

2005 DRAFTING REQUEST

Bill

Received: 12/17/2004

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Brian Pleva

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - cust./plac./vis.

Extra Copies:

Submit via email: YES

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Virtual parent time

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 01/04/2005	jdyer 01/27/2005		_____			
/1			rschluet 01/27/2005	_____	sbasford 01/27/2005		
/2	pkahler 03/29/2005	jdyer 03/29/2005	rschluet 03/29/2005	_____	sbasford 03/29/2005		
/3	pkahler	jdyer	rschluet	_____	lemery	mbarman	

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	05/17/2005	05/18/2005	05/18/2005	_____	05/18/2005	06/20/2005	

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↳ Not Needed

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13 5/18 jld

Handwritten signature and initials, possibly 'S' and 'PB', with '5185' written below.

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<END>

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/1		1/23/05 jld	rschluet 01/27/2005		sbasford 01/27/2005		

FE Sent For:

Handwritten notes and signatures:

- Large signature/initials over the table.
- Handwritten "3205" at the bottom left.
- Handwritten "p6" at the bottom right.
- Handwritten "<END>" at the bottom right.

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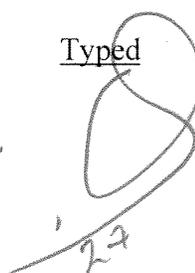
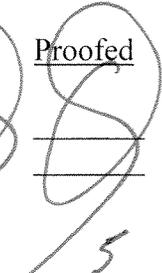
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/?	pkahler	1/27 jld					
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FE Sent For:

<END>

Kahler, Pam

From: Malaise, Gordon
Sent: Monday, December 13, 2004 5:12 PM
To: Pleva, Brian; Nelson, Robert P.
Cc: Kahler, Pam
Subject: RE: Virtual Visitation Legislation

Brian:

Actually, neither Robert nor I would be the drafter of your request to permit Internet visitation between a noncustodial parent and his or her child. Your draft would come under the Domestic Relations subject area, which is drafted by Pam Kahler.

Gordon

-----Original Message-----

From: Pleva, Brian
Sent: Monday, December 13, 2004 4:42 PM
To: Malaise, Gordon; Nelson, Robert P.
Subject: Virtual Visitation Legislation

Gordon & Robert, I'm not sure which one of you would draft a bill like, but we'd like to get legislation drafted that is modeled after the linked Utah enrolled bill:

<http://www.le.state.ut.us/~2004/bills/hbillenr/hb0082.pdf>

More supporting information is in the below e-mail and at <http://www.internetvisitation.org>.

Thank you!

Brian J. Pleva

Office of Sen. Cathy Stepp
Telephone: (608) 266-1832
Toll-Free: (866) 615-7510

-----Original Message-----

From: Michael Gough [mailto:mgough@wi.rr.com]
Sent: Wednesday, November 17, 2004 2:29 PM
To: Sen.Stepp
Subject: Request to discuss sponsoring legislation

Dear Senator Stepp,

My name is Michael Gough and I am recently relocated from Utah and currently living in Sturtevant WI, my 5 year old daughter currently lives in Wauwatosa WI. I would like to request if you would be willing to discuss the possibility of sponsoring a Bill on Child Custody Rights to add Virtual Visitation to Wisconsin's Child Advisory Guidelines. I am the father that led the crusade to pass the nations first Virtual Visitation Law in Utah this year and want to do it many other states as well.

In January 2004, Utah was the first state to unanimously pass and add Virtual Visitation or Virtual Parent-Time to the Utah Divorce Code as an option for all divorcing families. We would like to request that you sponsor similar legislation in our great state of Wisconsin.

Wording for Bill consideration:

"Virtual parent-time" means 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. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

We would like add the following wording so that the courts do not consider Virtual Visitation as a reason to allow move-aways or relocation. These cases should be decided on their own merit and not due to the availability of Virtual Visitation. Nothing can or should replace in-person visitation, Virtual Visitation is intended to supplement the in-person visits, never to replace it.

"Virtual Visitation shall not be used by the courts to justify or allow relocation or move-aways. These cases must be decided without taking into account Virtual Visitation as Virtual Visitation is not intended to be a replacement for any in-person parent-time".

Fiscal Impact: None

Imposed Costs to divorced parents: None

The modification to the code is to add the "option" of Virtual Parent-Time and does not make it mandatory that Virtual Visitation be used, only make it acceptable to use and gives divorcing families another communication mechanism for their children. This is completely voluntary. If neither parent asks for Virtual Parent-Time, then it will not be forced on the divorcing parents.

Reason for a Bill

Legislation will protect parent's rights and educate attorneys and their clients as well as guide the courts as to the proper use of Virtual Visitation to "supplement" in-person visits NOT replace in-person visits and prevent misuse and possible justifications for relocation or move-aways. In addition it adds the option of using the latest technology for communication in divorce and custody cases to update the "telephone only" language. It will save many families litigation costs as these families will not have to justify their request to the courts. Virtual Visitation legislation will expand the quality and quantity a non-custodial parent can spend with their children as well as give access to the custodial parent when the children are visiting with the non-custodial parent.

Included in the email below is additional information to provide background on Virtual Visitation. Please feel free to contact us to discuss the next steps or for a demonstration and how we can assist in the drafting, submission and support of this Bill. Representative Douglas Aagard of Utah was quoted as saying "It is not often we get to sponsor legislation that has such a positive benefit to families of divorce". I look forward to hearing from you to discuss Virtual Visitation amendments and provide a demonstration of what this is all about. You can get more information, articles and see examples at:

<http://www.InternetVisitation.org>

Sincerely,

Michael Gough
1521 92nd St.
#123
Sturtevant, WI. 53177
262-308-2383
mkgough@yahoo.com
<http://www.InternetVisitation.org>

Additional information:

Statistics:

- There are 35 million children in the US that have a parent living in a different city. That equates to 1 in 4 families. (2003 - Judges Trends in 2003: Virtual Visitation - Is this a new option for divorcing parents?)

Notes:

- Virtual Parent-Time is to supplement **not to replace**, in-person parent-time.
- Virtual Parent-Time allows you to not just hear, but also see and interact with the child you are communicating with
- Virtual Parent-Time can include: helping with homework; reading stories; sharing pictures; and seeing the

- child's other household, pets, and other family members like grandparents
- In Virtual Parent-Time by video conferencing, you can see subtle changes in your child that were in the past only during the non-custodial visits.
- Virtual Parent-Time by video conferencing can be installed for as little as \$100 for each household with a computer.
- Modifications to the State Code will help in allowing the option for parents to implement Virtual Parent-Time and significantly improve the quality time of children and their non-custodial parents whether they live around the corner, across town, across state, or across the country.
- As a non-custodial parent with his daughter living in another state, Michael Gough was quoted as saying, "The first video call with my daughter was better than the previous 18 months of telephone calls combined!"
- Virtual Parent-Time will help improve relationships when in-person visits are not possible.
- In-person visits are clearly the best option for both children and parents. Virtual Parent-Time should never be used to replace in-person visits, but for those families living in another city, the cost of travel can keep them from being able to have as many in-person visits with their children as they would like to have.

