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In Pro Per

SUPERIOR COURT, COUNTY OF

_____)
In re)

A Minor.)
_____)

No.

**MEMORANDUM OF POINTS
AND AUTHORITIES
SUPPORTING PETITIONER'S
MOTION FOR
TRANSPORTATION OF
PRISONER TO COURT**

Hearing:
Dept.:
Hearing judge:

Action filed:
Trial date:

California Penal Code section 2625 and *Payne v. Superior Court*, 17 Cal.3d 908 (1976), provide statutory and judicial authority for this order. These authorities uphold a prisoner's right to appear in court for a hearing regarding his/her marital or parental interests.

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1 FACTS:

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POINTS AND AUTHORITIES:

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

II. The California Supreme Court has held that an indigent prisoner seeking to defend a civil suit has a due process right of access to the courts. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 919). A trial court must exercise its discretion to determine whether access is best provided through a personal appearance by the prisoner, representation by counsel, or both. (*Payne, supra*, 17 Cal.3d at pp. 924-25.) Because incarceration creates unusual obstacles to effective communication between attorney and client even when counsel has been appointed, a personal appearance by the prisoner is often essential to safeguard the prisoner's marital and parental interests in actions which will affect those interests.

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

Date:

Respectfully Submitted,

Petitioner in Pro Per