

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Committee on Judiciary

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BILL: SB 1440

INTRODUCER: Senator Book

SUBJECT: Court Proceedings

DATE: March 28, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Favorable</b>
2.			CF	
3.			RC	

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## I. Summary:

SB 1440 amends several statutes to authorize the use of audio-video communication technology in dependency and delinquency proceedings. This technology allows people to appear in proceedings remotely, rather than in person. When a court authorizes someone to appear remotely, he or she must receive instructions for the use of the technology.

The bill also requires each party in a dependency case to provide a primary e-mail address that, in addition to a permanent mailing address, will be used by the court for notice purposes.

The bill is based on procedures for using audio-video technology that were used by the state court system during the height of the COVID-19 pandemic.

The bill takes effect upon becoming a law.

## II. Present Situation:

To help ensure public safety during the COVID-19 pandemic of 2020, state courts limited in-person appearances to essential matters before the trial courts. The courts authorized many court proceedings to be conducted remotely, rather than in person, which allowed attorneys and parties to appear by using video or audio technology.<sup>1</sup>

A workgroup<sup>2</sup> was established by the Florida Supreme Court to study whether certain remote proceedings, which produced effective results, should continue after the COVID-19 epidemic.

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<sup>1</sup> The Supreme Court of Florida, *In Re: Amendment to Florida Rules of Juvenile Procedure, Florida Family Law Rules of Procedure, and Florida Supreme Court Approved Family Law Forms* (July 14, 2022) <https://casetext.com/case/in-re-amendments-to-fla-rules-of-juvenile-procedure-9151>.

<sup>2</sup> The workgroup was officially named the “Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19.”

The workgroup concluded “that permanent, broader authorization for remote proceedings was warranted” due to the positive results that were observed during the pandemic. Additional court-appointed committees having subject matter expertise made recommendations to the Court to amend court rules and authorize remote proceedings. The Court adopted the proposed amendments on July 14, 2022.<sup>3</sup>

Chapter 39, F.S., governs proceedings relating to the protection of children, including the removal of children from their parents and their placement in an environment that protects them. Chapter 92, F.S., governs witness, records, and documents. Chapter 985, F.S., governs juvenile justice proceedings. These chapters have not been updated to permit the use of audio-video technology or provide e-mail addresses for receiving correspondence from the courts.

### III. Effect of Proposed Changes:

The bill amends several statutes in ch. 39, F.S., to authorize the use of audio-video communication technology. When audio-video communication is permitted, instructions for its use must also be provided. The bill requires parties to provide a primary e-mail address in addition to a permanent mailing address for the court to use in contacting the party. However, the court may excuse a party from this requirement to provide an e-mail address if good cause is shown, but must excuse the party from providing the e-mail address if the party is incarcerated and is not represented by an attorney.

#### **Section 1 – Section 39.013(13), F.S., - Dependency Jurisdiction and Procedures**

Section 39.013, F.S., sets forth jurisdiction requirements and the general procedures that govern dependency cases. A new subsection is added which specifies that an individual’s appearance or attendance at dependency proceedings may be made through physical appearance or attendance or, at the court’s discretion, through audio-video communication technology, unless the court determines that it is inconsistent with the U. S. Constitution, the State Constitution, a statute, a rule of court, or a court order.

#### **Section 2 – Section 39.0131, F. S. – Permanent Mailing and Primary E-mail Address Designation**

Section 39.0131, F.S., requires each party in a dependency action, upon first appearance before the court, to provide a permanent mailing address which will be used for notice purposes. New language is added that also requires a party to provide a primary e-mail address. However, the court *may* excuse a party from providing an e-mail address for good cause shown. The court *must* excuse a party from providing an e-mail address if he or she is incarcerated and not represented by an attorney.

#### **Section 3 – Section 39.402(16), F.S., Shelter Placements**

Section 39.402, F.S., sets forth the procedures that must be followed when a child is being placed into a shelter. “Shelter” means a placement with a relative or a nonrelative, or in a licensed home of facility, for the temporary care of a child who is alleged to be or who has been found to be

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<sup>3</sup> The Supreme Court of Florida, *supra* note 1.

dependent.<sup>4</sup> Section 39.402(16), F.S., states that at the conclusion of a shelter hearing, the court must notify all parties in writing of the next scheduled hearing to review the shelter placement. This provision is amended to provide that, if the next hearing will be held using audio-video communication technology, the written notice must include all relevant information that is needed to attend the proceeding.

#### **Section 4 – Section 39.502(1), (4), (5), (18), and (19), F.S. – Notice, Process, and Service to Parents in Dependency Matters**

##### ***Section 39.502(1), F.S.***

Section 39.502, F.S., outlines the requirements for providing notice, process, and service of dependency petitions.<sup>5</sup> Unless parental rights have been terminated, parents must be notified of all proceedings or hearings involving their child. This statute is amended to authorize a party to consent to service or notice by e-mail by giving a primary e-mail address to the clerk of court.

##### ***Section 39.502(4), F.S.***

This statute is amended to provide that, when a summons is issued notifying the person to appear for a hearing, if audio-video communication technology is applicable, the summons must also include instructions for appearing at the hearing through the use of the audio-video communication technology.

##### ***Section 39.502(5), F.S.***

This subsection is amended to allow a party to consent to service by e-mail by providing a primary e-mail address to the clerk of the court.