References:

Representative Douglas C. Aagard - District 15 (Utah) Sponsor
 1055 West 150 South
 Kaysville, UT. 84037
 801-778-8384
daagard@AmericaFirst.com <<mailto:daagard@AmericaFirst.com>>

Senator Lyle W. Hillyard - District 25 (Utah) Senate Sponsor
 175 East First North
 Logan, Utah 84321
 (435) 753-0043
lyle@hao-law.com

Joyce Maughan - Attorney at Law (Utah)
 10 West Broadway
 Suite 500
 Salt Lake City, UT. 84101
 (801) 359-5900
Maughanlaw@xmission.com <<mailto:Maughanlaw@xmission.com>>

Michael Gough - Non-custodial father and Virtual Visitation advocate
 1521 92nd St.
 #123
 Sturtevant, WI. 53177
 (262) 886-0197 - Home
 (262) 308-2383 - Cell
mkgough@yahoo.com <<mailto:mkgough@yahoo.com>>
[Http://www.IntenetVisitation.org](http://www.IntenetVisitation.org) - Virtual Visitation Portal

[Http://www.VirtualFamiliesandFriends.com](http://www.VirtualFamiliesandFriends.com) - Information on Virtual Visitation

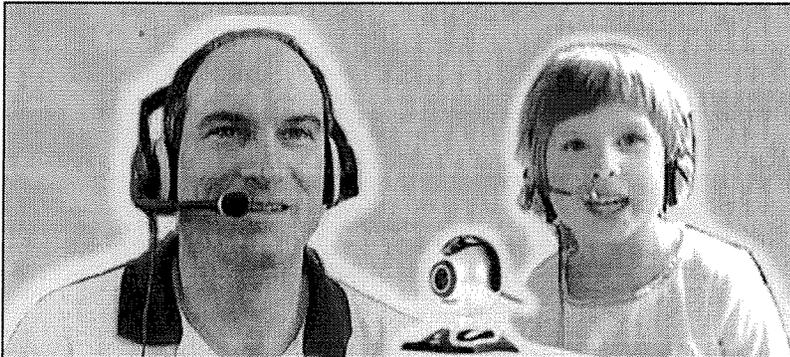
Statistics and Trends

Judges Trends in 2003: Virtual Visitation - Is this a new option for divorcing parents?

In the United States, recent studies estimate that the rate of divorce is as high as 50 percent of all marriages. An estimated 18 million children have separated or divorced parents, and an additional 17 million children's parents never married according to the Children's Rights Council. At least 25 percent of all of these children have a parent living in a different city. Courts are increasingly implementing virtual visitation when deciding these child-related cases in a manner that recognizes the critical need for a child to have both parents in his or her life.

Judges will not be able to ignore the new technology as they weigh conflicting pleas from divorced parents. Advocates of virtual visitation say communicating over the Internet is especially helpful in cases that involve supervised visits. It is also being used as a remedy for noncustodial parents to remain in contact with their children. Because virtual visitation is a relatively new trend, we will likely be seeing many other ways it can be used. For example, the monitoring of the

care of the elderly in nursing homes and pets in their off-premises care facilities are new possibilities for using virtual visitation.



This site is dedicated to those wanting to learn more about 'Virtual Visitation' or Virtual Parent-Time. If you are a parent or family of divorce and want a better way to communicate with your children when they are not with you, then this site is for you.

[home](#) ['Virtual Visitation' in the news](#) [how to perform 'Video Calls'](#) [divorce resources](#) [legislation](#) [links](#) [contact us](#)

Last Updated: Dec 20, 2004

See actual screen shots of 'Virtual Visitation'

- ['Virtual Visitation' Pictures](#)

Michael's Corner

- [a little about me](#)

Other Virtual Visitation Websites

[VideoCall4Free \(How To\)](#)

[VirtualFamiliesandFriends.com](#)

[DistanceParent.org](#)

Other Information

[Divorce and Video Call Statistics](#)

What is 'Virtual Visitation' ?

'Virtual Visitation' has many names: Virtual Parent-Time, Internet Visitation, Video Phone, Video Call, Computer Visitation and others. The common legal term is 'Virtual Visitation' and that is how we will refer to it, though it may vary from state to state or individual preference. 'Virtual Visitation' involves using tools such as personal video conferencing, a webcam, email, instant messaging (IM) and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits and telephone contacts between two people.

'Virtual Visitation' has many applications such as these:

What's New...

Dec 24th, 2004

Michael will be interviewed by Steve Ashley's 'Parent to Parent' Radio Show 5pm-6pm PST.

- [Visit the website](#)

Dec 19th, 2004

CBS News 2 in Chicago ran this piece on Video Calls with Soldiers in Iraq with their families - By the Freedom Calls foundation.

- [Watch the news clip](#)

Dec 13th, 2004

CBS Comedy Two and a Half Men show Virtual Visitation being performed.

- [Watch the edited clip](#)

Dec 9, 2004 - Michael appeared on Attorney and

Advertising....

Fathers' Rights



Fathers' Rights

Jeffery Leving

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Child Visitation

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www.legalmatch.com

- For divorced parents to communicate with their children
- For parents traveling on business or vacation to keep in touch with their family
- For grandparents to keep in touch with their distant family members and grandchildren
- Families seeking a better way to communicate than the telephone
- For children whose parents are overseas on military duty
- Elderly Care facilities so family members can keep in touch
- Counseling Centers for a way their patients can communicate with their children
- For supervised visits for parents and their children
- Remote education
- Business conferencing
- Improvement for the tens of millions of Instant Messaging users to add video and audio to their communication

Author Jeffery Leving's Chicago Cable Talk Show Thursday Dec 9th, 2004 at 8pm discussing 'Virtual Visitation'.

Dec 7, 2004 - Well known Forensic consultant Dean Tong invited Michael to discuss 'Virtual Visitation' on his Tuesday morning Radio Show. You can listen to Michael's segment here.

What it is NOT - A replacement or substitute to in-person contact with your children

Some have expressed

concerns that 'Virtual Visitation' is intended to "replace or substitute" in-person or face-to-face visits with your children. Not so. The most important contact you can have with your children is the contact you have in-person or face-to-face.

'Virtual Visitation' is NOT intended to support or justify relocation or move-away cases of a custodial parent and we do not promote, support or encourage 'Virtual Visitation' for this use.

What it IS - A significant improvement over the telephone

'Virtual Visitation' IS an additional way to improve your communication with your children when you can not be with them in-person. Virtual Visitation should NEVER be used to replace or substitute in-person or face-to-face visits with your children.

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1294/7

PJK:.....

2/2

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

parent

1 AN ACT...; relating to: granting a parent virtual parent time with a child. ✓

Analysis by the Legislative Reference Bureau

Under current law, in a divorce or legal separation in which a minor child is involved, and in a paternity action, the court must grant sole legal custody of the child to one parent or joint legal custody to both parents together. In addition, the court must allocate between the parents periods of physical placement, which is the condition under which the child is physically placed with the parent and the parent has the right and responsibility during that time to care for, and make routine daily decisions concerning, the child. The court may deny a parent periods of physical placement with the child only if being physically placed with the parent would endanger the child's physical, mental, or emotional health.

* This bill provides that, if the court grants periods of physical placement to both parents, the court may grant to a parent a reasonable amount of virtual parent time at reasonable hours during the other parent's periods of physical placement with the child. Virtual parent time is defined as time that a parent spends with his or her child during which the child is not in the parent's physical presence but which is facilitated by the use of various types of communication tools, such as the telephone, electronic mail, instant messaging, and video conferencing or other wired or wireless technologies via the Internet. The basis for granting virtual parent time is whether it is in the child's best interest and whether equipment for providing virtual parent time is reasonably available to the parent with physical placement. Virtual parent time supplements and does not replace the physical placement that a parent has with the child.

The bill also provides that a parenting plan that a party files with the court before a pretrial conference when legal custody or physical placement is contested

must include any virtual parent time a parent is requesting and must indicate what equipment is reasonably available for providing virtual parent time to the other parent, and that, when a parent is proposing to move with the child and the other parent objects to the move, the court may not consider whether the objecting parent has virtual parent time with the child or whether equipment is available to a parent for providing virtual parent time when the court determines whether to modify legal custody or physical placement or to prohibit the parent from moving with the child.

plain comma

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 767.001 (7) of the statutes is created to read:

2 767.001 (7) "Virtual parent time" means time that a parent spends with his or
 3 her child during which the child is not in the parent's physical presence but which
 4 is facilitated by the use of communication tools such as the telephone, electronic mail,
 5 instant messaging, video conferencing or other wired or wireless technologies via the
 6 Internet, or another medium of communication.

7 **SECTION 2.** 767.23 (1) (am) of the statutes is amended to read:

8 767.23 (1) (am) Upon the request of a party, granting periods of physical
 9 placement, including virtual parent time, to a party in a manner consistent with s.
 10 767.24. The court or circuit court commissioner shall make a determination under
 11 this paragraph within 30 days after the request for a temporary order regarding
 12 periods of physical placement or virtual parent time is filed.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 s. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 6; 2003 a. 130, 326.

