

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 651 (Bryan)
Version: April 9, 2025
Hearing Date: July 8, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Juveniles: dependency: incarcerated parent

DIGEST

This bill clarifies that nonminor dependents (NMDs) have specified rights related to appearing and participating in their dependency hearings, and modifies the requirements relating to an incarcerated person's right to be present, or appear remotely, at proceedings relating to child custody, parentage, or dependency, as specified.

EXECUTIVE SUMMARY

Current law permits an NMD to remain in extended foster care until they reach 21 years of age. As a legal adult, an NMD generally retains the legal authority to make their own decisions. Minors and NMDs and minors in the dependency system also have a number of rights with respect to their proceedings before the juvenile court – which generally occur at least every six months – including the right to counsel. One statute, however, provides only minors, but not NMDs, with rights related to their hearings, including the right to be notified of hearings, the right to appear and participate, and, if it is determined that they were not so notified or given the opportunity to appear, the right to have the hearing postponed until they can be present, unless the court finds that it is in the minor's best interest to proceed. The omission of NMDs from this statute appears to be an oversight.

This bill corrects this omission by expressly adding NMDs to the statute granting minors rights to appear at, and participate in, their hearings. Consistent with NMDs' status as adults, the bill does not permit a court to move forward with a proceeding without the presence of an NMD who was not notified, or who wished to attend but was not given the opportunity.

Current law also establishes when incarcerated individuals have the right to attend, in person, a parentage proceeding, or specified proceedings relating to their custody of, or parental rights with respect to, a child. This bill modifies the provisions relating to when a court must order the individual's personal appearance at such a proceeding, and requires the individual to be given the option to appear at such a proceeding remotely.

This bill is sponsored by Dependency Legal Services and Families Inspiring Reentry & Reunification 4 Everyone, and is supported by ACLU California Action, All of Us or None Orange County, the Alliance for Children's Rights, the Children's Law Center of California, Disability Rights California, the Ella Baker Center for Human Rights, and Riverside All of Us Or None. The Committee has not received timely opposition to this bill. The Senate Public Safety Committee passed this bill with a vote of 6-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the procedures and requirements by which a child can be declared free from the custody and control of their parents, as specified. (Fam. Code, div. 12, pt. 4, §§ 7800 et seq.)
- 2) Provides that the purpose of the juvenile court and the dependency system is to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include the provision of a full array of social and health services to help the child and family and to prevent the reabuse of children. (Welf. & Inst. Code, § 300.2.)
- 3) Establishes that the juvenile court has jurisdiction over:
 - a) A child who is subject to abuse or neglect. (Welf. & Inst. Code, § 300.)
 - b) A child, when that child has committed acts that trigger delinquency jurisdiction rendering the child a ward. (Welf. & Inst. Code, §§ 601, 602.)
 - c) Any nonminor dependent (NMD), between the age of majority and 21 years, under specified conditions. An NMD under the jurisdiction of the juvenile court retains their legal decision-making authority as an adult, except as specified. (Welf. & Inst. Code, §§ 303, 388(e).)
- 4) Defines "nonminor dependent" as a current foster youth or a nonminor under the transition jurisdiction of the court who is between 18 and 21 years old, turned 18 years old while under an order of foster care placement, is in foster care under the responsibility of the county welfare department, county probation department, or

Indian Tribe, and is participating in a transitional independent living plan, as specified. (Welf. & Inst. Code, § 11400(v).)

- 5) Provides that a child may become a dependent of the juvenile court and be removed from the custody of their parent or guardian¹ on the basis of enumerated forms of abuse or neglect. (Welf. Inst. Code, § 300(a)-(j).)
- 6) Requires the juvenile court to review the status of every minor or NMD in foster care at least once every six months, as specified. (Welf. & Inst. Code, § 366.)
- 7) Requires the juvenile court, in its regular status reviews beginning after a dependent youth has attained 16 years of age and until the last status review hearing before the dependent youth attains 18 years of age, to review the status of specified efforts to provide the youth with specified services, documents, and information in advance of the youth's 18th birthday. (Welf. & Inst. Code, §§ 366.3, 391.)
- 8) Requires the court to appoint counsel for a minor or NMD in a dependency proceeding if they are not already represented by counsel, unless the court specifically finds that the minor or NMD would not benefit from the appointment of counsel. (Welf. & Inst. Code, § 317(c)(1).)
- 9) States that a minor who is the subject of a juvenile court hearing is entitled to all of the following:
 - a) To be present at the hearing.
 - b) The right to be represented at the hearing by counsel of their choice.
 - c) If the minor is present at the hearing, to be informed by the court that they have the right to address the court and participate in the hearing, and to be allowed, if they desire, to address the court and participate at the hearing.
 - d) If the minor is 10 years of age or older and is not present at the hearing, for the court to determine whether the minor was properly notified and given the opportunity to attend; if the minor was not so notified or given the right to be present, the court shall continue the hearing unless the court finds that it is in the best interest of the minor not to continue the hearing, and the continuance shall be for the period of time necessary to provide notice and secure the minor's presence. (Welf. & Inst. Code, § 349 (Section 349).)
- 10) Provides that nothing in 9) prevents or limits a minor's right to attend or participate in the hearing. (Welf. & Inst. Code, § 349(e).)
- 11) Defines "prisoner," for purposes of 12), as any individual in custody in a state prison, the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority, or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent

¹ Going forward, this analysis uses "parent" to include "guardian."

to be tried or adjudged to punishment, is confined to a state hospital for the care and treatment of persons with mental health disorders or in any other public or private treatment facility. (Pen. Code, § 2625(a).)

- 12) Establishes requirements for when a prisoner is entitled to notice of, and to elect to appear at, a proceeding relating to the adjudication of their parental rights, the adjudication of their child as a dependent child, or to determine parentage, and the procedures for such appearances. (Pen. Code, § 2625.)

This bill:

- 1) Clarifies that Section 349's provisions relating to the rights of a minor who is the subject of a juvenile court hearing also apply to NMDs.
- 2) Provides, pursuant to 1), if the court finds that an NMD was not properly notified of a hearing or wished to be present and was not given the opportunity to be present, the court shall continue the hearing to allow the NMD to be present, only for the period of time necessary to notify the NMD and secure their presence.
- 3) Provides that nothing in Section 349 prevents or limits an NMD's right to attend or participate in the hearing.
- 4) Adds the following proceedings to those that require notice and opportunity for an incarcerated parent to be physically present, or the opportunity to participate in those proceedings by videoconference or teleconference:
 - a) Hearings related to limitations on parent or guardian control and appointment of another adult to make educational or developmental services decisions;
 - b) Hearings on dependency status review;
 - c) Hearings on permanency review following continuance;
 - d) Any subsequent permanency review hearings; and,
 - e) Any hearing at which parentage of a child of the incarcerated person is to be determined.
- 13) Requires an incarcerated person who is a parent of a child involved in a dependency hearing, and who has either waived the right to physical presence at the hearing or who has not been ordered before the court, to be given the opportunity to participate in the hearing by videoconference if that technology is available and if participation otherwise complies with the law; teleconferencing must be utilized if videoconferencing technology is not available.

COMMENTS

1. Author's comment

According to the author:

AB 651 is a common sense measure that would ensure that incarcerated parents are notified of and allowed to participate in their children's dependency hearings remotely. Current law requires parents to be produced in-person for specified dependency hearings, but appearing in person is an onerous process if a parent is incarcerated in a county that is different from the county that has jurisdiction over their child. By allowing incarcerated parents the option for remote participation, we can ensure better outcomes for our foster youth and provide families with a better chance for safely reunifying after a parent's incarceration period is over.

2. Overview of the dependency system

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.² Welfare and Institutions Code section 300 sets forth the circumstances that can bring a child within the jurisdiction of the juvenile dependency court. " 'Although the harm or risk of harm to the child [for jurisdictional purposes] must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent.' " ³

When a child is found to be under the jurisdiction of the juvenile court, the child is deemed a dependent of that court and the court may begin proceedings to remove the child from the custody of their parent(s); if, after a series of hearings, a parent is found to be unfit, the court can terminate the parent's parental rights.⁴ The overarching inquiry is whether the child would suffer, or is likely to suffer, harm if they remain with their parent.

3. Overview of extended foster care and NMDs

In October 2008, the federal government enacted the Fostering Connections to Success and Increasing Adoptions Act,⁵ which, among other things, offered additional funding to states that opted to extend foster care services to youths between 18 and 21 years of age. Two years later, the Legislature enacted the California Fostering Connections to

² *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

³ *In re R.T.* (2017) 3 Cal.5th 622, 626.

⁴ *See id.*, §§ 360, 361.3, 366.26.

⁵ P.L. 110-351 (2008).

