

Title	Juvenile Law: Prisoner’s Telephonic Participation at Hearing Affecting Parental Rights (amend Cal. Rules of Court, rule 5.530; revise form JV-450; and adopt form JV-451)
Summary	The proposed amended rule and new and revised forms would establish a procedure for telephonic participation by incarcerated parents at hearings that seek to adjudicate the child of a prisoner as a dependent child of the court (adjudication hearings) and at hearings held under Welfare and Institutions Code section 366.26.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Chantal Sampogna, 415-865-7729, chantal.sampogna@jud.ca.gov
Discussion	<p>Penal Code section 2625(d) (section 2625) requires that incarcerated parents be transported to adjudication hearings and to hearings held under Welfare and Institutions Code section 366.26 (section 366.26) unless the prisoner elects not to be physically present. The Family and Juvenile Law Advisory Committee (Advisory Committee) has been informed that incarcerated parents often waive physical appearances, not because of an unwillingness to be present at or participate in the hearing, but because it may result in the loss of good time credits or program eligibility — often the credits or program participation required by the family reunification case plan. To increase the access and availability of the courts to these parents, and to address associated public policy considerations such as continuances caused by the failure to transport parents who want to be physically present and costs associated with transportation, the Advisory Committee is proposing the development of rules and forms to allow telephonic participation for incarcerated parents in the adjudication and section 366.26 hearings.</p> <p>Section 2625 neither authorizes nor prohibits telephonic participation by incarcerated parents; it provides for two options regarding a prisoner’s attendance at the identified hearings: physical presence or a waiver. Article VI, section 6 of the California Constitution provides that the Judicial Council may establish rules of court administration, practice, and procedure that are not inconsistent with statute. Similarly, Welfare and Institutions Code section 265 states, “The Judicial Council shall establish rules governing practice and procedure in the juvenile court not inconsistent with law.” Providing prisoners the option of participating in these hearings by telephone improves their access to court and the relevant programming available at their</p>

respective institutions, increases the information available to the court, and decreases continuances, security risks, and the costs associated with transporting incarcerated parents to court.

In 2005, the Second District in *In re Iris R.* (2005) 131 Cal.App.4th 337, identified the often habitual and willful disobedience of a court's order to transport a parent for dependency hearings as a problem.¹ "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." (*In re Iris R.* (2005) 131 Cal.App.4th 337, 343.)

In 2007, California Code of Civil Procedure, section 367.5 was added to the statutes. This section provides for telephonic appearances in civil cases. The Legislature stated this section does not apply to any types of cases or proceedings except those civil matters specified in section 367.5(b), in which juvenile matters are not included. Rather, the Legislature stated that consistent with its constitutional rulemaking authority, the Judicial Council may by rule provide for the procedures and practices, and for the administration of, telephonic appearances for all types of cases and matters not specified in subdivision (b). For these other cases and matters, the Judicial Council may specify the types of cases and matters in which parties may appear by telephone, the types of cases and matters in which parties shall appear personally, the conditions under which a party may be permitted to appear by telephone, and any other rules governing telephone and personal appearances that are within its rulemaking authority. (Code Civ. Proc., § 367.5(e)).

Policy recommendations and a large-county pilot project support the adoption of telephonic participation by incarcerated parents in adjudication and Welfare and Institutions Code section 366.26 hearings. Both the 2005 *California Juvenile Dependency Court Improvement Reassessment (Reassessment)* report and the California Blue Ribbon Commission on Children in Foster Care (Commission) recommended developing remote appearance options for incarcerated

¹ Other states have addressed this issue statutorily. For example, telephonic participation is allowed by statute in juvenile law matters in Oregon and Wisconsin upon a showing of good cause. (O.R.S., § 45.400; W.S.A., § 807.13.) Similarly, Florida has a Rule of Judicial Administration applying to its Unified Family Court division that provides that prisoners may make their appearance telephonically in evidentiary hearings with the stipulation of all parties and/or counsel including the prisoner. (FL ST 15 J CIR 7.101-9/08.)

parents.² In addition, the Superior Court of California, County of San Diego has collaborated with the County of San Diego's Alternate Public Defender, representing parents and children, and the San Diego Health and Human Services Agency, Child Welfare Services, on a pilot telephonic appearance project that allows prisoners to appear in court by telephone.

Currently, form JV-450, *Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights*, provides notice of the hearing to the parent and prison official and allows the parent to tell the court and prison official if he or she wants to be physically present at the hearing. This form does not provide for telephonic participation. Similarly, the California Rules of Court do not address telephonic appearances in juvenile proceedings.