13 **SECTION 3.** 767.24 (1m) (a) of the statutes is amended to read:

14 767.24 (1m) (a) What legal custody or physical placement, including virtual
 15 parent time, the parent is seeking.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 22; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

16 **SECTION 4.** 767.24 (1m) (Lm) of the statutes is created to read:

1 767.24 (1m) (Lm) ✓ What equipment is reasonably available to the parent for
2 providing virtual parent time with the other parent when the parent providing the
3 parenting plan has physical placement with the child.

4 **SECTION 5.** 767.24 (4) (e) ✓ of the statutes is created to read:

5 767.24 (4) (e) If the court grants periods of physical placement to more than one
6 parent, ✓ the court may grant to a parent a reasonable amount of virtual parent time
7 at reasonable hours during the other parent’s periods of physical placement with the
8 child. Virtual parent time with the child shall supplement and not replace a parent’s
9 periods of physical placement with the child. ✓ Granting a parent virtual parent time
10 with the child during the other parent’s periods of physical placement shall be based
11 on whether it is in the child’s best interest and whether equipment for providing
12 virtual parent time is reasonably available to the parent who has physical placement
13 with the child.

or be a substitute for

History: 1999 a. 9; 2001 a. 61.

14 **SECTION 6.** 767.327 (5m) (title) ✓ of the statutes is amended to read:

15 767.327 (5m) (title) ~~DISCRETIONARY OTHER FACTORS TO CONSIDER.~~ ✓

History: 1987 a. 355, 364; 1991 a. 32, 269; 1995 a. 70; 1999 a. 9; 2001 a. 61.

16 **SECTION 7.** 767.327 (5m) ✓ of the statutes is renumbered 767.327 (5m) (a).

17 **SECTION 8.** 767.327 (5m) (b) ✓ of the statutes is created to read:

18 767.327 (5m) (b) In making a determination under sub. (3), ✓ the court may not
19 consider whether the parent objecting to the move has virtual parent time with the
20 child or whether equipment for providing virtual parent time is reasonably available
21 to a parent.

22 **SECTION 9. Initial applicability.**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1294/dn

PJK:.....
JLd

I provided that virtual parent time may be granted if more than one parent is granted physical placement. I assumed that, if a parent is denied physical placement, (which would be the case if the child's being physically placed with that parent would endanger the child's physical, mental, or emotional health) the parent should not have virtual parent time, either. Let me know, however, if you want a parent who is denied physical placement to be able to have virtual parent time.

There may be other places in ch. 767 where you would like a specific reference to virtual parent time. There could be a problem, though, if it is added in some, but not all, of the places where it might be appropriate because then it will appear that it was left out of the places where it was not added intentionally, when that may not have been the case at all. One place, however, where you might want it added is in s. 767.242. Without adding it there, however, a parent would still be able to bring a motion, petition, or order to show cause for contempt of court if he or she were denied court-ordered virtual parent time, because the parent denying it would be in violation of a court order.

Another place where it might be appropriate to add a specific reference to virtual parent time is in s. 767.247, so that a parent who intentionally kills the other parent would be prohibited from virtual parent time. If a reference is added there, however, such references might also be needed in the following sections: 48.355 (3) (b) 1., 1m., and 2., 48.42 (1m) (e) 1. and 2., 48.428 (6) (b) 1., 1m., and 2., 880.157 (1) and (2), and 938.355 (3) (b) 1., 1m., and 2.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1294/1dn
PJK:jld:rs

January 27, 2005

I provided that virtual parent time may be granted if more than one parent is granted physical placement. I assumed that, if a parent is denied physical placement, (which would be the case if the child's being physically placed with that parent would endanger the child's physical, mental, or emotional health) the parent should not have virtual parent time, either. Let me know, however, if you want a parent who is denied physical placement to be able to have virtual parent time.

There may be other places in ch. 767 where you would like a specific reference to virtual parent time. There could be a problem, though, if it is added in some, but not all, of the places where it might be appropriate because then it will appear that it was left out of the places where it was not added intentionally, when that may not have been the case at all. One place, however, where you might want it added is in s. 767.242. Without adding it there, however, a parent would still be able to bring a motion, petition, or order to show cause for contempt of court if he or she were denied court-ordered virtual parent time, because the parent denying it would be in violation of a court order.

Another place where it might be appropriate to add a specific reference to virtual parent time is in s. 767.247, so that a parent who intentionally kills the other parent would be prohibited from virtual parent time. If a reference is added there, however, such references might also be needed in the following sections: 48.355 (3) (b) 1., 1m., and 2., 48.42 (1m) (e) 1. and 2., 48.428 (6) (b) 1., 1m., and 2., 880.157 (1) and (2), and 938.355 (3) (b) 1., 1m., and 2.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Kahler, Pam

1294

From: Risch, Jay
Sent: Wednesday, March 23, 2005 4:12 PM
To: Kahler, Pam
Subject: FW: Virtual Visitation Draft



Draft of WI V V Bill v2.0.doc...
Draft of WI V V Bill v2.0.rtf...

Pam,

Would you make some revisions for us? Let me know if you have any questions. Thanks -

Jay Risch
Office of Senator Stepp
266-1832

-----Original Message-----

From: Michael Gough [mailto:mgough@wi.rr.com]
Sent: Wednesday, March 23, 2005 8:30 AM
To: Risch, Jay; Rep.Vos; robinvos@wi.rr.com
Cc: 'Joyce Maughan'
Subject: RE: Virtual Visitation Draft

Jay,

I met with Senator Stepp and Representative Vos and the meeting was a success, to say the least.

Attached is a copy of the revised Bill in Word .DOC and .RTF. Can you please send it to:

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

And have her update, revise and comment on it so we can re-circulate it for a final look before submitting the Bill for consideration by the Legislature.

Thank you for your help and I look forward to working with you on this Bill and with Senator Stepp and Representative Vos.

Feel free to call me with any questions.

