

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.)

Prepared By: Judiciary Committee

BILL: CS/SB 1770

INTRODUCER: Judiciary Committee and Senator Lynn

SUBJECT: Technology to Supplement Visitation

DATE: April 19, 2007

REVISED: _____

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

I. Summary:

The bill permits a court, in connection with child custody proceedings, to order electronic communication between a parent and a child through telephones, e-mail, web cams, and other technologies. However, the bill creates a presumption that telephone communication between a parent and a child is in a child’s best interests. Accordingly, the bill requires a court to order telephone communication unless the presumption is rebutted.

The bill also provides that electronic communication must be used to supplement, rather than replace, face-to-face contact. Additionally, the bill permits a person whose child custody order does not prohibit electronic communication to seek court-ordered electronic communication without the need to prove a substantial change in circumstances. However, court-ordered electronic communication will not affect the calculation of child support.

This bill substantially amends section 61.046, Florida Statutes. The bill creates section 61.13002, Florida Statutes.

II. Present Situation:

A legislatively declared policy of this state is “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.”¹ This policy favoring continuing contact with both parents after a divorce is carried out through awards of custody and visitation.²

The statutes do not expressly address continuing contact with parents through electronic means except when a parent relocates with a child. If a court permits a proposed relocation, the court is expressly authorized to order contact with the nonrelocating parent by telephone, Internet, webcam, and other arrangements.³

III. Effect of Proposed Changes:

The bill permits a court, in connection with child custody proceedings, to order electronic communication between a parent and a child through telephones, e-mail, web cams, and other technologies. Before ordering electronic communication, a court must consider the following factors:

1. Whether electronic communication is in a child’s best interests;
2. Whether the communication equipment and technology is reasonably available, accessible, and affordable;
3. A parent’s history of substance abuse or domestic violence; and
4. Other material factors.

Additionally, the bill creates a presumption that telephone communication between a parent and a child is in a child’s best interests. Unless the presumption is rebutted, a court must order telephone communication.

The bill also provides that electronic communication must be used to supplement, rather than replace, face-to-face contact. Moreover, the bill permits a person whose child custody order does not prohibit electronic communication to seek court ordered electronic communication without the need to prove a substantial change in circumstances.⁴ However, court-ordered electronic communication will not affect the calculation of child support.⁵

Further, the bill states that a “court may not consider the availability of electronic communication as the sole determinative factor when considering relocation.” This statement implies that a court *is authorized* to consider the availability of electronic communication when evaluating a parent’s proposed relocation with a child. However, the availability of electronic

¹ Section 61.13(2)(b)1., F.S.

² See s. 61.13(3), F.S. (specifying factors for courts to consider for determining custody and visitation rights).

³ Section 61.13001(9), F.S.

⁴ Under existing case law:

A final divorce decree providing for the custody of a child can be materially modified only if (1) there are facts concerning the welfare of the child that the court did not know at the time the decree was entered, or (2) there has been a change in circumstances shown to have arisen since the decree.

Wade v. Hirschman, 903 So. 2d 928, 932 (Fla. 2005).

⁵ Existing law recognizes that a parent’s expenditures for a child will decrease when the child spends more time with the other parent. As a result, courts may adjust a parent’s child support obligation when the amount of time a child spends with a parent changes. See s. 61.30(11)(a)10. and (b)10., F.S.

communication is not specified as a factor to evaluate a proposed relocation of a child under s. 61.13001, F.S.

Lastly, the bill provides that it does not apply to judgments or orders issued before October 1, 2007. The provision may be intended to prevent the modification of existing custody orders in which the availability of electronic communication was a factor in the calculation of child support. Moreover, the provision may require a parent to show a substantial change in circumstances to modify an existing custody order to provide for electronic communication. However, subsection (5) of proposed s. 61.13002, F.S., suggests that a parent may seek to modify an existing custody order to provide for electronic communication without proving a substantial change in circumstances. As a result, the Legislature may wish to clarify the effect of the provision which provides that the bill does not apply to judgments or orders issued before October 1, 2007.

The bill provides an effective date of October 1, 2007.

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:

Parents may incur costs to provide electronic access to their children. However, the bill provides that the cost of electronic communication will be allocated between the parents based on their resources.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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