The proposed amendments to California Rules of Court, rule 5.530, addressing the persons who may be present at a dependency hearing, revisions to form JV-450, *Notice and Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights*, and adoption of new form JV-451, *Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights*, are consistent with statute and will allow the court to improve the administration of justice by increasing parental access to, and participation in, juvenile court hearings. Ultimately, this proposal will not be successful without discussion and collaboration with judicial leadership and partners, specifically the Wardens and Directors at the relevant institutions. We look forward to hearing input from all partners in this process.

Rule 5.530. Persons Present

Rule 5.530 explains who may be present at juvenile hearings and the requirements for maintaining the confidentiality of the proceedings. The proposed amendment to this rule would provide for an incarcerated parent, if he or she waived the right to be physically present at an adjudication hearing or section 366.26 hearing, to inform

² In 2005, the Administrative Office of the Courts' Center for Families, Children & the Courts completed its second federally mandated assessment of how its courts handle cases involving child abuse or neglect. The *Reassessment* recommended that options for remote appearances be considered in order to better facilitate incarcerated parents' participation in dependency hearings (Recommendation II.D). In 2008, the Judicial Council accepted the Commission's recommendations, including Recommendation 2B, which stated that judicial officers and other stakeholders should remove barriers that prevent children, parents, and caretakers from attending hearings, including addressing transportation difficulties and exploring telephonic appearances.

the court that he or she would like to participate in the hearing telephonically. The proposed amendment would also provide that before the parent's decision to waive physical appearance, the court and prison official must notify the parent if they are each able, respectively, to provide the technology necessary to enable the parent to participate telephonically in the hearing and to otherwise comply with this rule. We are seeking input on the court's and prison or jail's ability to make telephonic participation available to incarcerated parents.

Form JV-450, Notice and Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights

Currently, this mandatory form acts as the notice of hearing to the parent and institution, as the order for removal, and as the waiver form if a parent elects not to attend. The committee proposes splitting this form into two forms. The first, revised JV-450, would serve as a notice to the prison and incarcerated parent and as an order to the prison to transport the prisoner. The second form, discussed below, would contain the request for counsel, waiver, and interpreter and prison official declarations. Proposed additional changes to form JV-450 include simplified language, notice to the parent of the option to participate telephonically, and timeline requirements for completing this form and providing form JV-451 to the parent.

Form JV-451, Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights

The proposed form JV-451 would be mandatory because the contents of this form that are currently on form JV-450 are mandatory. The proposed form JV-451 would include information currently on form JV-450 but in a simpler, question-and-answer format, more clearly addressing the incarcerated parent's right to an attorney and to be physically present and including the proposed option of telephonic participation. The new form also provides timeline requirements for providing and completing the form.

The text of the amendment to the rule, the revised form, and the new form are attached at pages 5–9.

Rule 5.530 of the California Rules of Court would be amended, effective January 1, 2010, to read as:

1 **Rule 5.530. Persons present**

2
3 **(a) Separate session; restriction on persons present; waiver of physical**
4 **appearance; telephonic participation (§§ 345, 675; Pen. Code, § 2625)**
5

6 (1) All juvenile court proceedings must be heard at a special or separate
7 session of the court, and no other matter may be heard at that session.
8 No person on trial, awaiting trial, or accused of a crime, other than a
9 parent, de facto parent, guardian, or relative of the child, may be
10 present at the hearing, except while testifying as a witness.

11
12 (2) If, under Penal Code section 2625, an incarcerated parent makes a
13 knowing waiver of his or her right to be physically present at a hearing
14 seeking to adjudicate his or her child as a dependent of the court or to
15 terminate parental rights and informs the court that he or she would like
16 to participate telephonically, the parent may participate telephonically
17 if this participation otherwise complies with this rule. Before an
18 incarcerated parent's decision to waive physical appearance, the court
19 must notify the parent if it is able to provide the parent with telephonic
20 participation that otherwise complies with this rule and the prison or
21 jail official must notify the parent if the prison or jail is able to provide
22 the parent with telephonic participation that otherwise complies with
23 this rule.

24
25 **(b)–(e) *****
26
27

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 15 04/13/09 xyz Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE AND ORDER FOR PRISONER'S APPEARANCE AT HEARING AFFECTING PRISONER'S PARENTAL RIGHTS	CASE NUMBER: _____

The attorney of record, or court if the parent is unrepresented, must provide this form, with an attached blank form JV-451, *Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights*, to the parent and the Warden or Director of the prison or jail no later than 14 calendar days before the scheduled hearing.

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

on (date): _____ at (time): _____ in Dept.: _____ Room: _____ Phone: _____

located at court address above other (specify address): _____

Attorney of record (see caption box above): _____

This court can provide the parent with telephone participation that complies with Cal. Rules of Court, rule 5.530.
 cannot provide the parent with telephone participation that complies with Cal. Rules of Court, rule 5.530.