Sincerely,

Michael Gough

262.308.2383 - Cell
603.691.5825 - eFax

Text Page: <http://www.vtext.com> - Send to: 262-308-2383

<http://www.InternetVisitation.org>

MSN Messenger = mkgough@yahoo.com
Skype = mgough
Yahoo IM = mkgough
AOL IM = mgough hpc
~~~~~

.In regards to my last name Gough...

The combination of (ough) can be pronounced nine (9) different ways. The following sentence contains them all:

"A rough-coated dough-faced, thoughtful ploughman strode the streets of Scarborough after falling into a strough, he coughed and hiccoughed."

That should clear things up! (In case you were wondering, it's Gough as in cough.)

-----Original Message-----

From: Risch, Jay [mailto:Jay.Risch@legis.state.wi.us]

Sent: Thursday, February 03, 2005 3:43 PM

To: mgough@wi.rr.com

Subject: Virtual Visitation Draft

<<05-12941.pdf>> <<05-12941dn.pdf>>

Mike,

I know have a draft of the virtual visitation bill in my hands. I recall that when we talked on January 24, you wanted to review the draft with your legal team. Please also note the second attachment, which include some suggestions/questions from the bill drafting attorney.

Let me know if you need anything.

Jay Risch  
Office of Senator Cathy Stepp  
608-266-1832

Revision Number 1 - March 21, 2005

2005 – 2006 LEGISLATURE

## 2005 BILL

AN ACT *to renumber* 767.327 (5m); *to amend* 767.23 (1) (am), 767.24 (1m) (a) and 767.327 (5m) (title); and *to create* 767.001 (7), 767.24 (1m) (Lm), 767.24 (4) (e) and 767.327 (5m) (b) of the statutes; **relating to:** granting a parent virtual parent time with a child.

### *Analysis by the Legislative Reference Bureau*

Under current law, in a divorce or legal separation in which a minor child is involved, and in a paternity action, the court must grant sole legal custody of the child to one parent or joint legal custody to both parents together. In addition, the court must allocate between the parents periods of physical placement, which is the condition under which the child is physically placed with the parent and the parent has the right and responsibility during that time to care for, and make routine daily decisions concerning, the child. The court may deny a parent periods of physical placement with the child only if being physically placed with the parent would endanger the child's physical, mental, or emotional health.

This bill provides that, if the court grants periods of physical placement to both parents, the court may grant to a parent a reasonable amount of virtual visitation at reasonable hours during the other parent's periods of physical placement with the child. Virtual visitation is defined as time that a parent spends with his or her child during which the child is not in the parent's physical presence but which is facilitated by the use of various types of communication tools, such as the telephone, electronic mail, instant messaging, and video conferencing or other wired or wireless technologies via the Internet or other media. The basis for granting virtual visitation is whether it is in the child's best interest and whether equipment for providing virtual visitation is reasonably available to both parents. Virtual visitation should be used only to supplement physical placement. It should not be used to replace the physical placement that a parent has with the child.

The bill also provides that a parenting plan that a party files with the court before a pretrial conference when legal custody or physical placement is contested must include any virtual visitation a parent is requesting and must indicate what equipment is reasonably available to both parents for providing virtual visitation, and that, when a parent is proposing to move with the child and the other parent objects to the move, the court may not use the fact that virtual visitation is available as a reason to allow:

- (1) a parent with physical placement to move away with the child;
- (2) modification of legal custody or
- (3) modification of physical placement

**BILL**

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1. **SECTION 1.** 767.001 (7) of the statutes is created to read:
2. 767.001 (7) "Virtual visitation" means time that a parent spends with his or
3. her child during which the child is not in the parent's physical presence but which
4. is facilitated by the use of communication tools such as the telephone, electronic mail,
5. instant messaging, video conferencing or other wired or wireless technologies via the
6. Internet, or another medium of communication.
7. **SECTION 2.** 767.23 (1) (am) of the statutes is amended to read:
8. 767.23 (1) (am) Upon the request of a party, granting periods of physical
9. placement, including virtual visitation, to a party in a manner consistent with s.
10. 767.24. The court or circuit court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement or virtual visitation is filed. In determining the physical placement to allow on a temporary basis, the court shall use virtual visitation with the child only to supplement physical placement. Virtual visitation shall not be used as a replacement or as a substitute for a parent's periods of physical placement with the child. Granting a parent virtual visitation with the child during the other parent's periods of physical placement shall be based on whether it is in the child's best interest and whether equipment for providing virtual visitation is reasonably available to both parents.

Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

- (a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;
- (b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and
- (c) it is in the best interests of the child to have both parents actively involved in parenting the child.

The purpose of virtual visitation is to increase the frequent, meaningful, and continuing access for the child to each parent following separation or divorce. Therefore the use of virtual visitation should not be used as a justification for the parent with physical placement to move the child away from the other parent.

13. SECTION 3. 767.24 (1m) (a) of the statutes is amended to read:

14. 767.24 (1m) (a) What legal custody or physical placement, including virtual visitation, the parent is seeking.

**BILL – con't**

1. SECTION 4. 767.24 (1m) (Lm) of the statutes is created to read:

2. 767.24 (1m) (Lm) Whether the equipment for providing virtual visitation is reasonably available to both parents.

5. SECTION 5. 767.24 (4) (e) of the statutes is created to read:

6. 767.24 (4) (e) If the court grants periods of physical placement to more than one  
7. parent, the court may grant to a parent a reasonable amount of virtual visitation  
8. at reasonable hours during the other parent's periods of physical placement with the  
9. child. Virtual visitation with the child shall be used only to supplement physical placement. It shall not be used as a replacement or as a

10. substitute for a parent's periods of physical placement with the child. Granting a  
11. parent virtual visitation with the child during the other parent's periods of  
12. physical placement shall be based on whether it is in the child's best interest and whether equipment for providing virtual visitation is reasonably available to both parents.

Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(c) it is in the best interests of the child to have both parents actively involved in parenting the child.

The purpose of virtual visitation is to increase the frequent, meaningful, and continuing access for the child to each parent following separation or divorce. Therefore the use of virtual visitation should not be used as a justification for the parent with physical placement to move the child away from the other parent.

15. SECTION 6. 767.327 (5m) (title) of the statutes is amended to read:

16. 767.327 (5m) (title) DISCRETIONARY OTHER FACTORS TO CONSIDER.

17. SECTION 7. 767.327 (5m) of the statutes is renumbered 767.327 (5m) (a).

18. SECTION 8. 767.327 (5m) (b) of the statutes is created to read:

19. 767.327 (5m) (b) In making a determination under sub. (3), the court should not use the availability of virtual visitation as a reason in support of its decision to allow a parent with physical placement of the child to move the residence of the child away from the other parent.

23. SECTION 9. Initial applicability.

*modify*

*redundant*

*purpose of this statute*

*modify - it does not "allow" move*

**BILL – con't**

1. (1) PARENTING PLANS. The treatment of section 767.24 (1m) (a) and (Lm) of the
2. statutes first applies to actions commenced on the effective date of this subsection.

Parenting plans, and orders concerning parenting plans which are already in existence on the effective date of this subsection, may be modified to include virtual visitation, upon motion by either parent, and upon consideration by the court of the factors including those set forth in section 767.001(7), section 767.23(1)(am), section 767.24(1m)(a), section 767.24 (1m)(Lm), and 767.24(4)(e).

3. (END)

\*\*\*\*\*

**Other Sections that need to be looked at for applicability:**

All the statutes can be searched at:

<http://www.legis.state.wi.us/rsb/stats.html>

**767.247** – Prohibiting visitation or physical placement if a parent kills other parent.

Seems to be covered in **767.24 (4)**. To the courts discretion.

Does not need a change as “visitation” is used generically

**767.325** - Revision of legal custody and physical placement orders.

Seems to be covered for filing for a revision in an order

**48.355 (3) (b) 1., 1m., and 2.** - Dispositional orders.

Does not need a change as “visitation” is used generically

**48.42 (1m) (e) 1. and 2.,** - Procedure

Does not need a change as “visitation” is used generically

**48.428 (6) (b) 1., 1m., and 2.,** - Sustaining Care

Does not need a change as “visitation” is used generically

**880.157 (1) and (2),** and – Prohibiting visitation or physical placement if a parent kills other parent.

Does not need a change as “visitation” is used generically

**938.355 (3) (b) 1., 1m., and 2.** - Dispositional orders.

Does not need a change as “visitation” is used generically



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1294/2  
PJK:jld:rs

*revision*

2005 BILL

*Divide*

*Regen*

1 AN ACT to renumber 767.327 (5m); to amend 767.23 (1) (am), 767.24 (1m) (a)  
2 and 767.327 (5m) (title); and to create 767.001 (7), 767.24 (1m) (Lm), 767.24  
3 (4) (e) and 767.327 (5m) (b) of the statutes; relating to: granting a parent  
4 virtual parent time with a child.

---

***Analysis by the Legislative Reference Bureau***

Under current law, in a divorce or legal separation in which a minor child is involved, and in a paternity action, the court must grant sole legal custody of the child to one parent or joint legal custody to both parents together. In addition, the court must allocate between the parents periods of physical placement, which is the condition under which the child is physically placed with the parent and the parent has the right and responsibility during that time to care for, and make routine daily decisions concerning, the child. The court may deny a parent periods of physical placement with the child only if being physically placed with the parent would endanger the child's physical, mental, or emotional health.

This bill provides that, if the court grants periods of physical placement to both parents, the court may grant to a parent a reasonable amount of virtual parent time at reasonable hours during the other parent's periods of physical placement with the child. Virtual parent time is defined as time that a parent spends with his or her child during which the child is not in the parent's physical presence but which is facilitated by the use of various types of communication tools, such as the telephone, electronic mail, instant messaging, and video conferencing or other wired or wireless technologies via the Internet. The basis for granting virtual parent time is whether

**BILL**

it is in the child's best interest and whether equipment for providing virtual parent time is reasonably available to the parent with physical placement. Virtual parent time supplements and does not replace the physical placement that a parent has with the child.

The bill also provides that a parenting plan that a party files with the court before a pretrial conference when legal custody or physical placement is contested must include any virtual parent time a parent is requesting and must indicate what equipment is reasonably available for providing virtual parent time to the other parent, and that, when a parent is proposing to move with the child and the other parent objects to the move, the court may not consider whether the objecting parent has virtual parent time with the child or whether equipment is available to a parent for providing virtual parent time when the court determines whether to modify legal custody or physical placement or to prohibit the parent from moving with the child.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 767.001 (7) of the statutes is created to read:

767.001 (7) "Virtual parent time" means time that a parent spends with his or her child during which the child is not in the parent's physical presence but which is facilitated by the use of 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.

**SECTION 2.** 767.23 (1) (am) of the statutes is amended to read:

767.23 (1) (am) Upon the request of a party, granting periods of physical placement, including virtual parent time, to a party in a manner consistent with s. 767.24. The court or circuit court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement or virtual parent time is filed.

**SECTION 3.** 767.24 (1m) (a) of the statutes is amended to read:

767.24 (1m) (a) What legal custody or physical placement, including virtual parent time, the parent is seeking.

may be used only to

both parents

whether

and not as a substitute or replacement for,

Insert 2-A

Insert 2-B

**BILL**

*Whether*

*Insert 3-2*

1 SECTION 4. 767.24 (1m) (Lm) of the statutes is created to read:

2 767.24 (1m) (Lm) ~~What~~ equipment is reasonably available to the parent for  
3 providing virtual parent time with the other parent when the parent providing the  
4 parenting plan has physical placement with the child. *both parents*

5 SECTION 5. 767.24 (4) (e) of the statutes is created to read:

6 767.24 (4) (e) If the court grants periods of physical placement to more than one  
7 parent, the court may grant to a parent a reasonable amount of virtual parent time  
8 at reasonable hours during the other parent's periods of physical placement with the  
9 child. Virtual parent time with the child ~~shall~~ *may be used only to* supplement ~~and not replace or be a~~  
10 substitute for a parent's periods of physical placement with the child. Granting a  
11 parent virtual parent time with the child during the other parent's periods of  
12 physical placement shall be based on whether it is in the child's best interest and  
13 whether equipment for providing virtual parent time is reasonably available to the  
14 parent who has physical placement with the child. *both parents*

*Insert 3-9*

15 SECTION 6. 767.327 (5m) (title) of the statutes is amended to read:

16 767.327 (5m) (title) ~~DISCRETIONARY~~ OTHER FACTORS TO CONSIDER.

17 SECTION 7. 767.327 (5m) of the statutes is renumbered 767.327 (5m) (a).

18 SECTION 8. 767.327 (5m) (b) of the statutes is created to read:

19 767.327 (5m) (b) In making a determination under sub. (3) *(c)* the court may not  
20 consider whether the parent objecting to the move has virtual parent time with the  
21 child or whether equipment for providing virtual parent time is reasonably available  
22 to a parent. *Insert 3-22*

23 SECTION 9. Initial applicability.

**BILL**

1 (1) PARENTING PLANS. The treatment of section 767.24 (1m) (a) and (Lm) of the  
2 statutes first applies to ~~actions commenced~~ on the effective date of this subsection.

3 (END)

parenting plans filed with the court ✓

J-vote

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1294/2ins  
PJK:jld:rs

INSERT 2-A

*not* is reasonably available to both parents. The bill also provides *26*  
(END OF INSERT 2-A)

INSERT 2-B

*not* use the availability of virtual parent time as a factor in support of a refusal *26*  
(END OF INSERT 2-B)

INSERT 3-2

*not* 1 for providing virtual parent time *26*  
(END OF INSERT 3-2)

INSERT 3-9

*not* 2 a parent's periods of physical placement with the child. Virtual parent time  
3 may not be used as a replacement or as *26*  
(END OF INSERT 3-9)

INSERT 3-22

*not* 4 use the availability of virtual parent time as a factor in support of a refusal to  
5 prohibit a move *26*  
(END OF INSERT 3-22)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1294/2dn  
PJK:jld:rs

1. If you would like changes to the draft, it is really much easier for me, and more reliable for you, if you mark up a hard copy. If you send me a copy in Word with the changes highlighted in color, I have to print out a copy (with no color), visually compare the printed copy with the version on my computer screen so that I can mark up the copy that I have printed, indicating where I see color on the copy on my computer screen (hoping that I have caught everything), and then visually compare the copy that I have marked up with the copy of the draft to be redrafted.

2. I would prefer not to change the term "virtual *parent time*" to "virtual *visitation*." ✓  
In Wisconsin before 1988, a parent had "visitation" with his or her child after a divorce. Since 1988, however, the term "physical placement" has been used to mean the time that a child spends with a parent, and the term "visitation" has been used for the time that a child spends with a person who is not a parent, such as a grandparent. (There are some exceptions in the statutes, but they are more errors than intentional usages.) It would be inconsistent and confusing to go back to the pre-1988 use of the term "visitation" with respect to a parent. If you are strongly opposed to using the term "virtual parent time," is there another term, other than "visitation," that could be used instead?

3. Note that s. 767.23 (1) (am) ✓ does not have to be amended further because physical placement, including virtual parent time, must be granted in a manner consistent with s. 767.24. ✓ Since temporary orders under s. 767.23 must be consistent with final orders under s. 767.24, the requirements under s. 767.24 generally are not reiterated in s. 767.23.

4. I did not add the suggested language to the end of s. 767.24 (4) (e). ✓ I believe it is redundant of s. 767.24 (4) (a) and (b). ✓ Additionally, it should not be necessary to state that the purpose of virtual parent time is to increase the child's access to each parent after a divorce. That is self-evident. Normally, a statutory provision does not explicitly include its purpose.

5. Proposed s. 767.327 (5m) (b) ✓ is drafted differently from the suggested language because, technically, the court does not "allow" a move. If a parent proposes a move and the other parent objects, the court may modify custody or physical placement or may deny the move.

I limited proposed s. 767.327 (5m) (b) to a determination under s. 767.327 (3) (c) because the suggested language addressed only a court's "decision to allow a parent with physical placement of the child to move the residence of the child away from the other parent," and not a court's decision to modify legal custody or physical placement under s. 767.327 (3) (a) or (b). This limitation may not have been what you intended.

6. I changed the initial applicability provision so that the requirement to include in parenting plans information about the availability of equipment for providing virtual parent time first applies to parenting plans filed on the effective date. I'm sure that any parenting plan already filed can be amended to include that information if a party wishes. Alternatively, the judge or court commissioner could just ask the parties for the information if it becomes an issue. Providing that information in a parenting plan has nothing to do with whether the court may order virtual parent time in a temporary or final order. The purpose of the initial applicability provision is to clarify when parenting plans are *required* to include that information.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1294/2dn  
PJK:jld:rs

March 29, 2005

1. If you would like changes to the draft, it is really much easier for me, and more reliable for you, if you mark up a hard copy. If you send me a copy in Word with the changes highlighted in color, I have to print out a copy (with no color), visually compare the printed copy with the version on my computer screen so that I can mark up the copy that I have printed, indicating where I see color on the copy on my computer screen (hoping that I have caught everything), and then visually compare the copy that I have marked up with the copy of the draft to be redrafted.
