

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Children, Families, and Elder Affairs Committee

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BILL: SB 1770

INTRODUCER: Senator Lynn

SUBJECT: Use of Technology to Supplement Visitation

DATE: March 23, 2007      REVISED: 03/28/2007

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	<u>CF</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

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**I. Summary:**

Senate Bill 1770 establishes a rebuttable presumption that it is in the best interests of a child in a custody proceeding for the child and the parent to have reasonable telephone communication. The bill specifies that electronic communication shall be used to supplement rather than replace face-to-face contact.

The bill defines “electronic communication” and lists the factors to be considered by a court in deciding whether to grant electronic communication in a custody proceeding. The bill provides that the extent or amount of time that electronic communication is ordered is to have no effect on the calculation of child support.

The bill provides that the act will take effect on October 1, 2007, and will apply only to cases pending on that date, but that any party to a judgment or order entered prior to October 1, 2007, may seek to have electronic communication made part of that judgment or order.

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.13 and 61.17.

**II. Present Situation:**

Section 61.13 (2)(b), F.S., provides that in a dissolution proceeding, “[t]he court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act. It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties

is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing . . .” After considering all of the relevant factors, the court may order shared or sole parental responsibility and may also address issues of visitation.

Current law requires that there be a substantive change in circumstances in order to change a visitation agreement.<sup>1</sup> Also, pursuant to s. 61.13001(7), F.S., a court must consider many factors in reaching a decision regarding a proposed relocation and visitation agreement.

“Virtual visitation” (also called Internet visitation or computer visitation) is a term used to describe time spent by a parent with a child via electronic means. The various methods of electronic communication used for virtual visitation include e-mail, video conferencing, web cam, and video phone.<sup>2</sup>

Utah was the first state to codify the concept of virtual visitation. Utah’s statute requires each parent to “permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available . . .”<sup>3</sup> The statute defines virtual parent-time as parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent . . .”<sup>4</sup> The Utah statute states that virtual parent-time is designed to supplement, not replace, in-person parent-time.

Wisconsin passed similar legislation in 2006. In Wisconsin, electronic communication is defined as “time during which a parent and his or her child communicate by using communication tools such as the telephone, electronic mail, instant messaging, video conferencing or other wired or wireless technologies via the Internet, or another medium of communication.”<sup>5</sup>

Wisconsin’s custody statute allows the court to grant either or both parents a reasonable amount of electronic communication at reasonable hours during the other parent’s periods of physical placement with the child if it is in the best interests of the child and the equipment is reasonably available. It specifies that electronic communication cannot be used as a substitute for physical placement and that if a parent’s visitation with a child is supervised, the electronic communication must be supervised as well.<sup>6</sup> The Wisconsin statute states that the court may not use the availability of electronic communication as a factor in support of a modification of a physical placement order or in support of a refusal to prohibit a move.<sup>7</sup>

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<sup>1</sup> See, e.g., *Knipe v. Knipe*, 840 So. 2d 335 (Fla. 4th DCA 2003), gives a two prong test for the modification of visitation agreements: (1) a substantial or material change in the circumstances of the parties since the entry of the custody and visitation order, and (2) that the welfare of the child will be promoted by a change in custody and visitation.

<sup>2</sup> [http://www.localtechwire.com/business/local\\_tech\\_wire/opinion/story/1172531](http://www.localtechwire.com/business/local_tech_wire/opinion/story/1172531) (last visited March 19, 2007).

<sup>3</sup> U.C.A. 1953 s. 30-3-33(14)

<sup>4</sup> U.C.A. 1953 s. 30-3-32(3)(d)

<sup>5</sup> W.S.A. 767.001(1g)

<sup>6</sup> W.S.A. 767.41(4)(e)

<sup>7</sup> W.S.A. 767.481(5m)(b)

Missouri also passed a virtual visitation bill in 2006, but the bill was not signed into law by the Governor and is pending in this year's session. Similar legislation has been introduced and/or drafted in several other states as well.<sup>8</sup>

At least one appellate court has recognized that using the Internet to enhance visitation may be appropriate, at least when it is not used as a replacement for face-to-face visitation.<sup>9</sup> The McCoy case tacitly acknowledges that judges have inherent, discretionary authority to provide for virtual visitation, even in the absence of legislation.

The Florida Evidence Code defines a presumption as an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. Except for presumptions that are conclusive under the law from which they arise, all presumptions are rebuttable.<sup>10</sup>

Every rebuttable presumption is either: (1) A presumption affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or (2) A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill defines electronic communication to mean contact, other than face-to-face contact, facilitated by wired or wireless technologies, between a parent and that parent's minor child. The bill identifies the following examples:

- Telephones;
- Electronic mail (e-mail);
- Web cams; and
- Video-conferencing equipment and software.

The definition specifies that electronic communication is to supplement face-to-face contact between parent and child.

The bill establishes a rebuttable presumption that it is in the best interests of the child in a custody proceeding for the child and the parent to have telephone communication and that, unless the presumption is rebutted, the court shall order telephone communication.<sup>12</sup>

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<sup>8</sup> [http://www.localtechwire.com/business/local\\_tech\\_wire/opinion/story/1172531](http://www.localtechwire.com/business/local_tech_wire/opinion/story/1172531) (last visited March 19, 2007).

<sup>9</sup> *McCoy v. McCoy*, 336 N.J. Super. 172, 182, 764 A.2d 449 (2001).

<sup>10</sup> 90.301(1) and (2), F.S.

<sup>11</sup> 90.302 (1) and (2), F.S.

<sup>12</sup> Although the bill references telephone communication, the context infers *electronic* communication.

The bill provides that electronic communication may be used only to supplement face-to-face contact, and shall not be used as a replacement or substitute for face-to-face contact.

The bill identifies the following factors to be considered by a court in deciding whether to order electronic communication:

- Whether electronic communication is in the child's best interests;
- Whether the communication equipment and technology is reasonably available, accessible and affordable to both parents; and
- Whether there is a history of substance abuse or domestic violence by either parent.

The bill allows the court to consider any other material factors as well.

The bill provides that the party seeking electronic communication shall not be required to prove a substantial change in circumstances, and that the court cannot consider the availability of electronic communication as "solely determinative" in considering relocation.

The bill requires the court to allocate between the parents any additional costs that will be incurred by either or both of them in order to implement the electronic communication, and requires the parents to timely furnish each other with access to information necessary to facilitate electronic communication.

The bill allows the court to implement safeguards or guidelines for electronic communication.

The bill amends s. 61.17, F.S., to clarify that the extent or amount of electronic communication ordered by a court shall not be a factor in the calculation of child support. The bill specifies that it does not apply to orders entered prior to October 1, 2007, but allows a party to any order entered prior to October 1, 2007, to seek a court order for electronic communication.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have a fiscal impact on the parents who must bear the cost of buying the electronic technology.

**C. Government Sector Impact:**

Additional workload may be created from the reopening of visitation agreements to add electronic communication. The volume of cases that would be affected is indeterminate and, therefore, the fiscal impact is indeterminate.

**VI. Technical Deficiencies:**

At page 2, on lines 10 and 11, the bill refers to *telephone* communication. The context infers that the term *electronic* communication was intended in these lines.

At page 3, line 12, the bill provides that “the court may implement safeguards or guidelines for electronic communication.” It is unclear how a court would accomplish such implementation. It may be appropriate to specify instead that the court may order that certain safeguards be implemented by the parties.

**VII. Related Issues:**

The bill does not provide that if a parent’s face-to-face visitation with a child is supervised, the electronic communication must be supervised as well.



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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