2. The hearing will be held under:

- a. **Welfare and Institutions Code section 300** (to declare the child a dependent of the court)
- b. **Welfare and Institutions Code section 366.26** to
 - (1) Terminate parental rights
 - (2) Appoint a legal guardian
 - (3) Identify a placement _____ with a specific goal of _____
- c. Other (specify code section and hearing purpose): _____

3. **To the Parent:** You have a right to be physically present at this hearing. You must fill out the attached form JV-451, *Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights*, and tell the court if you want to be physically present at this hearing.

4. **To the Warden or Director of** (name of institution): _____
 You are ordered to deliver prisoner (name and identification number): _____
 who is a party, into the custody of (name): _____ so the prisoner may be transported to this court for the hearing. The sheriff is ordered to return the prisoner to _____ when the prisoner's appearance is no longer necessary.

If, on the attached form JV-451, the prisoner waives his or her right to be physically present at the hearing, you do not have to transport the prisoner. If the prisoner waives his or her right to be physically present at the hearing but requests to participate telephonically and you can provide the prisoner with telephone participation, you are directed to provide the prisoner with the means for the prisoner's telephonic participation on the date and time provided in number 1 above in a manner that will maintain the confidentiality of the hearing.

You must provide form JV-451 to the court and attorney of record no later than 7 days prior to the scheduled hearing date.

Date: _____

JUDICIAL OFFICER

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 18 04/13/09 xyz 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 APPEARANCE AT HEARING AFFECTING PRISONER'S PARENTAL RIGHTS	CASE NUMBER:

1. I have read and understand, or I have had explained to me, the order for my appearance at the hearing scheduled to affect my parental rights.

2. I understand that a hearing regarding the custody of the following children (names):

will be held

on (date):	at (time):	in Dept.:	Room:	Phone:
------------	------------	-----------	-------	--------

located at the court address above. Other (specify address):

3. I understand the hearing is set to

a. Limit my rights to the care, custody, and control of my child.

b. Select and implement a permanent plan for my child by

(1) Terminating my parental rights.

(2) Appointing a legal guardian.

(3) Identifying a placement _____ with a specific goal of _____

c. Other (specify code section and hearing purpose):

Right to attorney

4. I understand I have a right to be represented by an attorney at hearings affecting my parental rights.

a. I already have an attorney representing me in hearings affecting my parental rights.

b. I want an attorney to represent me at this hearing affecting my parental rights.

c. I do not want to be represented, and I give up my right to be represented by an attorney at this hearing affecting my parental rights.

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

Right to be physically present

5. I understand I have a right to be physically present at the hearing scheduled to affect my parental rights.
- a. I want to be physically present at the court hearing affecting my parental rights.
- b. I do not want to be physically present at the court hearing affecting my parental rights.

Request for telephonic participation

If you have waived your right to be physically present at this hearing and the court and prison or jail can provide you with telephone participation, you may request to participate in the hearing by telephone. Participation by telephone can happen only if the prison or jail where you are located can provide you with telephonic participation that will maintain your child's and any sibling's confidentiality. **However, if your telephone participation cannot be secured, the hearing may be held without your participation.**

6. I do not want to be physically present at the hearing, and I (*check all that apply*):
- a. Understand that both the court and my prison or jail can provide me with telephonic participation.
- b. Understand that either the court or my prison or jail cannot provide me with telephonic participation.
- c. Want to participate in the hearing by telephone.
- d. Do not want to participate in the hearing by telephone.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARENT)

DECLARATION OF INTERPRETER

(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 interpreted *Notice and Order for Prisoner's Appearance at Hearing Affecting Prisoner's 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 BY PRISON OFFICIAL THAT PRISONER DOES NOT WISH TO ATTEND HEARING

8. This institution

a. Can provide the prisoner with telephone participation that complies with Cal. Rules of Court, rule 5.530.

b. Cannot provide the prisoner with telephone participation that complies with Cal. Rules of Court, rule 5.530.

The prisoner (*name*): _____ has stated to me, or by conduct indicated to me, that he or she (*check all that apply*):

c. Does not want to attend the hearing in this matter.

d. Would like to participate telephonically.

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 PRISON OFFICIAL)

Notice:
This blank form must be provided by the court or attorney of record to the Warden or Director of the prison or jail and the parent no later than 14 calendar days prior to the scheduled hearing. This form must be completed by the prisoner or prison official and provided by the prison official to the court and any counsel of record for the parent no later than 7 calendar days prior to the scheduled court hearing.

Item SPR09-35 Response Form

Title: **Juvenile Law: Prisoner's Telephonic Participation at Hearing Affecting Parental Rights** (amend Cal. Rules of Court, rule 5.530, revise Form JV-450, and approve Form JV-451)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

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

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
--