  2. I would prefer not to change the term "virtual *parent time*" to "virtual *visitation*." In Wisconsin before 1988, a parent had "visitation" with his or her child after a divorce. Since 1988, however, the term "physical placement" has been used to mean the time that a child spends with a parent, and the term "visitation" has been used for the time that a child spends with a person who is not a parent, such as a grandparent. (There are some exceptions in the statutes, but they are more errors than intentional usages.) It would be inconsistent and confusing to go back to the pre-1988 use of the term "visitation" with respect to a parent. If you are strongly opposed to using the term "virtual parent time," is there another term, other than "visitation," that could be used instead?
  3. Note that s. 767.23 (1) (am) does not have to be amended further because physical placement, including virtual parent time, must be granted in a manner consistent with s. 767.24. Since temporary orders under s. 767.23 must be consistent with final orders under s. 767.24, the requirements under s. 767.24 generally are not reiterated in s. 767.23.
  4. I did not add the suggested language to the end of s. 767.24 (4) (e). I believe it is redundant of s. 767.24 (4) (a) and (b). Additionally, it should not be necessary to state that the purpose of virtual parent time is to increase the child's access to each parent after a divorce. That is self-evident. Normally, a statutory provision does not explicitly include its purpose.
  5. Proposed s. 767.327 (5m) (b) is drafted differently from the suggested language because, technically, the court does not "allow" a move. If a parent proposes a move and the other parent objects, the court may modify custody or physical placement or may deny the move.
- I limited proposed s. 767.327 (5m) (b) to a determination under s. 767.327 (3) (c) because the suggested language addressed only a court's "decision to allow a parent

with physical placement of the child to move the residence of the child away from the other parent,” and not a court’s decision to modify legal custody or physical placement under s. 767.327 (3) (a) or (b). This limitation may not have been what you intended.

6. I changed the initial applicability provision so that the requirement to include in parenting plans information about the availability of equipment for providing virtual parent time first applies to parenting plans filed on the effective date. I’m sure that any parenting plan already filed can be amended to include that information if a party wishes. Alternatively, the judge or court commissioner could just ask the parties for the information if it becomes an issue. Providing that information in a parenting plan has nothing to do with whether the court may order virtual parent time in a temporary or final order. The purpose of the initial applicability provision is to clarify when parenting plans are *required* to include that information.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)



State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU

**RESEARCH APPENDIX -**  
**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/28/2005 (Per: PJK)



☞ The 2005 drafting file for LRB 05-1294/2  
has been copied/added to the 2005 drafting file for  
**LRB 05-2896**

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

**Kahler, Pam**

---

**From:** Michael Gough [mgough@wi.rr.com]  
**Sent:** Thursday, May 05, 2005 9:42 AM  
**To:** Kahler, Pam  
**Cc:** Risch, Jay; Rep.Vos; robinvos@wi.rr.com  
**Subject:** LRB-1294/3 proposed

Hello Ms. Kahler,

Here is the proposed 3<sup>rd</sup> draft for the Virtual Visitation Bill. We have received feedback from attorney's, a judge and others to come up with this third draft. Per a request we received we also checked the paternity sections to see if Electronic Communication applied and it does through 767.24 as you already pointed out.

We used "strikethrough" for words meant for deletion and "bold and underlined" for new wording. This allows you to print it and see what was changed. Let us know if you need anything else to make this easier for you.

To summarize the changes:

There were several requests to try and separate "Placement" from Virtual Parent-Time by changing the name to "electronic communication" so that they are not confused or considered similar. So Virtual Parent Time has been replaced by "Electronic Communication" everywhere in the Bill draft and separate paragraphs to help separate the concept.

Section 2:

Move item to 767.23 (1) (am) to (1) (an) to separate Electronic Communication from Placement

Section 3:

Move wording into 767.24 (1m)(L) to separate Electronic Communication in the Parenting Plan from Placement

Section 5:

Only a few word changes

Section 8:

Only a few word changes

We are passing this draft to Jason Westphal of the WI. Bar Family Law Section for discussion and their feedback and suggestions.

Thanks again for your help on this. I will forward any comments the Family Law Section makes so that you may incorporate it or if we are done and ready to submit.

Fell free to call me with any questions or to discuss the changes.

Sincerely,

Michael Gough  
mkgough@yahoo.com  
262-308-2383

cc: Senator Stepp's and representative Vos' office

2005 – 2006 LEGISLATURE

**2005 BILL**

1 AN ACT *to renumber* 767.327 (5m); *to amend* 767.23 (1) (am), 767.24 (1m) (a)  
2 and 767.327 (5m) (title); and *to create* 767.001 (7), 767.24 (1m) (Lm), 767.24  
3 (4) (e) and 767.327 (5m) (b) of the statutes; **relating to:** granting a parent  
4 ~~virtual parent time~~ **electronic communication** with a child.

*Analysis by the Legislative Reference Bureau*

Under current law, in a divorce or legal separation in which a minor child is involved, and in a paternity action, the court must grant sole legal custody of the child to one parent or joint legal custody to both parents together. In addition, the court must allocate between the parents periods of physical placement, which is the condition under which the child is physically placed with the parent and the parent has the right and responsibility during that time to care for, and make routine daily decisions concerning, the child. The court may deny a parent periods of physical placement with the child only if being physically placed with the parent would endanger the child's physical, mental, or emotional health.

This bill provides that, if the court grants periods of physical placement to both parents, the court ~~may~~ **should** grant to a parent a reasonable amount of ~~virtual parent time~~ **electronic communication** at reasonable hours during the other parent's periods of physical placement with the child. ~~Virtual parent time~~ **Electronic communication** is defined as time that a parent spends with his or her child during which the child is not in the parent's physical presence but which is facilitated by the use of various types of communication tools, such as the telephone, electronic mail, instant messaging, and video conferencing or other wired or wireless technologies via the Internet. The basis for granting ~~virtual parent time~~ **electronic communication** is whether

**BILL**

it is in the child's best interest and whether equipment for providing virtual parent time electronic communication is reasonably available to both parents. Virtual parent time Electronic communication may be used only to supplement, and not as a substitute or replacement for, the physical placement that a parent has with the child.

The bill provides that a parenting plan that a party files with the court before a pretrial conference when legal custody or physical placement is contested must include any virtual parent time electronic communication a parent is requesting and must indicate whether equipment for providing virtual parent time electronic communication is reasonably available to both parents. The bill also provides that, when a parent is proposing to move with the child and the other parent objects to the move, the court may not use the availability of virtual parent time electronic communication as a factor in support of a refusal to prohibit the parent from moving with the child.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 767.001 (7) of the statutes is created to read:

2 767.001 (7) "Virtual parent time" "Electronic Communication" means time that a parent spends with his or

3 her child during which the child is not in the parent's physical presence but which  
4 is facilitated by the use of communication tools such as the telephone, electronic mail,  
5 instant messaging, video conferencing or other wired or wireless technologies via the  
6 Internet, or another medium of communication.

7 SECTION 2. 767.23 (1) (am) (an) of the statutes is amended created to read:

8 767.23 (1) (am) (an) Upon the request of a party, granting periods of physical  
9 placement, including virtual parent time electronic communication, to a party in a  
manner consistent with s.

10 767.24. The court or circuit court commissioner shall make a determination under  
11 this paragraph within 30 days after the request for a temporary order regarding  
12 periods of physical placement or virtual parent time electronic communication is  
filed.

13 ~~SECTION 3. 767.24 (1m) (a) of the statutes is amended to read:~~

14 ~~767.24 (1m) (a) What legal custody or physical placement, including virtual  
15 parent time, the parent is seeking.~~

13 SECTION 3. 767.24 (1m) (L) Whether and how the child will be able to contact the  
14 other parent when the child has physical placement with the parent providing  
the  
15 parenting plan including electronic communication the parent is seeking

**SECTION 4 BILL**

1 **SECTION 4.** 767.24 (1m) (Lm) of the statutes is created to read:

2 767.24 (1m) (Lm) Whether equipment for providing ~~virtual parent time~~ **electronic**  
3 **communication** is

4 reasonably available to both parents.

4 **SECTION 5.** 767.24 (4) (e) of the statutes is created to read:

5 767.24 (4) (e) If the court grants periods of physical placement to more than one  
6 parent, the court ~~may~~ **should** grant to a **each** parent a reasonable amount of ~~virtual~~  
7 ~~parent time~~ **electronic communication**

8 at reasonable hours during the other parent's periods of physical placement with the  
9 child. ~~Virtual parent time~~ **Electronic communication** with the child may be used only  