##### ***Section 39.502(18), F.S.***

At the conclusion of any hearing, the court must provide the parent or legal custodian of the child a written notice containing the date of the next scheduled hearing. This provision is amended to provide that, if the hearing is going to be conducted through audio-video communication technology, the instructions for an appearance must also be included.

##### ***Section 39.502(19), F.S.***

The attorney for the Department of Children and Families is required to provide oral or written notice to a relative who requests notification of the date, time, and location of the proceeding and hearings. This statute is amended to state that, if applicable, the attorney must provide relatives with instructions for appearance through audio-video communication technology.

#### **Section 5 – Section 39.506(3) and (4), F.S. – Arraignment Hearings**

Section 39.506(3), F.S., states that, if a person served with notice does not “personally” appear at an arraignment hearing, he or she consents to a dependency adjudication. The document

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<sup>4</sup> Section 39.01(78), F.S.

<sup>5</sup> A dependency petition is filed by the Department of Children and Families to initiate proceedings to determine whether a child is dependent. Section 39.501, F.S.

containing the notice to respond or appear must contain language stating that their failure to “personally” appear at the arraignment hearing constitutes consent to the adjudication of the child or children as dependent and may ultimately result in the loss of custody of the child or children. If a person appears for an arraignment hearing and the court orders that person to “personally” appear at the adjudicatory hearing for dependency, then the failure to appear for the adjudicatory hearing constitutes consent to a dependency adjudication.

This provision is amended to delete references to “personally” appear and permits an appearance either physically or through audio-video communication technology. If the audio-video communication technology is used, the instructions for using that technology must be provided.

Section 39.506(4), F.S., is amended to require each party at an arraignment hearing to provide the court with a permanent mailing address. This subsection is amended to require each party to also provide a primary e-mail address. However, the court may, for good cause shown, excuse a person from providing a primary e-mail address if he or she is incarcerated and not represented by an attorney.

#### **Section 6 – Section 39.521, F.S. – Disposition Hearings and Powers of Disposition**

A disposition hearing is a hearing in which the court determines which protection services are the most appropriate for a child as well as placement of the child in dependency cases.<sup>6</sup> The court must include in its written order of disposition several findings, including the date, time, and location of the next scheduled review hearing. The statute is amended to provide that if the next hearing is conducted by the use of audio-video communications technology, instructions for an appearance must accompany the written order of disposition.

#### **Section 7 – Section 39.801(3), F.S. - Termination of Parental Rights; Notice and Service of Notice**

Before a court may terminate parental rights, notice of the date, time, and place of the advisory hearing must be served upon certain persons listed in the statute, including the parents and legal custodians of the child. The statute is amended to state that, if it is applicable, instructions for appearance through audio-video communications technology, must also be included.

Additionally, the statute is amended to permit a party to consent to service or notice by e-mail by providing a primary e-mail address to the clerk of the court. If a person served with notice fails to appear at the advisory hearing, either physically or, at the discretion of the court, through audio-video communications technology, that failure to appear constitutes consent for termination of parental rights. If the court permits an appearance through the use of audio-video communication technology, instructions for that appearance must be included.

The existing references in the statute to someone “personally” appearing are removed and new language is supplied authorizing physical appearance or an appearance through audio-video communication technology.

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<sup>6</sup> Section 39.01(24), F.S.

**Section 8 – Section 92.54, F.S. – Victim and Witness Testimony Taken Outside a Courtroom and Shown by Closed-Circuit Television**

Section 92.54, F.S., authorizes a court to order the testimony of a victim or witness under the age of 18, or who has an intellectual disability, to be taken outside of the courtroom and shown by closed-circuit television. The statute is amended to also permit the testimony to be shown by means of audio-video communication technology.

**Section 9 – Section 985.319, F.S., Process and Service**

Chapter 985, F.S., contains the laws governing juvenile justice. Proceedings that seeks to find that a child has committed a delinquent act or violated a law are initiated by the filing of a petition for delinquency by the state attorney. After the petition is filed, the clerk's office issues a summons that requires the person served to appear for a hearing at a certain time and place. This statute is amended to permit the hearing to be held through the use of audio-video communication technology. If the hearing is held using that technology, the summons must provide instructions on how to attend the hearing.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

By allowing individuals to appear remotely through the use of audio-video equipment, there could be a significant savings to people who would otherwise need to take time away from their jobs to appear in court.

**C. Government Sector Impact:**

According to the Office of the State Courts Administrator, the effect on the judicial workload will not be significant because the courts already allow appearances using audio-video communication technology. The actual effect on the court system workload will depend on how many courts ultimately use this technology to allow court appearances, but that effect is not currently known.<sup>7</sup>

Because the data needed to quantify the increase in the workload is not available, the fiscal impact of this legislation cannot be accurately determined.<sup>8</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.013, 39.0131, 39.402, 39.502, 39.506, 39.521, 39.801, 92.54, and 985.319.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>7</sup> Office of the State Courts Administrator, *Senate Bill 1440 Judicial Impact Statement* (March 14, 2023) <http://abar.laspsb.state.fl.us/ABAR/Document.aspx?id=31409&yr=2023> (on file with the Senate Committee on Judiciary).

<sup>8</sup> *Id.*