

# DRAFT REVISIONS for “VIRTUAL VISITATION” BILL for A 3107

[http://www.njleg.state.nj.us/2006/Bills/A3500/3107\\_11.HTM](http://www.njleg.state.nj.us/2006/Bills/A3500/3107_11.HTM)

Changes are strikethrough (delete) and new text (bold, underlined and italic)

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ASSEMBLY, No. 3107

## STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED MAY 18, 2006

Sponsored by:

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District 8 (Burlington)

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### SYNOPSIS

Permits ~~virtual parent-time~~ ***electronic communication*** orders to facilitate ***parenting time*** **or** visitation of minor child with noncustodial and custodial parent where appropriate.

### CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning electronic visitation orders and amending Title 9 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

**1. R.S.9:2-2 is amended to read as follows:**

**9:2-2. Custody of children of divorced or separated parents within jurisdiction of Superior Court; removal from jurisdiction; consent; security**

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.

**(a) The court may not use the availability of electronic communication as a factor to justify or in support of a relocation by the custodial parent out of the immediate area or state.**

**2. R.S.9:2-4 is amended to read as follows:**

9:2-4. The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation

between the parents in making major decisions regarding the child's health, education and general welfare;

b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or

c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

g. The court, where appropriate, may order the custodial parent, or the noncustodial parent when the child is staying with the noncustodial parent, to facilitate ~~virtual parent-time~~ **electronic communication** of the child if the necessary equipment is reasonably available. If the parents cannot agree on whether the equipment is reasonably available, the court shall decide the reasonableness of its availability, taking into consideration:

(1) the best interests of the child;

(2) each parent's ability to handle any additional expenses for ~~virtual parent-time~~; **electronic communication**; and

(3) any other factors the court considers material.

As used in this act, "~~virtual parent time~~" "**electronic communication**" means parent time facilitated by tools such as telephone, electronic mail, instant messaging, video conferencing and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a ~~noncustodial parent and a child. or between a child and the custodial parent when the child is staying with the noncustodial parent.~~ **Electronic communication** Virtual parent time is intended to supplement, not replace, in person parent time.

(cf: P.L 1997, c.299, s.9)

### **3. R.S.9:2-4.1 is amended to read as follows:**

**9:2-4.1 Person convicted of sexual assault, custody of, visitation to minor child; denied, exceptions.**

1. a. Notwithstanding any provision of law to the contrary, a person convicted of sexual assault under N.J.S.2C:14-2 shall not be awarded the custody of or visitation rights to any minor child, including a minor child who was born as a result of or was the victim of the sexual assault, except upon a showing by clear and convincing evidence that it is in the best interest of the child for custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual assault under N.J.S.2C:14-2 shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

b. Notwithstanding any provision of law to the contrary, a person convicted of sexual contact under N.J.S.2C:14-3 or endangering the welfare of a child under N.J.S.2C:24-4 shall not be awarded the custody of or visitation rights to any minor child, except upon a showing by clear and convincing evidence that it is in the best interest of the child for such custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual contact under N.J.S.2C:14-3 or endangering the welfare of a child under N.J.S.2C:24-4 shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

c. A denial of custody or visitation under this section shall not by itself terminate the parental rights of the person denied visitation or custody, nor shall it affect the obligation of the person to support the minor child.

d. In any proceeding for establishment or enforcement of such an obligation of support the victim shall not be required to appear in the presence of the obligor and the victim's and child's whereabouts shall be kept confidential.

**e. Any supervised visitation shall include any electronic communication between a child and the supervised parent.**

**4. R.S.9:2-7.1 is amended to read as follows:**

**9:2-7.1. Visitation rights for grandparents, siblings**

1.a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation or any electronic communication. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation or any electronic communication is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

- (1) The relationship between the child and the applicant;
- (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
- (3) The time which has elapsed since the child last had contact with the applicant;
- (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
- (6) The good faith of the applicant in filing the application;
- (7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
- (8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

**5. R.S.9:2-13 is amended to read as follows:**

**9:2-13. Definitions**

For the purposes of this act, the following words and phrases, unless otherwise indicated, shall be deemed to have the following meanings:

(a) The phrase "approved agency" means a legally constituted agency having its principal office within or without this State, which has been approved, pursuant to law, to place children in New Jersey for purposes of adoption.

(b) The word "child" means any person under 18 years of age.

(c) The word "custody" means continuing control and authority over the person of a child, established by natural parenthood, by order or judgment of a court of competent jurisdiction, or by written surrender to and approved agency pursuant to law.

(d) The phrase "forsaken parental obligations" means willful and continuous neglect or failure to perform the natural and regular obligations of care and support of a child.

(e) The phrase "mentally incompetent" means inability to understand and discharge the natural and regular obligations of care and support of a child by reason of mental disease, feebleness of mind, or habitual intemperance.

(f) The word "parent," when not otherwise described by the context, means a natural parent or parent by previous adoption.

(g) The word "may" shall be construed to be permissive and the word "shall" shall be construed to be mandatory.

**(h) "Parenting Time", means in-person time spent between a child and their parent including any form of visitation and any electronic communication;**

**(i) "Electronic communication" means time during which a parent and his or her child communicate by using 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.**

## **6. R.S.9:6-8.55 is amended to read as follows:**

### **9:6-8.55. Order of protection**

The court may make an order of protection in assistance or as a condition of any other order made under this act. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or guardian responsible for the child's care or the spouse of the parent or guardian, or both. Such an order may require any such person: a. To stay away from the home, the other spouse or the child; b. To permit a parent to visit the child at stated periods; c. To abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded; d. To give proper attention to the care of the home; ~~and~~ e. To refrain from acts of commission or omission

that tend to make the home not a proper place for the child and f. any electronic communication the court deems appropriate.

**7. This act shall take effect immediately.**

### STATEMENT

This bill provides that visitation rights may include ~~virtual parent time~~ electronic communication. Under the bill, ~~“virtual parent time”~~ “electronic communication” means parent time facilitated by tools such as telephone, electronic mail, instant messaging, video conferencing and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits for the child, ~~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 Electronic communication is intended to supplement, not replace, in person parent time.

Under the bill, the court may order the parents to facilitate ~~virtual parent time~~ electronic communication if the necessary equipment is reasonably available. If the parents cannot agree on whether the equipment is reasonably available, the court shall decide the reasonableness of its availability taking into consideration:

- (1) the best interests of the child;
- (2) each parent’s ability to handle any additional expenses for ~~virtual parent time~~ electronic communication; and
- (3) any other factors the court considers material.

**References :**

- [www.InternetVisitation.org](http://www.InternetVisitation.org)

**Existing Laws:**

- Utah Bill: HB 0082s01
- Wisconsin Bill - SB 244

**Existing Bills:**

- Missouri - Bill submitted by Rep Michael Brown
- Ohio - SB 341 submitted by Senator Marc Dunn
- South Carolina - Bill created SB1344 by Senator Mescher
- Illinois - Bill submitted HB5379 by Representative Ruth Munson
- Virginia - Bill submitted SB123 by Senator Jay O'Brien
- Michigan - Bill submitted HB6452 by Rep Tom Pearce