

STATUTE NOTE
Virtual Parents: How Virtual Visitation Legislation Is Shaping
the Future of Custody Law

*David Welsh**

I. INTRODUCTION

Following Michael Gough's divorce in 2002, his ex-wife wanted to move to Wisconsin with their four-year-old daughter.¹ Michael's work obligations kept him in Utah, yet he longed to sustain a significant relationship with his daughter in spite of the distance.² Gough, a computer security specialist, arrived at his custody hearing with two laptops and demonstrated to the court how easy-to-use video conferencing technology could connect him over the internet with his daughter at minimal cost.³ Though the judge was unfamiliar with this novel technology, Gough persuaded the court to grant him virtual visitation rights in addition to traditional visitation.⁴ Gough subsequently presented a seminar to the Family Law section of the Utah State Bar with the help of Salt Lake City attorney Joyce Maughan. "One of the attorneys present . . . was so impressed that he proposed legislation" in Gough's daughter's name creating a presumption in favor of virtual visitation in custody cases.⁵

"Virtual visitation . . . refers to the use of email, instant messaging, webcams, and other internet tools to provide regular contact between a noncustodial parent and his or her child."⁶ In 2004, Utah became "the first . . . state to legislate the authority of judges to include virtual visitation in divorce decrees."⁷ As a result, parents are required to "permit and encourage" telephone and internet communication when the technology is "reasonably available."⁸ Currently, only

* Junior Staff Member, *Journal of Law & Family Studies*; J.D. candidate 2010.

¹ See Nora Lockwood Tooher, *Divorced Dad Leads Drive For 'Virtual Visitation'*, LAW WEEKLY USA, Dec. 15, 2005 at 1, available at http://www.internetvisitation.org/pdf/Lawyers%20Weekly%20USA_Dec_05.pdf.

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ See *id.* at 2.

⁶ Elisabeth Bach-Van Horn, *Virtual Visitation: Are Webcams Being Used as an Excuse to Allow Relocation?*, 21 J. AM. ACAD. MATRIMONIAL LAW. 171, 172 (2008).

⁷ *Id.* at 181.

⁸ Saige's Law, 2004 Utah Laws 321 at 30-3-33(14):

[E]ach parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

- (a) the best interests of the child;
- (b) each parent's ability to handle any additional expenses for virtual parent-time; and

four states have laws recognizing virtual visitation while seven more have drafted bills.⁹ Proponents of this type of legislation argue that court-ordered virtual visitation is the “logical next step” in advancing long distance relationships beyond phone calls and letter writing.¹⁰ Nevertheless, although virtual visitation is “the cutting edge of divorce law” and recently has received a great deal of favorable media attention,¹¹ some observers fear that video conferencing technology may be used improperly as a substitute for actual visitation.¹²

This note explores the growing role of virtual visitation in custody agreements from the perspectives of parents, children, and professionals. Such a consideration reveals that effective state legislation can clarify the current ambiguity of case law, enhance communication between non-custodial parents and children, and prevent abuse of this technology by judges or parents. Utah’s virtual visitation statute has proven itself over the past four years and serves as a model for other states to follow. Using the suggestions outlined below, legislatures can establish similar standards that will increase interaction between children and non-custodial parents.

II. THE GROWING NEED FOR VIRTUAL VISITATION

In our increasingly mobile society, many children struggle to maintain a relationship with each of their parents when their families divide.¹³ “An estimated 18 million children have separated or divorced parents, and an additional 17 million children’s parents never married At least 25% of all of these children have a parent living in a different city.”¹⁴ Contributing to this growing phenomenon, “[w]ithin four years after separation or divorce, 75% of [single] mothers will relocate at least once, and of that number over half will do so again.”¹⁵ As a result, close to ten million children do not have standard face-to-face interaction with one of their parents.¹⁶

Sociological research continually demonstrates the importance of both parents’ involvement in their children’s lives.¹⁷ Consequently, public policy

(c) any other factors the court considers material.

⁹ See Bach-Van Horn, *supra* note 6, at 180 (citing Internetvisitation.org, Legislation, http://internetvisitation.org/web_pages/legislation.html (last visited Nov. 26, 2008)) (noting that Utah, Wisconsin, Florida, and Texas currently have virtual visitation legislation in place).