10 to supplement a parent's

11 periods of physical placement with the child. ~~Virtual parent time~~ **Electronic**  
12 **communication** may not be used

13 as a replacement or as a substitute for a parent's periods of physical placement with  
14 the child. Granting a parent ~~virtual parent time~~ **electronic communication** with the  
15 child during the other

16 parent's periods of physical placement shall be based on whether it is in the child's  
17 best interest and whether equipment for providing ~~virtual parent time~~ electronic  
18 communication is reasonably

19 available to both parents.

15 **SECTION 6.** 767.327 (5m) (title) of the statutes is amended to read:

17 767.327 (5m) (title) DISCRETIONARY OTHER FACTORS TO CONSIDER.

18 **SECTION 7.** 767.327 (5m) of the statutes is renumbered 767.327 (5m) (a).

19 **SECTION 8.** 767.327 (5m) (b) of the statutes is created to read:

20 767.327 (5m) (b) In making a determination under sub. (3) (c), the court may  
21 not use the availability of ~~virtual parent time~~ **electronic communication** as a factor in  
22 support of a ~~refusal to~~

**prohibit a move** **modification of physical placement, or in support of a refusal to**  
**prohibit a move.**

**SECTION 9. Initial applicability.**

**SECTION 9 BILL**

1 (1) PARENTING PLANS. The treatment of section 767.24 (1m) (a) and (Lm) of the  
2 statutes first applies to parenting plans filed with the court on the effective date of  
3 this subsection.  
4 (END)

## Kahler, Pam

---

**From:** Risch, Jay  
**Sent:** Tuesday, May 17, 2005 11:50 AM  
**To:** Kahler, Pam  
**Subject:** RE: Virtual Visitation Bill Draft

Pam,

I think the draft is ready to go out with the changes you made. Why don't you send it through now.

Thanks.

Jay

---

**From:** Kahler, Pam  
**Sent:** Tuesday, May 17, 2005 10:32 AM  
**To:** Risch, Jay  
**Subject:** RE: Virtual Visitation Bill Draft

Jay:

I've finished my changes, but in Michael Gough's last e-mail, he said, "I will forward any comments the Family Law Section makes so that you may incorporate it or if we are done and ready to submit." I took that to mean that I should wait to hear if further changes are recommended or if the draft can go out with the changes he sent. Do you want me to send it through now?

Pam

-----Original Message-----

**From:** Risch, Jay  
**Sent:** Monday, May 16, 2005 1:49 PM  
**To:** Kahler, Pam  
**Subject:** Virtual Visitation Bill Draft

Hi Pam,

Just checking in for a status report/timetable on our bill draft. Any idea when we might have it back?

Thanks -

Jay Risch  
Stepp Office



*✓ in is new*

## 2005 BILL

*D-vote*

*electronic communication*

*regenerate*

1 AN ACT *to renumber* 767.327 (5m); *to amend* 767.23 (1) (am), 767.24 (1m) (a)  
 2 and 767.327 (5m) (title); and *to create* 767.001 (7), 767.24 (1m) (Lm), 767.24  
 3 (4) (e) and 767.327 (5m) (b) of the statutes; **relating to:** granting a parent  
 4 ~~virtual parent time~~ with a child. ✓

### *Analysis by the Legislative Reference Bureau*

Under current law, in a divorce or legal separation in which a minor child is involved, and in a paternity action, the court must grant sole legal custody of the child to one parent or joint legal custody to both parents together. In addition, the court must allocate between the parents periods of physical placement, which is the condition under which the child is physically placed with the parent and the parent has the right and responsibility during that time to care for, and make routine daily decisions concerning, the child. The court may deny a parent periods of physical placement with the child only if being physically placed with the parent would endanger the child's physical, mental, or emotional health.

This bill provides that, if the court grants periods of physical placement to both parents, the court may grant to a parent a reasonable amount of ~~virtual parent time~~ at reasonable hours during the other parent's periods of physical placement with the child. ~~Virtual parent time~~ is defined as time ~~that~~ a parent ~~spends with~~ his or her child ~~during which the child is not in the parent's physical presence but which is facilitated by the use of various types of communication tools, such as the telephone, electronic mail, instant messaging, and video conferencing or other wired or wireless technologies via the Internet.~~ The basis for granting ~~virtual parent time~~ is whether

*Electronic communication*

*Electronic communication*

*Communicate by using*

*during which*

**BILL**

Electronic communication

electronic communication

it is in the child's best interest and whether equipment for providing ~~virtual parent time~~ is reasonably available to both parents. ~~Virtual parent time~~ may be used only to supplement, and not as a substitute or replacement for, the physical placement that a parent has with the child.

The bill provides that a parenting plan that a party files with the court before a pretrial conference when legal custody or physical placement is contested must include any ~~virtual parent time~~ a parent is requesting and must indicate whether equipment for providing ~~virtual parent time~~ is reasonably available to both parents.

The bill also provides that, ~~when~~ a parent is proposing to move with the child and the other parent objects to the move, the court may not use the availability of ~~virtual parent time~~ as a factor in support of a refusal to prohibit the parent from moving with the child.

modification of physical placement or a

electronic communication

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

SECTION 1. 767.001 (7) of the statutes is created to read:

767.001 (7) ~~Virtual parent time~~ means time that a parent spends with his or

her child during which the child is not in the parent's physical presence but which

is facilitated by the use of 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.

SECTION 2. 767.23 (1) (am) of the statutes is amended to read:

767.23 (1) (am) Upon the request of a party, granting periods of physical placement, including virtual parent time, to a party in a manner consistent with s.

767.24. The court or circuit court commissioner shall make a determination under this paragraph within 30 days after the request for a temporary order regarding periods of physical placement or virtual parent time is filed.

SECTION 3. 767.24 (1m) (a) of the statutes is amended to read:

767.24 (1m) (a) What legal custody or physical placement, including virtual parent time, the parent is seeking.

Inset 2-15

communicate by using

**BILL**

1           **SECTION 4.** 767.24 (1m) (Lm) of the statutes is created to read:

2           767.24 (1m) (Lm) Whether equipment for providing ~~virtual parent time~~ is  
3           reasonably available to both parents. ✓ *either or both*

4           **SECTION 5.** 767.24 (4) (e) of the statutes is created to read:

5           767.24 (4) (e) If the court grants periods of physical placement to more than one  
6           parent, the court may grant to a parent a reasonable amount of ~~virtual parent time~~  
7           at reasonable hours during the other parent's periods of physical placement with the

8           child. ~~Virtual parent time with the child~~ may be used only to supplement a parent's

9           periods of physical placement with the child. ~~Virtual parent time~~ may not be used  
10          as a replacement or as a substitute for a parent's periods of physical placement with

11          the child. Granting a parent ~~virtual parent time~~ with the child during the other  
12          parent's periods of physical placement shall be based on whether it is in the child's

13          best interest and whether equipment for providing ~~virtual parent time~~ is reasonably  
14          available to both parents.

15          **SECTION 6.** 767.327 (5m) (title) of the statutes is amended to read:

16          767.327 (5m) (title) ~~DISCRETIONARY OTHER FACTORS TO CONSIDER.~~

17          **SECTION 7.** 767.327 (5m) of the statutes is renumbered 767.327 (5m) (a).

18          **SECTION 8.** 767.327 (5m) (b) of the statutes is created to read:

19          767.327 (5m) (b) In making a determination under sub. (3) (c), the court may  
20          not use the availability of virtual parent time as a factor in support of a refusal to

21          prohibit a move.

22          **SECTION 9. Initial applicability.**

Electronic communication

Electronic communication

*Insert 3-21*

**BILL**

1 (1) PARENTING PLANS. The treatment of section 767.24 (1m) (a) and (Lm) of the  
2 statutes first applies to parenting plans filed with the court on the effective date of  
3 this subsection.

4 (END)

D-note

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1294/3ins  
PJK:jld:rs

INSERT 2-15

1 SECTION 1. 767.23 (1) (ap)<sup>x</sup> of the statutes is created to read:

2 767.23 (1) (ap) Upon the request of a party, granting periods of<sup>✓</sup> electronic  
3 communicaton to a party in a manner consistent with s. 767.24<sup>✓</sup>. The court or circuit  
4 court commissioner shall make a determination under this paragraph<sup>✓</sup> within 30  
5 days after the request for a temporary order regarding periods of electronic  
6 communicaton is filed.

7 SECTION 2. 767.24 (1m) (L)<sup>y</sup> of the statutes is amended to read:

8 767.24 (1m) (L) Whether and how the child will be able to contact the other  
9 parent when the child has physical placement with the parent providing the  
10 parenting plan, and what<sup>✓</sup> electronic communication, if any, the parent is seeking.

**History:** 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109; 2003 a. 130.

(END OF INSERT 2-15)

INSERT 3-21

11 SECTION 3. 767.327 (5m) of the statutes is renumbered 767.327 (5m) (intro.)  
12 and amended to read:

13 767.327 (5m) ~~DISCRETIONARY~~ OTHER FACTORS TO CONSIDER. <sup>(intro.)</sup> In making a  
14 determination under sub. (3), ~~the~~:

15 (a) The court may consider the child's adjustment to the home, school, religion  
16 and community.

**History:** 1987 a. 355, 364; 1991 a. 32, 269; 1995 a. 70; 1999 a. 9; 2001 a. 61.

17 SECTION 4. 767.327 (5m) (b) of the statutes is created to read:

1           767.327 (5m) (b) The court may not use the availability of electronic ✓  
2 communication as a factor in support of a modification of a physical placement order  