Success Act (the Act),⁶ which authorized the juvenile courts to exercise jurisdiction over, and extend foster care benefits to, persons between 18 to 21 years of age who are eligible for specified public assistance and for whom one or more of the following conditions exist:

- The nonminor is working toward their high school education or an equivalent credential;
- The nonminor is enrolled in a postsecondary institution or vocational education program;
- The nonminor is participating in a program or activity designed to promote or remove barriers to employment;
- The nonminor is employed for at least 80 hours per month; and/or,
- The nonminor is incapable of doing any of the activities described above, due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor.⁷

In the years after the Act's passage, the Legislature passed several additional measures to refine, and close gaps in, the laws governing foster care for youths between 18 and 21 years of age.⁸ These dependents are known as "nonminor dependents," or NMDs,⁹ and the system of supports provided to them is known as "extended foster care." As of April 1, 2025, there were 38,894 minors and NMDs in foster care in California, 6,801 of whom were NMDs.¹⁰

4. A dependent minor or NMD's rights at their dependency hearings

If a minor or an NMD does not have counsel in a dependency proceeding, the court must appoint counsel for them.¹¹ A primary responsibility of court-appointed counsel is "to advocate for the protection, safety, and physical and emotional well-being of the child or the [NMD]."¹²

⁶ AB 12 (Beall, Ch. 559, Stats. 2010).

⁷ Welf. & Inst. Code § 11403.

⁸ See AB 212 (Beall, Ch. 459, Stats. 2011), AB 1712 (Beall, Ch. 846, Stats. 2012), AB 787 (Stone, Ch. 487, Stats. 2013), AB 2454 (Quirk-Silva, Ch. 769, Stats. 2014), AB 2337 (Gipson, Ch. 539, Stats. 2018), AB 748 (Gipson, Ch. 682, Stats. 2019).

⁹ See Welf. & Inst. Code, § 11400(v).

¹⁰ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care, CWS/CMS 2025 Quarter 1 Extract (Jul. 3, 2025), *available at* <https://ccwip.berkeley.edu/childwelfare/reports/PIT/MTSG/r/ab636/1> (link current as of July 3, 2025).

¹¹ Welf. & Inst. Code, § 317(c).

¹² *Id.* at § 317(c)(2). Court-appointed counsel for a minor is tasked with generally representing the child's interests, without specifying when and how counsel may make arguments contrary to the child's wishes, while court-appointed counsel for an NMD, however, "is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the [NMD]." (*Id.*, § 317(e)(1).) AB 373 (Blanca Rubio, 2025), which this Committee passed with a vote of 10-1, would require NMDs' counsel to represent their clients' wishes without qualification.

Section 349 also provides that a minor dependent has a number of rights and requirements with respect to their juvenile court hearings, including:

- The right to be present at the hearing.
- The right to be represented at the hearing by counsel of their choice.
- The requirement that the court inform the minor that they have the right to address the court and participate in the hearing, and the right to do so if they so choose.
- The requirement for the court to determine, for a minor who is 10 years of age or older and not present at the hearing, whether the minor was properly notified of their right to be present and whether they were given the opportunity to be present. If the court determines that the minor was not notified or given the opportunity to be present, the court must continue the hearing to allow the minor to be present, unless the court finds that it is in the best interest of the child not to continue the proceeding. If the court does continue the hearing, it shall be continued only for the time necessary to provide the notice and secure the child's presence; the court may issue any and all orders necessary to ensure that the minor has an opportunity to attend.¹³

Section 349 also provides that none of the specific rights and requirements listed prevents or limits a minor's right to attend or participate in the hearing.¹⁴ Section 349 does not, however, extend any of its rights and privileges to NMDs. Committee staff are not aware of any policy rationale for this omission.

5. This bill clarifies that an NMD has the same rights with respect to a dependency hearing as a minor and improves access to proceedings for incarcerated parents

Although Committee staff are not aware of any court interpreting Section 349's grant of rights to "minors" to mean that NMDs do not share the same rights, the statute's failure to expressly extend those rights to NMDs stands out as a holdover from before California adopted extended foster care. This bill, therefore, adds NMDs to Section 349, eliminating any doubt as to whether NMDs have the same rights as minors with respect to appearing at, and participating in, their dependency hearings. The bill also adds one distinction for purposes of an NMD's appearance, in an instance where a court finds that an NMD was not properly notified of the proceeding or wished to be present but was not given the opportunity to appear. In such a situation involving a minor, the court may elect to move forward with the proceeding without the minor's presence if it finds that it is in the best interest of the minor not to continue the proceeding. NMDs are legal adults, however, who retain their legal decisionmaking authority;¹⁵ in recognition of this status, the bill requires the court to continue a proceeding until the time that the NMD can appear, with no exceptions.

¹³ Welf. & Inst. Code, § 349.

¹⁴ *Id.*, § 349(e).

¹⁵ Welf. & Inst. Code, § 303(d)(1).