¹⁰ Sarah L. Gottfried, Note, *Virtual Visitation: The New Wave of Communication Between Children and Non-Custodial Parents in Relocation Cases*, 9 CARDOZO WOMEN’S L.J. 567, 570 (2003).

¹¹ Carol R. Flango, Science and Technology for Judges Trends in 2003: Virtual Visitation—Is This A New Option for Divorcing Parents?, in 2003 Report on Trends in the State Courts, 20, 21 (2003), available at http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends03_Pub.pdf.

¹² Glenn Sacks & Dianna Thompson, *No Virtue in Virtual Visitation*, BOSTON GLOBE, July 12, 2002, at A15, available at http://www.glennsacks.com/no_virtue_in.htm.

¹³ See Flango, *supra* note 11, at 21.

¹⁴ *Id.*

¹⁵ Gottfried, *supra* note 10, at 568.

¹⁶ See *id.*

¹⁷ See, e.g., Kenneth Waldron, *A Review of Social Science Research on Post Divorce Relocation*, 19 J. AM. ACAD. MATRIMONIAL LAW. 337, 353 (2005).

recognizes the parent-child relationship as an important state interest.¹⁸ Children in single-parent homes have less financial resources, receive fewer educational opportunities, and are more likely to commit crimes.¹⁹ Supporting these conclusions, one recent study suggests that:

[C]hildren of divorced parents who are separated from one parent due to the custodial or non-custodial parent moving beyond an hour's travel time from the other parent are significantly less well off on many child mental and physical health measures compared to those children whose parents do not relocate after divorce.²⁰

Children under six-years-old experience a particularly detrimental effect in the absence of one parent because the parent-child bond has not yet solidified.²¹ Although relocation is typically less detrimental from ages six to ten years old, contact remains important; especially with a parent of the same gender.²² Beginning around age thirteen, a child's external social context including school, friends, and activities plays an increasingly important role relative to that of each parent.²³ In sum, "[a] review of the research on the effects of increased [non-custodial parental] involvement is unambiguous: a child does better in every aspect of adjustment that has been measured, both long-term and short-term, if there is active [non-custodial parent] involvement."²⁴

While virtual visitation may not force commitment into inherently deadbeat parents, it can facilitate the communication process for those seeking to foster more meaningful relationships with their children. Evidence suggests that today's non-custodial fathers are increasingly anxious to take a role in their children's lives and are significantly less likely to abandon relationships with children following divorce.²⁵ Although virtual visitation may be seen as a "gap filling measure"²⁶ when an ideal visitation schedule is impossible, the use of this technology can enhance both the quantity and quality of parental contacts. It "has empowered the

¹⁸ See, e.g., *McGuinness v. McGuinness*, 970 P.2d 1074, 1076–78 (Nev. 1998) (noting that "[t]he fundamental proposition that both parents ought to be allowed to maintain significant and substantial involvement in the child's life cannot be disputed.").

¹⁹ See Bureau of the Census, U.S. Dep't of Commerce, *Census Brief: Children With Single Parents—How They Fare 1*, (1997), available at <http://www.census.gov/prod/3/97pubs/cb-9701.pdf>; iMAPP, *Can Married Parents Prevent Crime? Recent Research on Family Structure and Delinquency 2000-2005, passim* (2005), available at <http://www.marriagedebate.com/pdf/imapp.crimefam.structure.pdf>.

²⁰ Waldron *supra* note 18, at 366.

²¹ See Waldron, *supra* note 17, at 350.

²² See *id.* at 352–53.

²³ See *id.* at 353–55.

²⁴ See *id.* at 359.

²⁵ See *id.* at 358 (noting that the rate of father abandonment of children following divorce fell from 50% in 1970 to 25% in 1990 while shared custody arrangements rose from 10% to 40% during this time period).

