

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bills adds ss. 61.046, 61.13, and 61.17, F.S., expanding statutory law relating to electronic technology to supplement visitation.

Empower Families: The bill provides for factors when determining the use of electronic technology to supplement visitation. The bill may provide consistency across the state in the application of electronic technology, while potentially serving to benefit the family as a unit due to the increased clarity of the visitation agreement.

B. EFFECT OF PROPOSED CHANGES:

Background:

HB 863 relates to the use of technology to supplement visitation between parent and child. Utah was the first state to codify the concept of virtual visitation. Utah defines “virtual parent-time” as “parent time facilitated by tools such as telephone, e-mail, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a non-custodial parent and a child or between a child and the custodial parent when the child is staying with the non-custodial parent.”¹

Virtual parent-time is designed to supplement, not replace, in-person parent-time. In addition, “Each parent shall 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, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available.”²

Florida

Florida law states that the 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.³

“The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care and any other responsibilities that the court finds unique to a particular family. The court shall order sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of the minor child.”⁴

¹ Section 30-3-32(3)(d), Ut.St.

² Section 30-3-33(14), Ut.St.

³ Section 61.13, F.S. (2006).

⁴ Id.

“For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including but not limited to: (a) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent; (b) The love, affection and other emotional ties existing between the parents and the child; (c) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs; (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (e) The permanence, as a family unit, of the existing or proposed custodial home; (f) The moral fitness of the parents; (g) The mental and physical health of the parents; (h) The home, school and community record of the child; (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding and experience to express a preference; (j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent; (k) Evidence that any party has knowingly provided false information to the court regarding a domestic violence; ... (l) Evidence of domestic violence or child abuse; (m) Any other fact considered by the court to be relevant.”⁵

Effect

HB 863 creates new language in s. 61.046, F.S., relating to the use of technology to supplement visitation. The bill defines the term “electronic communication” to mean contact, other than face to face contact, facilitated by tools such as telephones, electronic mail (email), web cams, video conferencing equipment and software or other wired or wireless technologies, or other means of communication to supplement face to face contact between a parent and that parent’s minor child.”

According to the bill, there is a rebuttable presumption that it is in the best interest of the child that a parent and child shall have reasonable telephone communication. Therefore, the court shall order telephone communication unless this presumption is rebutted.

The bill makes an important note that electronic communication may be used only to supplement a parent’s face to face time contact with his or her minor child and shall not be used as a replacement or substitute for such time. This language is consistent with what other states that have recognized electronic communication have codified.⁶

Factors:

The bill requires the court to evaluate the following factors prior to granting parents electronic communication:

- Whether the electronic communication is in the child’s best interest.
- Whether the communication equipment and technology for providing electronic communication is reasonably available, accessible, and affordable to both parents.
- Whether there is a history of substance abuse or domestic violence as defined in s. 741.28, F.S.,⁷ or that meets the criteria of s. 39.806(1)(d), F.S.,⁸ by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
- Any other factor that the court considers material.

⁵ Id.

⁶ Section 30-3-32(3)(d), Ut.St.

⁷ **Domestic violence** means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offenses resulting in physical injury or death of one family household member by another family or household member. *See s. 741.28, F.S.*

⁸ Section 39.806(1)(d), F.S., sets out the framework for the grounds for termination of parental rights when the parent of a child is incarcerated in a state or federal correctional institute.

- The party seeking electronic communication shall not be required to prove a substantial change in circumstances. Current Florida law requires a substantive change in circumstances to change a visitation agreement.⁹
- The court may implement safeguards or guidelines for electronic communication.

Relocation:

When a parent is relocating and visitation is being determined, the bill is consistent with s. 61.13001(7) F.S., which provides the guidelines for parental relocation of a child. The bill provides that the court shall not consider the availability of electronic communication as solely determinative when considering relocation.

Cost:

The bill provides for the allocation of costs for using electronic communications. Specifically, if the court finds that either or both parents will incur additional costs necessary to implement electronic communication, the expenses shall be allocated after consideration of both parents' respective financial circumstances.

Access to Information:

The bill provides that if the court enters an order granting electronic communication, each parent shall furnish the other parent with the access information necessary to facilitate electronic communication. If there is a change in the access information, each parent shall notify the other parent of any change within 7 days.

Child Support:

The bill provides that the extent or amount of time that electronic communication is ordered shall not be a factor in the calculation of child support.

Applicability:

The provisions of this bill shall not apply to any judgments or orders prior to October 1, 2007. However, the bill provides that any party to a judgment or order entered prior to October 1, 2007, may seek to have the court effectuate electronic communication by pleading and proof consistent with the requirements of this bill.

The act shall take effect October 1, 2007 and shall apply to all cases pending on or after that date.

C. SECTION DIRECTORY:

Section 1: Provides for a definition of electronic communication.

Section 2: Amends s. 61.13, F.S., to provide a rebuttable presumption of telephone communication and supplemental communication.

Section 3: Amends s. 61.17, F.S., to provide that electronic communication shall not be a factor in calculated child support; provides applicability and provides for modification of existing orders.

Section 4: Provides for an effective date of October 1, 2007 and shall apply to all cases pending on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁹ *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. However, in *Barrett v. Barrett*, 862 So. 2d 100 (Fla. 2nd DCA 2003), the court held that the trial court does not have to find that a detriment would occur if the visitation wasn't altered.

1. Revenues:
See Fiscal Comments.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comment.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 863 would have a fiscal impact on the parents that have to bear the cost of buying the electronic technology.

D. FISCAL COMMENTS:

To the extent that the parties may choose to effectuate electronic communication there would be a fiscal impact. Local revenue may be generated and additional workload created from the reopening of the visitation agreement. It is undeterminable the volume of cases that would effectuate electronic communication and therefore the fiscal impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenue; or reduce the percentage of a state tax shared with counties or cities.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES