this proposal as it was circulated for comment.</p> <p>Operational impacts identified by the working group:</p>	No response required.

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			<p>Potential Fiscal Impact It is anticipated that the courts will incur costs associated with any long distance phone call fees charged.</p> <p>The courts will also incur costs to purchase the conference call equipment if they currently do not have the technical capabilities to conduct these calls.</p> <p>Savings on security costs may vary. Adult in-custody inmates will need sheriff deputies to monitor and transport them around and into the court. Costs associated with these monitoring services are usually borne by the courts. Many courts, however, utilize existing security for in-custody parents appearing at dependency hearings.</p> <p>Impact on Local or Statewide Justice Partners The working group notes that there may be a possibly significant impact to both local and statewide justice partners that will need to inventory existing technological capabilities and develop internal procedures to accommodate telephone appearances by prisoners.</p> <p>Other Impact This proposal would assist with the implementation of the recommendations proposed by the Judicial Council's California Blue Ribbon Commission on Children in Foster</p>	

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			<p>Care to develop remote appearance options for incarcerated parents and approved by the council in 2008. Recommendation 2B from the Commission stated that judicial officers and other stakeholders should remove barriers that prevent, among others, parents from attending hearings, including addressing transportation difficulties and exploring telephonic appearances.</p> <p>In addition, the current proposal would implement PC section 2625 (as amended by SB 962), which governs the appearance of an incarcerated parent in juvenile court proceedings affecting his or her parental rights.</p>	
15.	Youth Law Center Maria F. Ramiu, Managing Attorney San Francisco	A	<p>I suggest that “authorized by law” should be added to the end of subsection (a) to emphasize that the rule is not creating an independent right as provided in subsection (c).</p> <p>The standards in (b) apply to any appearance or participation in court by telephone, videoconference, or other digital or electronic means authorized by law.</p>	The committee agrees with this suggestion and has incorporated it into the proposal.