²⁶ Anne LeVasseur, Note, *Virtual Visitation: How Will Courts Respond to a New and Emerging Issue?*, 17 QUINNIAC PROB. L.J. 362, 368 (2004).

non-custodial parent to be involved in every small detail of the daily lives of the children.” As Michael Gough explained, “Before starting Virtual Visitation, when I spoke with my four-and-a-half-year-old daughter, our telephone calls lasted only an average of 5 minutes. Now during video calls, they last an average of 15 minutes and have gone as long as 45 minutes.”²⁷ Gough described his first twenty-minute video conference with his daughter as better than the previous eighteen months of telephone interaction.²⁸ He “was able to see the haircut she managed to give herself, her dinosaur outfit that she planned to wear for Halloween and the roar she was ready to give along with it.”²⁹ Similarly, Tawny Sniderman, a non-custodial mother, reports that she is “sold” on virtual visitation.³⁰ Video conferencing technology allows her to see excitement in her daughter and “share spontaneous moments.”³¹ For both Gough and Sniderman, visual interaction with their young child over the computer cannot replace actually being there, but it is far superior to telephone calls and letters.³² As these experiences demonstrate, virtual visitation can play an important role in enhancing a child’s relationship with a non-custodial parent, thus it offers the potential to improve the child’s physical and mental well-being.

III. THE ACCESSIBILITY OF VIRTUAL VISITATION

Today, the technology required to set up a virtual visitation system is widely available and implementation costs are relatively affordable.³³ Gough’s virtual visitation system connected two existing computers for a mere two-hundred dollars.³⁴ In 2004, it was reported that the expense of building a virtual visitation system from the ground up—including computer equipment, web cameras, and audio components—was approximately seven-hundred dollars.³⁵ For the many individuals that already own a computer with an internet connection, setting up a virtual visitation system requires little more than a web camera, microphone, and a video conferencing software program.³⁶ Parents with lesser financial resources may be able to take advantage of these technologies at the growing number of libraries with internet-equipped computer terminals.³⁷ While choppy video and

²⁷ Together While Apart, Michael Gough Wins Right to Virtual Visitation With Daughter, http://jimbuie.blogs.com/virtualfamilies1/2004/11/michael_gough_w.html (last visited Nov. 26, 2008) [hereinafter Together While Apart].

²⁸ *See id.*

²⁹ *Id.*

³⁰ Gottfried, *supra* note 10, at 589.

³¹ *See id.*

³² *See id.*; Together While Apart, *supra* note 27.

³³ *See* MICHAEL GOUGH, SKYPE ME! 1–11 (2005); MICHAEL GOUGH, VIDEO CONFERENCING OVER IP 1-20 (Jason Rosenfeld tech. ed., 2006) [hereinafter GOUGH, VIDEO CONFERENCING].

³⁴ *See* Together While Apart, *supra* note 27.

³⁵ *See id.*

³⁶ *See* GOUGH, VIDEO CONFERENCING *supra* note 33, at 1–20.

³⁷ *See* National Center for Education Statistics, Search for Public Libraries, <http://nces.ed.gov/surveys/libraries/librarysearch/>, for a searchable database of public libraries, which can be contacted for inquiries regarding the availability of internet access.

delayed audio characterized most early systems, modern computers with high speed internet access have greatly improved image and sound transmission.³⁸

While video conferencing represents the most interactive type of virtual visitation technology, other forms of virtual visitation are also widely used.³⁹ In addition to text-based emails, video emails now allow persons to record and send video clips of themselves.⁴⁰ Instant messaging allows users to carry on live typewritten conversations over the internet.⁴¹ Pictures can be exchanged instantly via email, websites, and photo sharing applications rather than by mail.⁴² Websites and blogs have increasingly become electronic substitutes for scrapbooks and journals.⁴³ Although not specifically addressed in most custody agreements, these technologies are already widely used by many non-custodial parents to keep in touch with their children.⁴⁴ Millions of children and teens are already familiar with such programs and use them to keep in touch with extended family, friends, and classmates. Currently, the law is just beginning to recognize these forms of internet communication technology.⁴⁵

IV. THE BENEFITS OF CREATING EFFECTIVE VIRTUAL VISITATION LEGISLATION I.

A. Legislation Will Create Uniform Rules for Virtual Visitation to Resolve Existing Common Law Ambiguity

Although virtual visitation cases are occurring more and more frequently, legislatures have been slow to react, and courts have yet to establish meaningful precedent relating to the phenomenon. While some judges have pioneered the use of technology in custody cases, others have fought this trend or ignored virtual visitation altogether.⁴⁶ In 2001, the groundbreaking case *McCoy v. McCoy*⁴⁷ brought virtual visitation into the spotlight. In *McCoy*, the New Jersey court of appeals reversed a decision that prevented a divorced mother from moving to California with her daughter.⁴⁸ While the non-custodial father opposed the move, the court found that the mother's offer to construct an interactive website with webcam technology was "creative and innovative."⁴⁹ Through virtual visitation, the court reasoned, the father could communicate daily with his daughter and even help her with her homework.⁵⁰ That same year in *Burke v. Burke*, the Tennessee

³⁸ See GOUGH, VIDEO CONFERENCING, *supra* note 33, at 22–37.

³⁹ See LeVasseur *supra* note 26, at 365.

⁴⁰ See, e.g., Eyejot, <http://www.eyejot.com/>.

⁴¹ See, e.g., Windows Live Messenger, <http://get.live.com/messenger>.

⁴² See, e.g., Flickr, <http://www.flickr.com/>.

⁴³ See, e.g., Facebook, <http://www.facebook.com>; Blogger, <http://www.blogger.com/>.

⁴⁴ See Steven Ashley & Philip S. Hall, The Long-Distance Dad 149–50 (2008).

⁴⁵ See Jim McKay, Virtual Parenting, GOV'T TECH., July 6, 2006, <http://www.govtech.com/gt/100099>.

⁴⁶ See, e.g., *McCoy v. McCoy*, 764 A.2d 449, 454–455 (N.J. Super. Ct. App. Div. 2001).

⁴⁷ *Id.*

⁴⁸ *Id.* at 455.

⁴⁹ *Id.* at 454.

⁵⁰ See *id.* at 452.

court of appeals upheld a lower court's order that an "internet-based video communications system" be installed to facilitate communication with the non-custodial parent involved.⁵¹ The court found virtual visitation to be a "unique, forward thinking and viable communication alternative."⁵² Courts have upheld the use of virtual visitation in similar cases arising in Connecticut, Massachusetts, Missouri, Michigan, Iowa, Louisiana, North Dakota, and New York.⁵³

However, critics point out that virtual visitation can be improperly used by courts to justify relocating a child away from the non-custodial parent.⁵⁴ For example, one Massachusetts court allowed the custodial parent to move to New York, and replaced the non-custodial parent's regular weekday visits with "virtual visits."⁵⁵ Parental advocates argue that these "Move Away Moms" (or dads) use technology as a means to remove the other parent from the child's life, and that the troubling current trend of easing relocation requirements is exacerbated by virtual visitation.⁵⁶ Some courts echo these concerns. For example, in *Nighswander v. Sudick*, the Superior Court of Connecticut denied a mother's request to move to California, even after considering virtual visitation technologies, stating that her sons' relationships with their father would be "forever altered."⁵⁷ Likewise, in *Graham v. Graham*, the Pennsylvania Superior Court overturned a lower court's decision allowing a mother to relocate noting that "staying connected via the Internet could [never] be a substitute for face-to-face contact."⁵⁸ In contrast, trial courts in North Dakota and South Carolina have rejected virtual visitation in some instances only to be overruled on appeal in favor of relocation.⁵⁹

This ambiguity in the common law approach reveals an urgent need for states to enact legislation addressing virtual visitation. Such move-away cases are universally difficult to resolve as courts must balance "one parent's upward mobility versus the other's continuing contact with the child."⁶⁰ In some cases, technology may be "randomly and arbitrarily implemented by a judge who might not be well-informed about the issues surrounding virtual visitation."⁶¹ Ambiguous results in turn lead to inefficiency, unpredictability, and problems with expectations as parents and their lawyers are unsure whether virtual visitation is appropriate.⁶² Rather than making a subjective case-by-case judgment of the "child's best interest," legislation allows states to make objective policy decisions

⁵¹ No. M2000-01111-COA-R3-CV, 2001 WL 921770, at *1, *7 (Tenn. Ct. App., Aug. 7, 2001).

⁵² *Id.*

⁵³ See Gottfried, *supra* note 10, at 584–89.

⁵⁴ See Sachs & Thompson, *supra* note 12.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ No. FA 97393793, 2000 WL 157905, at *10 (Conn. Super. Ct., Jan. 26, 2000).

⁵⁸ 794 A.2d 912, 915 (Pa. Super. Ct. 2002).

⁵⁹ See generally *Tibor v. Tibor*, 598 N.W.2d 480, 487 (ND 1999); *Rice v. Rice*, 517 S.E.2d 220, 227–28 (S.C. Ct. App. 1999).

⁶⁰ Gottfried, *supra* note 10, at 569 (citation omitted); see also Waldron, *supra* note 17, at 337–41.

⁶¹ Gottfried *supra* note 10, at 593.

⁶² See generally Gottfried, *supra* note 10, at 592–93.

about the role of virtual visitation. For example, Wisconsin's virtual visitation statute specifically states that "[t]he court may not use the availability of electronic communication as a factor in support of a modification of a physical placement order or in support of a refusal to prohibit a move."⁶³ Conversely, Florida's virtual visitation statute allows courts to decide relocation cases based on a range of factors, including the availability of virtual visitation.⁶⁴ Although these statutes reflect different policy judgments, it is better that such judgments be made uniformly by the state rather than subjectively by judges. Courts have little meaningful precedent to rely on and are left to make case-by-case determinations that are often overturned on appeal.⁶⁵ In contrast, virtual visitation statutes allow predictability and prevent courts from applying differing policy judgments from case to case.

Additionally, effective legislation legitimizes virtual visitation and sets appropriate standards for its use.⁶⁶ Many judges are still relatively unfamiliar with virtual visitation and have little guiding precedent to rely on.⁶⁷ Some may be hesitant to endorse a novel technology in the absence of legislative support, while others may consider themselves activists by pioneering virtual visitation whenever possible.⁶⁸ Furthermore, non-custodial parents often use virtual visitation technologies such as email and instant messaging without court approval.⁶⁹ However, use of such technologies is often contingent on the agreement of the other parent. Without legislation to enforce virtual visitation, non-custodial parents are left without recourse if the other party refuses to cooperate. States are also left without the ability to appropriately regulate the use of virtual visitation in difficult cases such as those involving abuse or domestic violence.⁷⁰ Such cases require strict standards limiting the use of virtual visitation in order to maintain protection

⁶³ Wis. Stat. § 767.481(5m)(b) (2007).

⁶⁴ Fla. Stat. § 61.13001(3)(a)(7) (2007).

⁶⁵ See, e.g., *Graham v. Graham*, 794 A.2d 912, 915 (Pa. Super. Ct. 2002).

⁶⁶ See Ann Sanner, 'Virtual' Visits Pushed in Several States, U.S.A. TODAY, Feb. 28, 2006, http://www.usatoday.com/tech/news/techinnovations/2006-02-28-virtual-visitacion_x.htm (last visited Nov. 26, 2008) (noting that "Utah lawyers are now more likely to suggest virtual visitation, simply 'because their lawyers are more aware of it.'").

⁶⁷ See McKay, *supra* note 45 (noting that many judges do not even know that virtual visitation exists as a possible remedy when deciding what is in the best interest of the child.).

⁶⁸ See, e.g., ABCNews.com, Virtual Visitation Brings Parents and Kids Closer, <http://a.abcnews.com/GMA/AmericanFamily/Story?id=2314888&page=1> (last visited Nov. 26, 2008) (noting that one non-custodial parent is authorized to have visits with one of his children via virtual visitation in Colorado, but was denied virtual visitation with another child in Virginia. "[The] judge wouldn't order [virtual visitation] because Virginia did not have a virtual visitation law.") See Tooher, *supra* note 1.

⁶⁹ See, e.g., California Divorce and Family Law, Proponents of the Web Cam Option Seek to Get it Included in State Custody Laws, http://oc-divorce.typepad.com/california_divorce_and_fa/virtual_visitation/ (last visited Nov. 26, 2008).

⁷⁰ See McKay, *supra* note 45 (noting that "judges must carefully consider prior abuse or domestic violence if the technology could reveal the location or invade the privacy of the custodial parent.").

and privacy for the victims involved. Thus, legislatures are in the best position to consider and address the relevant public policy issues surrounding virtual visitation.

B. Legislation Can Establish Virtual Visitation as a Supplement, Not a Substitute for In Person Parent Time

Critics of virtual visitation share a common concern that emerging technologies will be used as a substitute for actual parental interaction.⁷¹ For example, “it would be difficult to make a convincing argument that seeing each other on a computer monitor is comparable to a hug, or showing a baseball trophy on the screen is comparable to having a parent at the game.”⁷² Some parental advocates argue that “[w]e don't give birth to Internet babies . . . we need reality, not virtual reality.”⁷³ Although virtual visitation allows a greater level of interaction than was previously possible, professionals unanimously agree that technology alone can never replace actual time spent between a parent and child.⁷⁴

Some attorneys fear that parents will feel less incentive to purchase expensive plane tickets or drive significant distances to see their children in person when they can do so at home via the internet.⁷⁵ On the other hand, some research indicates that parental involvement is self-reinforcing.⁷⁶ Thus, the more contact a parent has with a child via virtual visitation, the more in person contact the parent will want to have with the child.⁷⁷ For example, after years of communicating with his daughter using virtual visitation, Michael Gough eventually moved to Wisconsin to further develop his relationship with her.⁷⁸ Further research is needed to determine how virtual visitation affects other forms of parent-child communication including in-person contact.

States have responded to these concerns when drafting virtual visitation legislation. All four states with virtual visitation statutes specify that internet communication is not a replacement for in-person parent time.⁷⁹ For example, Florida's statute explicitly states that “[e]lectronic communication may be used only to supplement a parent's face-to-face contact with his or her minor child. Electronic communication may not be used to replace or as a substitute for face-to-face contact.”⁸⁰ Thus, non-custodial parents cannot justify skipping actual visits

⁷¹ *Id.*

⁷² Waldron, *supra* note 17, at 352.

⁷³ Gottfried, *supra* note 10, at 591.

⁷⁴ See McKay, *supra* note 45 (noting that some lawmakers want “legislation [that] would not allow judges to grant virtual visitation in lieu of face-to-face contact.”).

⁷⁵ Interview with Brent Newton, Guardian *ad Litem*, Utah Third District Court, in Salt Lake City, Ut. (September 15, 2008).

⁷⁶ See Joyce A. Arditti, *Child Support Noncompliance and Divorced Fathers: Rethinking the Role of Paternal Involvement*, in *WOMEN AND DIVORCE/MEN AND DIVORCE* 109–10 (Sandra S. Volgy ed., 1991).

⁷⁷ *See id.*

⁷⁸ See Tooher, *supra* note 1.

⁷⁹ See generally Bach-Van Horn, *supra* note 6, at 181–87.

⁸⁰ Fla. Stat. § 61.13003(4) (2007).

even if they regularly interact with their children via the internet. Similarly, Texas uses the amount of in-person time that each parent spends with the child to determine child support payments.⁸¹ However, the state's virtual visitation statute specifically rejects the use of virtual visitation time to reduce child support.⁸² Utah also recognizes that virtual visitation may not be right for everyone and authorizes its use only when "reasonably available."⁸³ With such limitations, courts will not require parents to use technology that is beyond their level of sophistication or financial means.⁸⁴ In conclusion, these statutes send a clear message to parents and judges more effectively than the common law that virtual visitation should only supplement actual visits. In this manner, legislation can effectively respond to the critics' most important concern about virtual visitation by ensuring that technology allows more communication time without permitting less actual interaction.

V. THE ELEMENTS OF AN EFFECTIVE VIRTUAL VISITATION STATUTE

Legislatures should act to legitimize the use of virtual visitation by passing effective legislation establishing guidelines for when to use this technology. Increasing the interaction between children and non-custodial parents is an important public policy goal that improves children's wellbeing in a variety of ways.⁸⁵ Experts are needed to facilitate the union of cutting-edge communications technology with public policy in a way that individual judges cannot.⁸⁶ Proposing such legislation requires little more than a technologically savvy parent like Michael Gough and innovative attorney such as Joyce Maughan. For example, when Gough decided to move to Wisconsin to be closer to his daughter, he became an integral part of enacting Wisconsin's subsequent virtual visitation legislation.⁸⁷ Similarly, parental advocates in other states should use their expertise to collect ideas, conduct research, and propose legislation recognizing the use of virtual visitation.

In crafting such legislation, legislatures should specifically state that virtual visitation is to be used only as a supplement to actual parent time.⁸⁸ Although this presumption exists in current legislation, it must be articulated clearly in order to establish a bright-line rule.⁸⁹ This rule can prevent abuse of this technology by non-custodial parents, and rebut the main fear of critics that virtual visitation will be used to replace actual visitation time.⁹⁰ Legislatures must also decide whether virtual visitation should be considered as a factor in relocation cases. Courts have

⁸¹ See Tex. Fam. Code Ann. § 154.123(4) (2007).

⁸² See Tex. Fam. Code Ann. § 153.015(d) (2007).

⁸³ Saige's Law, 2004 Utah Laws 321 at 30-3-33(12).

⁸⁴ See *id.*

⁸⁵ See Waldron, *supra* note 17, at 366.

⁸⁶ See generally Tooher, *supra* note 1.

⁸⁷ See *id.*

⁸⁸ See, e.g., Fla. Stat. § 61.13003(4) (2007) (stating that "[e]lectronic communication may not be used to replace or as a substitute for face-to-face contact.").

⁸⁹ See *id.*

⁹⁰ See Sachs & Thompson, *supra* note 12.

taken a variety of different approaches in this area; however, uniform standards are needed given the frequency with which relocations occur and the impact of these relocations on the children involved.⁹¹ By removing ambiguity, attorneys will be in a better position to recommend virtual visitation to their clients when appropriate.⁹² Likewise, judges will have an additional tool available in custody disputes, a legislative standard to rely on, and more predictable holdings that are significantly less likely to be overturned on appeal. Legislation should not be designed to completely tie the hands of judges, but to provide a framework for the use of virtual visitation in determining what is in the best interest of the child.

Legislatures must recognize that virtual visitation will not be appropriate in all cases.⁹³ Although a large percentage of the population has access to the internet, virtual visitation legislation should be flexible given the parents, children, and circumstances involved.⁹⁴ Legislation should not be designed to force parents or children to use a form of communication that they are not comfortable with or to require them to purchase computer systems with high-speed internet.⁹⁵ Similarly, legislation should not be so ardent as to require parents or children to use virtual visitation in public places, such as libraries, when such conditions may be impractical and intrusive. Utah's presumption for virtual visitation when the technology is "reasonably available" allows judges to consider a wide variety of factors in deciding whether the use of this technology is in the best interest of the child.⁹⁶ This degree of flexibility appropriately balances the individual circumstances of a particular case with overall predictability between similar cases.

Finally, legislatures must be open to further modification of the statutes given the rapid growth of technology in this area. While the law often lags behind current technology, innovations in virtual visitation are occurring rapidly and may necessitate further legislative updates dealing with issues such as privacy.⁹⁷ Over time, states will be able to compare the effectiveness of their unique virtual visitation statutes and make revisions to further their public policy goals. Legislation that follows this process will maximize the effectiveness of virtual visitation technology and avoid potential pitfalls caused by ignorance or abuse.

VI. CONCLUSION

As computer and internet technologies become increasingly available, virtual visitation will continue to grow at a rapid pace. While a handful of states have responded by enacting corresponding legislation, the majority have been slow to deal with these forms of electronic communication that are widely available to

⁹¹ See, e.g., *McCoy v. McCoy*, 764 A.2d 449, 454; *Tibor v. Tibor*, 598 N.W.2d 480, 487 (ND 1999); *Rice v. Rice*, 517 S.E.2d 220, 222 (S.C. App. Ct. 1999).

⁹² See generally Sanner, *supra* note 66.

⁹³ See, e.g., Saige's Law, 2004 Utah Laws 321 at 30-3-33(12).

⁹⁴ See generally *Internetvisitation.org*, *supra* note 9 (providing examples of virtual visitation legislation).

⁹⁵ See *id.*

⁹⁶ Saige's Law, 2004 Utah Laws 321 at 30-3-33(12).

⁹⁷ See, e.g., *ABCNews.com*, *supra* note 68.

divorcing parents. Legislators and judges play an important role in legitimizing the use of virtual visitation between parents and children. Experts are needed to examine ways that virtual visitation can enhance relationships and advance societal interests. Parents like Michael Gough provide examples of how virtual visitation allows non-custodial parents to touch the lives of their children on a daily basis. Through effective legislation, states can facilitate parent-child interaction and, despite being thousands of miles apart, bring parents like Michael Gough back into the lives of their children.