This bill also modifies the provisions surrounding when an incarcerated individual can attend a proceeding relating to custody or parentage, or relating to a child who is under the jurisdiction of the juvenile court, in person, and requires incarcerated parents to be given a remote appearance option to attend dependency matters. First, the bill expands the types of hearings for which an incarcerated parent, or presumed parent, must be given notice and an opportunity to attend in person or by videoconference, to include proceedings related to a change in a prior court order terminating juvenile court jurisdiction; hearings relating to limitations on a parent's right to make educational or developmental decisions; and dependency status review and permanency review hearings. Second, the bill requires, rather than permits, an incarcerated parent to be given the opportunity to participate remotely in their child's dependency proceedings. The United States Constitution protects the interest of parents in the care, custody, and management of their child, and these rights "do[] not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."¹⁶ By extending the rights of parents and presumed parents to participate in hearings relating to their children or presumed children, this bill further protects those interests. The Senate Public Safety Committee also considered these provisions and passed this bill with a vote of 6-0.

6. Arguments in support

According to Dependency Legal Services:

Fifteen to 20% of children in the family regulation system are estimated to have an incarcerated parent. Early and frequent inclusion of parents, including incarcerated parents, results in better outcomes for children. There are clear benefits to releasing children to relatives, and parental involvement facilitates swift enactment of these vital placements. Parents provide essential information to ensure compliance with the Indian Child Welfare Act. All children have a right to a relationship and reunification with their parents when it is safe and possible, and inclusion of the parent throughout the life of the case, even while they are incarcerated, makes successful reunification more likely.

The current provision for the participation of incarcerated parents in juvenile dependency cases in Penal Code 2625 requires in-person production of any parent in state prison or county jail only for Welfare and Institutions Code ("WIC") 366.26 termination of parental rights hearings and most adjudications and allows for remote appearance only at the court's discretion. However, caselaw has noted the notorious difficulty in producing incarcerated parents for their hearings and the impact it has on courts' ability to adhere to statutory timeline mandates. Parents in out-of-county local custody are almost never able to participate in hearings. Further, parents in state prison may give up their right to be present, as being transported for court requires temporary housing in

¹⁶ *Santosky v. Kramer* (1982) 455 U.S. 745, 753.

county jail and can result in removal from coveted rehabilitation programs and disrupt good time calculations.

This bill makes two important changes to the current law. First, it requires that the court order remote participation when in-person appearance is not possible or waived for WIC 366.26 permanency hearings and adjudications. COVID-19 necessitated that many facilities update their remote appearance abilities, yet these advances are not necessarily being utilized for dependency cases. Second, the bill expands the hearings for which remote appearance must be made available for parents who are incarcerated, including disposition, statutory review, paternity, and Welfare and Institutions Code 388 petitions. It is vital for parents and children to be involved at all stages of the proceedings, not just the beginning and the end.

SUPPORT

Dependency Legal Services (co-sponsor)
Families Inspiring Reentry & Reunification 4 Everyone (co-sponsor)
ACLU California Action
All of Us or None Orange County
Alliance for Children's Rights
Children's Law Center of California
Disability Rights California
Ella Baker Center for Human Rights
Riverside All of Us Or None

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation:

AB 1201 (Jackson, 2025) would modify the limitation on reunification services for a parent who has been convicted of a violent felony, to situations where specified criteria relating to the crime are met, or where the court finds that reunification is not in the best interest of the child. AB 1201 is pending before the Senate Human Services Committee.

AB 1195 (Quirk-Silva, 2025) requires an order placing a child in foster care, and ordering reunification services, to included specified provisions if the parent is incarcerated in a county jail, and authorizes the use of videoconferencing technology or telephonic communication in lieu of in-person visits, as specified. AB 1195 is pending before the Senate Human Services Committee.

AB 373 (Blanca Rubio, 2025) provides that a nonminor dependent's counsel must represent the nonminor dependent's wishes. AB 373 is pending before the Senate Appropriations Committee.

Prior legislation:

AB 3049 (Bryan, 2024) would have expanded Section 349 to include NMDs and would have added additional provisions relating to the obligation of a minor or NMD's counsel. AB 3049 died in the Senate Appropriations Committee.

AB 2282 (McKinnor, 2024) would have modified the limitation on reunification services to a parent or guardian who has been convicted of a violent felony to circumstances where the victim of the violent felony was a child. AB 2282 died in this Committee.

AB 1134 (McKinnor, 2023) would have modified the limitation on reunification services to a parent or guardian who has been convicted of a violent felony to circumstances where the victim of the violent felony was a child under the custody of the parent or guardian. AB 1134 died in the Assembly Judiciary Committee.

AB 2159 (Bryan, Ch. 691, Stats. 2022) prohibited a juvenile court from denying family reunification services to a parent or guardian who is in custody before conviction and required the court, in determining the appropriate reunification services for the parent or guardian in custody, to consider the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or guardian's access to those court-mandated services and ability to maintain contact with the child, and to document that information in the child's care plan.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 79, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
Assembly Public Safety Committee (Ayes 9, Noes 0)