3 or in support of a refusal to prohibit a move.

(END OF INSERT 3-21)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1294/3dn  
PJK/jld/rs

keep

Thank you to Michael Gough for striking, bolding, and underlining his suggested changes. It was much easier to follow. I want to explain my deviations from his suggested changes.

1. I did not use "court *should* grant" instead of "court *may* grant" partly because of drafting convention. Normally a judge is either authorized (may) or directed (shall) to do something. In this case, the judge is correctly *authorized*, and should not be *directed*, to grant electronic communication, because the bill provides a standard for the judge to use in making the decision, i.e., whether it is in the child's best interest and whether the equipment is reasonably available to both parents. (That same reasoning applies to the use of the word "should.") If you don't like the use of the word "may," another option would be to direct the court (shall) to grant electronic communication if the court finds that it is in the child's best interest and that the equipment is reasonably available to both parents.

2. I did not change "a parent" to "each parent" in proposed s. 767.24 (4) (e).<sup>✓</sup> The use of "a parent" *means* either or both, but to make it absolutely clear, I changed "a parent" to "*either or both* parents." If it is changed to "each parent," the implication is that the court may not grant electronic communication to one of the parents unless the court grants it to both. Additionally, what if only one of the parents wants or requests electronic communication? *You wouldn't want to prevent the court from granting electronic communication to only one of the parents in some situations.*

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1294/3dn  
PJK:jld:rs

May 18, 2005

Thank you to Michael Gough for striking, bolding, and underlining his suggested changes. It was much easier to follow. I want to explain my deviations from his suggested changes.

1. I did not use "court *should* grant" instead of "court *may* grant" partly because of drafting convention. Normally a judge is either authorized (may) or directed (shall) to do something. In this case, the judge is correctly *authorized*, and should not be *directed*, to grant electronic communication, because the bill provides a standard for the judge to use in making the decision, i.e., whether it is in the child's best interest and whether the equipment is reasonably available to both parents. (That same reasoning applies to the use of the word "should.") If you don't like the use of the word "may," another option would be to direct the court (shall) to grant electronic communication if the court finds that it is in the child's best interest and that the equipment is reasonably available to both parents.

2. I did not change "*a* parent" to "*each* parent" in proposed s. 767.24 (4) (e). The use of "*a* parent" *means* either or both, but to make it absolutely clear, I changed "*a* parent" to "*either or both* parents." If it is changed to "*each* parent," the implication is that the court may not grant electronic communication to one of the parents unless the court grants it to both. Additionally, what if only one of the parents wants or requests electronic communication? You wouldn't want to prevent the court from granting electronic communication to only one of the parents in some situations.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

## Kahler, Pam

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**From:** Risch, Jay  
**Sent:** Friday, June 03, 2005 3:48 PM  
**To:** Kahler, Pam  
**Subject:** RE: LRB-1294

Thanks for your input and patience on all this. We're just going to go ahead and move forward with the /3 version.

---

**From:** Kahler, Pam  
**Sent:** Thursday, June 02, 2005 1:39 PM  
**To:** Risch, Jay  
**Cc:** 'mgough@wi.rr.com'  
**Subject:** LRB-1294

Jay:

I've reviewed the new proposed language and I don't think most of it adds anything to what the bill already contains. First, there is no reason to say that "physical placement is preferred over electronic communication." The bill already says that electronic communication may not be used to *supplement or replace* physical placement. One is not preferred over the other; they are two separate issues. The statutes already state that a child is entitled to physical placement with both parents and spell out what the court considers when allocating periods of physical placement.

Second, I think it is obvious (too obvious to state) that electronic communication "may be used to provide frequent and continuing contact for the child with both parents." Isn't that the whole point? If we can glean that, I think judges will get the idea, too. They are not completely ignorant of what their decisions will do.

The last point is a little tricky. If we say that the court may limit or prohibit electronic communication if it is not in the child's best interest, aren't we saying that the court doesn't have to grant it in the first place? If the court may prohibit it, it must be going on without a court order because the court would not grant it just to prohibit it. Since the bill authorizes the court to *grant* electronic communication, the assumption is that it would not occur without a court order. However, at the risk of making it appear that the bill is not necessary at all, I could authorize the court to limit or prohibit electronic communication if the court determines that electronic communication is not in the child's best interest. (Prohibiting physical placement is another issue, and it is already dealt with in the statutes, so I will not mention that.) The proposed language does not specifically mention abuse as a reason for prohibiting or limiting electronic communication, so I won't either, unless someone objects strongly very soon.

Pam

## Kahler, Pam

---

**From:** Kahler, Pam  
**Sent:** Thursday, June 02, 2005 1:39 PM  
**To:** Risch, Jay  
**Cc:** 'mgough@wi.rr.com'  
**Subject:** LRB-1294

Jay:

I've reviewed the new proposed language and I don't think most of it adds anything to what the bill already contains. First, there is no reason to say that "physical placement is preferred over electronic communication." The bill already says that electronic communication may not be used to *supplement or replace* physical placement. One is not preferred over the other; they are two separate issues. The statutes already state that a child is entitled to physical placement with both parents and spell out what the court considers when allocating periods of physical placement.

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The last point is a little tricky. If we say that the court may limit or prohibit electronic communication if it is not in the child's best interest, aren't we saying that the court doesn't have to grant it in the first place? If the court may prohibit it, it must be going on without a court order because the court would not grant it just to prohibit it. Since the bill authorizes the court to *grant* electronic communication, the assumption is that it would not occur without a court order. However, at the risk of making it appear that the bill is not necessary at all, I could authorize the court to limit or prohibit electronic communication if the court determines that electronic communication is not in the child's best interest. (Prohibiting physical placement is another issue, and it is already dealt with in the statutes, so I will not mention that.) The proposed language does not specifically mention abuse as a reason for prohibiting or limiting electronic communication, so I won't either, unless someone objects strongly very soon.

Pam

LRB-1294/4 - proposed

**Draft #4 updates**

4 SECTION 5. 767.24 (4) (e) of the statutes is created to read:  
5 767.24 (4) (e) If the court grants periods of physical placement to more than one  
6 parent, the court may grant to either or both parents a reasonable amount of  
7 electronic communication at reasonable hours during the other parent's periods of  
8 physical placement with the child. Electronic communication shall not be used as  
9 a replacement or as a substitute for a parent's periods of physical placement with the  
10 child. Physical placement is preferred over electronic communication. Electronic  
11 Communication with the child may be used only to supplement a parent's periods of  
12 physical placement with the child. Electronic Communication may be used to  
13 provide frequent and continuing contact for the child with both parents.  
14 Granting a parent electronic communication with the child during the other parent's  
15 periods of physical placement shall be based on whether it is in the child's best  
16 interest and whether equipment for providing electronic communication is  
17 reasonably available to both parents. If physical placement or Electronic  
18 Communication is found not to be in the best interests of the child, the court may  
19 limit or prohibit physical placement or electronic communication between the child  
20 and one or both parents.

**Kahler, Pam**

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**From:** Risch, Jay  
**Sent:** Tuesday, May 31, 2005 12:52 PM  
**To:** Kahler, Pam  
**Subject:** FW: LRB-1294/4 proposed  
Pam,

I thought were done with /3. I guess not. When /4 is ready, we're just just introducing it! Thanks.

Jay

---

**From:** Michael Gough [mailto:mgough@wi.rr.com]  
**Sent:** Tuesday, May 31, 2005 12:47 PM  
**To:** Kahler, Pam  
**Cc:** Risch, Jay  
**Subject:** RE: LRB-1294/4 proposed

Pam,

I received a request from Dr. Ken Waldron to add a restriction clause for cases where Abuse or where it may be harmful to the child might occur – directly allowing the court to restrict or prohibit. We allow its use and why, but not when it should be limited is his concern.

We reworted Section 5 for your review and comment. Some of the wording is the same – just inserted a couple sentences.

Let me know if you have any questions.

Regards,

Micahel Gough

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262.308.2383 - Cell

**Emery, Lynn**

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**From:** Risch, Jay  
**Sent:** Monday, June 20, 2005 12:31 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1294/3 Topic: Virtual parent time

It has been requested by <Risch, Jay> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-1294/3 Topic: Virtual parent time