

1 [your name & CDC #]

2 [facility name]

3 [address]

4 [city, state, zip code]

5 In Pro Per

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8 SUPERIOR COURT, COUNTY OF [fill in name of county]

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12 In re [child's name])

13 A Minor.)

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15 _____)

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

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No. [case #]

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

[fill in]

**Hearing:
Dept.:
Hearing judge:**

**Action filed:
Trial date:**

1 FACTS:

The following are four examples of the sorts of facts that should be included in your motion seeking transportation to Court for either a Section 300, 355, 358, or 366.26 hearing.

This is meant only as an example. The Court will be looking for basic background on your case and also proof that you are making an effort to keep in regular contact with your child through telephone calls, letters & cards, and/or visits. You also should explain any absences from past hearings affecting your parental rights. If you have a family member who is willing and able to care for your child during your incarceration, it is very important that social services is notified; the longer a child remains in foster care the more difficult it is for a family member to have the child placed with family. Family members are required to undergo a background check before a child can be placed with them.

Example #1: **Sec 300: Detention Hearing**

On August 15th, 2000, I was arrested by the San Jose Police Department at 3am for possession of narcotics and taken into custody. I was eventually sentenced to three years in prison.

13 I am the parent of a 5-year old daughter, Bernice Jones (DOB: 2/14/97). As a result of my arrest,
14 Bernice was taken into custody by California Protective Services. Because I was immediately taken into
15 custody, I did not have an opportunity to arrange for the care of my child.

16 I have been in regular contact with Bernice since my arrest, both via telephone and through written
17 correspondence. **[Insert whether or not you have been attending hearings, depending on the stage**
18 **of the custody proceedings, if NOT, explain your reasons why]** I believe that my sister, Thelma Smith,
19 has also been in regular contact with Bernice. Thelma has been very close with Bernice all of her life. I
20 believe that Thelma would be an excellent caregiver for my child.

It is important that I attend the hearing on October 23rd so that I can assist my attorney in persuading the Court that Thelma Smith would provide a safe living environment and is able to make informed decisions for Bernice.

24 Without a court order for transportation to the hearing I will not be able to attend the hearing.

Example #2: Sec 355: Jurisdiction Hearing

On August 15th, 2000, I was arrested by the San Jose Police Department at 3am for possession of narcotics and taken into custody. I was eventually sentenced to three years in prison.

I am the parent of a 5-year old daughter, Bernice Jones (DOB: 2/14/97). As a result of my arrest, Bernice was taken into custody by California Protective Services. Because I was immediately taken into custody, I did not have an opportunity to arrange for the care of my child.

I have been in regular contact with Bernice since my arrest, both via telephone and through written correspondence. I believe that my sister, Thelma Smith, has also been in regular contact with Bernice. Thelma has been very close with Bernice all of her life. I believe that Thelma would be an excellent caregiver for my child.

On October 23rd, 2001, I did not attend Bernice's detention hearing. I was not able to attend because I did not receive notice of the hearing in time to arrange transportation. [***OR I attended Bernice's detention hearing.***]

It is important that I attend the jurisdiction hearing on December 18th so that I can assist my attorney in persuading the Court that the allegations in the dependency petition are false. [***OR I do not have an attorney representing me and I am proceeding In Pro Per.***] I need to testify directly concerning the ability of Thelma Smith to care for Bernice.

Without a court order for transportation to the hearing I will not be able to attend the hearing.

1 **Example #3: Sec 358: Disposition Hearing**

2 On August 15th, 2000, I was arrested by the San Jose Police Department at 3am for possession of
3 narcotics and taken into custody. I was eventually sentenced to three years in prison.

4 I am the parent of a 5-year old daughter, Bernice Jones (DOB: 2/14/97). As a result of my arrest,
5 Bernice was taken into custody by California Protective Services. Because I was immediately taken into
6 custody, I did not have an opportunity to arrange for the care of my child.

7 I have been in regular contact with Bernice since my arrest, both via telephone and through written
8 correspondence. I believe that my sister, Thelma Smith, has also been in regular contact with Bernice.
9 Thelma has been very close with Bernice all of her life. I believe that Thelma would be an excellent
10 caregiver for my child.

11 On October 23rd, 2001, I did not attend Bernice's detention hearing. I was not able to attend
12 because I did not receive notice of the hearing in time to arrange transportation. [***OR I attended Bernice's***
13 ***detention hearing.***] I was also not able to attend the jurisdiction hearing on December 18th because I did
14 not have sufficient notice to arrange for transportation to the hearing. [***OR I attended Bernice's***
15 ***jurisdiction hearing.***]

16 It is important that I attend the disposition hearing on February 15th to ensure that the court orders
17 a suitable living environment for my child. I also need to request that the court order specific services in
18 order that I can maintain my relationship with my child until we can be reunified upon my release. I would
19 also like to reemphasize my belief that Thelma Smith would be the best caregiver for my child.

20 Without a court order for transportation to the hearing I will not be able to attend the hearing.

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Example #4: Sec 366.26: Permanent Plan Hearing

On August 15th, 2000, I was arrested by the San Jose Police Department at 3am for possession of narcotics and taken into custody. I was eventually sentenced to three years in prison.

I am the parent of a 5-year old daughter, Bernice Jones (DOB: 2/14/97). As a result of my arrest, Bernice was taken into custody by California Protective Services. Because I was immediately taken into custody, I did not have an opportunity to arrange for the care of my child.

I have been in regular contact with Bernice since my arrest, both via telephone and through written correspondence. I believe that my sister, Thelma Smith, has also been in regular contact with Bernice. Thelma has been very close with Bernice all of her life. I believe that Thelma Smith would be an excellent caregiver for my child.

On October 23rd, 2001, I did not attend Bernice's detention hearing. I was not able to attend because I did not receive notice of the hearing in time to arrange transportation. **[OR I attended Bernice's detention hearing.]** I was also not able to attend the jurisdiction hearing on December 18th because I did not have sufficient notice to arrange for transportation to the hearing. **[OR I attended Bernice's jurisdiction hearing.]**

It is important that I attend the Permanent Plan Hearing on April 4th. The decisions made at this hearing will likely permanently affect the placement and care of my child. I wish to attend the hearing in order to assist my attorney in persuading the court to find a suitable living arrangement for my child. **[OR I do not have an attorney and I am proceeding In Pro Per and my presence is necessary].**

Without a court order for transportation to the hearing I will not be able to attend the hearing.

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: [fill in date]

Respectfully Submitted,

[sign here]
Petitioner in Pro Per