

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 599

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO CHILD ABDUCTION PREVENTION ACT; AMENDING TITLE 32,  
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 19, TITLE 32, IDAHO CODE, TO  
3 PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR COOPERATION AND  
4 COMMUNICATION AMONG COURTS, TO PROVIDE FOR ACTIONS FOR ABDUCTION PRE-  
5 VENTION MEASURES, TO PROVIDE FOR JURISDICTION IN CERTAIN CHILD CUSTODY  
6 ACTIONS, TO PROVIDE FOR THE CONTENT REQUIREMENTS OF A CERTAIN CHILD CUS-  
7 TODY PETITION, TO PROVIDE FOR FACTORS TO DETERMINE RISK OF ABDUCTION,  
8 TO ESTABLISH PROVISIONS AND MEASURES TO PREVENT ABDUCTION, TO AUTHORIZE  
9 A WARRANT TO TAKE PHYSICAL CUSTODY OF A CHILD IN CERTAIN INSTANCES, TO  
10 PROVIDE FOR THE DURATION OF AN ABDUCTION PREVENTION ORDER, TO PROVIDE  
11 FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, AND TO PROVIDE FOR RE-  
12 LATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE  
13 ACT; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Title 32, Idaho Code, be, and the same is hereby amended  
17 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
18 ter 19, Title 32, Idaho Code, and to read as follows:

19 CHAPTER 19

20 IDAHO CHILD ABDUCTION PREVENTION ACT

21 32-1901. SHORT TITLE. This chapter shall be known and may be cited as  
22 the "Idaho Child Abduction Prevention Act."

23 32-1902. DEFINITIONS. As used in this chapter:

24 (1) "Abduction" means the wrongful removal or wrongful retention of a  
25 child.

26 (2) "Child" means an unemancipated individual who is less than eighteen  
27 (18) years of age.

28 (3) "Child-custody determination" means a judgment, decree, or other  
29 order of a court providing for the legal custody, physical custody, or vis-  
30 itation with respect to a child. The term includes a permanent, temporary,  
31 initial, and modification order.

32 (4) "Child-custody proceeding" means a proceeding in which legal cus-  
33 tody, physical custody, or visitation with respect to a child is at issue.  
34 The term includes a proceeding for divorce, dissolution of marriage, separa-  
35 tion, neglect, abuse, dependency, guardianship, paternity, termination of  
36 parental rights, or protection from domestic violence.

37 (5) "Court" means an entity authorized under the law of a state to es-  
38 tablish, enforce, or modify a child-custody determination.

39 (6) "Petition" includes a motion or its equivalent.

1 (7) "Record" means information that is inscribed on a tangible medium  
2 or that is stored in an electronic or other medium and is retrievable in per-  
3 ceivable form.

4 (8) "State" means a state of the United States, the District of Colum-  
5 bia, Puerto Rico, the United States Virgin Islands, or any territory or in-  
6 sular possession subject to the jurisdiction of the United States. The term  
7 includes a federally recognized Indian tribe or nation.

8 (9) "Travel document" means records relating to a travel itinerary, in-  
9 cluding travel tickets, passes, reservations for transportation, or accom-  
10 modations. The term does not include a passport or visa.

11 (10) "Wrongful removal" means the taking of a child that breaches rights  
12 of custody or visitation given or recognized under the law of this state.

13 (11) "Wrongful retention" means the keeping or concealing of a child  
14 that breaches rights of custody or visitation given or recognized under the  
15 law of this state.

16 32-1903. COOPERATION AND COMMUNICATION AMONG COURTS. The provisions  
17 of sections 32-11-110, 32-11-111, and 32-11-112, Idaho Code, shall apply to  
18 cooperation and communications among courts in proceedings under this chap-  
19 ter.

20 32-1904. ACTIONS FOR ABDUCTION PREVENTION MEASURES. (1) A court on its  
21 own motion may order abduction prevention measures in a child-custody pro-  
22 ceeding if the court finds a credible risk of abduction of the child.

23 (2) A party to a child-custody determination or another individual or  
24 entity having a right under the law of this state or any other state to seek a  
25 child-custody determination for the child may file a petition seeking abduc-  
26 tion prevention measures to protect the child under this chapter.

27 (3) A prosecutor or public authority designated under section 32-11-  
28 315, Idaho Code, may seek a warrant to take physical custody of a child under  
29 section 32-1909, Idaho Code, or other appropriate prevention measures.

30 32-1905. JURISDICTION. (1) A petition under this chapter may be filed  
31 only in a court that has jurisdiction to make a child-custody determination  
32 with respect to the child at issue under chapter 11, title 32, Idaho Code.

33 (2) A court of this state has temporary emergency jurisdiction under  
34 section 32-11-204, Idaho Code, if the court finds a credible risk of abduc-  
35 tion.

36 32-1906. CONTENTS OF PETITION. A petition under this chapter must be  
37 verified and include a copy of any existing child-custody determination, if  
38 available. The petition must specify the risk factors for abduction, in-  
39 cluding the relevant factors described in section 32-1907, Idaho Code. If  
40 reasonably ascertainable, the petition must contain:

41 (1) The name, date of birth, and gender of the child;

42 (2) The customary address and current physical location of the child;

43 (3) The identity, customary address, and current physical location of  
44 the respondent;

1 (4) A statement of whether a prior action to prevent abduction or domes-  
 2 tic violence has been filed by a party or other individual or entity having  
 3 custody of the child and the date, location, and disposition of the action;

4 (5) A statement of whether a party to the proceeding has been arrested  
 5 for a crime related to domestic violence, stalking, or child abuse or neglect  
 6 and the date, location, and disposition of the case; and

7 (6) Any other information required to be submitted to the court for a  
 8 child-custody determination under section 32-11-209, Idaho Code.

9 32-1907. FACTORS TO DETERMINE RISK OF ABDUCTION. (1) In determining  
 10 whether there is a credible risk of abduction of a child, the court shall con-  
 11 sider whether the petitioner or respondent:

12 (a) Has previously abducted or attempted to abduct the child;

13 (b) Has threatened to abduct the child;

14 (c) Has recently engaged in activities that may indicate a planned ab-  
 15 duction, including:

16 (i) Abandoning employment;

17 (ii) Selling a primary residence;

18 (iii) Terminating a lease;

19 (iv) Closing bank or other financial management accounts, liqui-  
 20 dating assets, hiding or destroying financial documents, or con-  
 21 ducting any unusual financial activities;

22 (v) Applying for a passport or visa or obtaining travel documents  
 23 for the respondent, a family member, or the child; or

24 (vi) Seeking to obtain the child's birth certificate or school or  
 25 medical records;

26 (d) Has engaged in domestic violence, stalking, or child abuse or ne-  
 27 glect;

28 (e) Has refused to follow a child-custody determination;

29 (f) Lacks strong familial, financial, emotional, or cultural ties to  
 30 the state or the United States;

31 (g) Has strong familial, financial, emotional, or cultural ties to an-  
 32 other state or country;

33 (h) Is likely to take the child to a country that:

34 (i) Is not a party to the Hague convention on the civil aspects  
 35 of international child abduction and does not provide for the ex-  
 36 tradition of an abducting parent or for the return of an abducted  
 37 child;

38 (ii) Is a party to the Hague convention on the civil aspects of in-  
 39 ternational child abduction but:

40 1. The Hague convention on the civil aspects of interna-  
 41 tional child abduction is not in force between the United  
 42 States and that country;

43 2. Is noncompliant according to the most recent compliance  
 44 report issued by the United States department of state; or

45 3. Lacks legal mechanisms for immediately and effectively  
 46 enforcing a return order under the Hague convention on the  
 47 civil aspects of international child abduction;

48 (iii) Poses a risk that the child's physical or emotional health or  
 49 safety would be endangered in the country because of specific cir-

1 cumstances relating to the child or because of human rights viola-  
 2 tions committed against children;

3 (iv) Has laws or practices that would:

4 1. Enable the respondent, without due cause, to prevent the  
 5 petitioner from contacting the child;

6 2. Restrict the petitioner from freely traveling to or exit-  
 7 ing from the country because of the petitioner's gender, na-  
 8 tionality, marital status, or religion; or

9 3. Restrict the child's ability legally to leave the coun-  
 10 try after the child reaches the age of majority because of a  
 11 child's gender, nationality, or religion;

12 (v) Is included by the United States department of state on a cur-  
 13 rent list of state sponsors of terrorism;

14 (vi) Does not have an official United States diplomatic presence  
 15 in the country; or

16 (vii) Is engaged in active military action or war, including a  
 17 civil war, to which the child may be exposed;

18 (i) Is undergoing a change in immigration or citizenship status that  
 19 would adversely affect the respondent's ability to remain in the United  
 20 States legally;

21 (j) Has had an application for United States citizenship denied;

22 (k) Has forged or presented misleading or false evidence on government  
 23 forms or supporting documents to obtain or attempt to obtain a passport,  
 24 a visa, travel documents, a social security card, a driver's license, or  
 25 other government-issued identification card or has made a misrepresen-  
 26 tation to the United States government;

27 (l) Has used multiple names to attempt to mislead or defraud; or

28 (m) Has engaged in any other conduct the court considers relevant to the  
 29 risk of abduction.

30 (2) In the hearing on a petition under this chapter, the court shall  
 31 consider whether the respondent had a good faith basis to believe that the  
 32 respondent's conduct was necessary to avoid imminent harm to the child or re-  
 33 spondent and any other factor that may be relevant to whether the respondent  
 34 may be permitted to remove or retain the child.

35 32-1908. PROVISIONS AND MEASURES TO PREVENT ABDUCTION. (1) If a peti-  
 36 tion is filed under this chapter, the court may enter an order that must in-  
 37 clude:

38 (a) The basis for the court's exercise of jurisdiction;

39 (b) The manner in which notice and opportunity to be heard were given to  
 40 the persons entitled to notice of the proceeding;

41 (c) A detailed description of each party's custody and visitation  
 42 rights and residential arrangements for the child;

43 (d) A provision stating that a violation of the order may subject the  
 44 party in violation to civil and criminal penalties; and

45 (e) Identification of the child's country of habitual residence at the  
 46 time of the issuance of the order.

47 (2) If, at a hearing on a petition under this chapter or on the court's  
 48 own motion, the court finds a credible risk of abduction of the child, the  
 49 court shall enter an abduction prevention order. The order must include the

1 provisions required by subsection (1) of this section and measures and con-  
2 ditions, including those in subsections (3), (4), and (5) of this section,  
3 that are reasonably calculated to prevent abduction of the child, giving due  
4 consideration to the custody and visitation rights of the parties. The court  
5 shall consider the age of the child, the potential harm to the child from  
6 an abduction, the legal and practical difficulties of returning the child  
7 to the jurisdiction if abducted, and the reasons for the potential abduc-  
8 tion, including evidence of domestic violence, stalking, or child abuse or  
9 neglect.

10 (3) An abduction prevention order may include one (1) or more of the  
11 following:

12 (a) An imposition of travel restrictions that require a party traveling  
13 with the child outside a designated geographic area provide the other  
14 party with the following:

15 (i) The travel itinerary of the child;

16 (ii) A list of physical addresses and telephone numbers at which  
17 the child can be reached at specified times; and

18 (iii) Copies of all travel documents;

19 (b) A prohibition of the respondent directly or indirectly:

20 (i) Removing the child from this state, the United States, or an-  
21 other geographic area without permission of the court or the peti-  
22 tioner's written consent;

23 (ii) Removing or retaining the child in violation of a child-cus-  
24 tody determination;

25 (iii) Removing the child from school or a child care or similar fa-  
26 cility; or

27 (iv) Approaching the child at any location other than a site des-  
28 ignated for supervised visitation;

29 (c) A requirement that a party register the order in another state as a  
30 prerequisite to allowing the child to travel to that state;

31 (d) With regard to the child's passport:

32 (i) A direction that the petitioner place the child's name in the  
33 United States department of state's child passport issuance alert  
34 program;

35 (ii) A requirement that the respondent surrender to the court or  
36 the petitioner's attorney any United States or foreign passport  
37 issued in the child's name, including a passport issued in the name  
38 of both the parent and the child; and

39 (iii) A prohibition on the respondent from applying on behalf of  
40 the child for a new or replacement passport or visa;

41 (e) As a prerequisite to exercising custody or visitation, a require-  
42 ment that the respondent provide:

43 (i) To the United States department of state office of children's  
44 issues and the relevant foreign consulate or embassy, an authenti-  
45 cated copy of the order detailing passport and travel restrictions  
46 for the child;

47 (ii) To the court:

48 1. Proof that the respondent has provided the information in  
49 subparagraph (i) of this paragraph; and

- 1           2. An acknowledgment in a record from the relevant foreign  
2           consulate or embassy that no passport application has been  
3           made, or passport issued, on behalf of the child;
- 4           (iii) To the petitioner, proof of registration with the United  
5           States embassy or other United States diplomatic presence in the  
6           destination country and with the central authority for the Hague  
7           convention on the civil aspects of international child abduction,  
8           if that convention is in effect between the United States and the  
9           destination country, unless either of the parties objects; and
- 10          (iv) A written waiver under the privacy act, 5 U.S.C. 552a, as  
11          amended, with respect to any document, application, or other in-  
12          formation pertaining to the child authorizing its disclosure to  
13          the court and the petitioner; and
- 14          (f) Upon the petitioner's request, a requirement that the respondent  
15          obtain an order from the relevant foreign country containing terms  
16          identical to the child-custody determination issued in the United  
17          States.
- 18          (4) In an abduction prevention order, the court may impose conditions  
19          on the exercise of custody or visitation that:
- 20           (a) Limit visitation or require that visitation with the child by the  
21           respondent be supervised until the court finds that supervision is no  
22           longer necessary and order the respondent to pay the costs of supervi-  
23           sion;
- 24           (b) Require the respondent to post a bond or provide other security in  
25           an amount sufficient to serve as a financial deterrent to abduction, the  
26           proceeds of which may be used to pay for the reasonable expenses of re-  
27           covery of the child, including reasonable attorney's fees and costs if  
28           there is an abduction; and
- 29           (c) Require the respondent to obtain education on the potentially harm-  
30           ful effects to the child from abduction.
- 31          (5) To prevent imminent abduction of a child, a court may:
- 32           (a) Issue a warrant to take physical custody of the child under section  
33           32-1909, Idaho Code, or the law of this state other than this chapter;
- 34           (b) Direct the use of law enforcement to take any action reasonably  
35           necessary to locate the child, obtain return of the child, or enforce a  
36           custody determination under this chapter or the law of this state other  
37           than this chapter; or
- 38           (c) Grant any other relief allowed under the law of this state other  
39           than this chapter.
- 40          (6) The remedies provided in this chapter are cumulative and do not af-  
41          fect the availability of other remedies to prevent abduction.

42          32-1909. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. (1) If a petition  
43          under this chapter contains allegations, and the court finds that there is a  
44          credible risk that the child is imminently likely to be wrongfully removed,  
45          the court may issue an ex parte warrant to take physical custody of the child.

46          (2) The respondent on a petition under subsection (1) of this section  
47          must be afforded an opportunity to be heard at the earliest possible time af-  
48          ter the ex parte warrant is executed, but not later than the next judicial day

1 unless a hearing on that date is impossible. In that event, the court shall  
2 hold the hearing on the first judicial day possible.

3 (3) An ex parte warrant under subsection (1) of this section to take  
4 physical custody of a child must:

5 (a) Recite the facts upon which a determination of a credible risk of  
6 imminent wrongful removal of the child is based;

7 (b) Direct law enforcement officers to take physical custody of the  
8 child immediately;

9 (c) State the date and time for the hearing on the petition; and

10 (d) Provide for the safe interim placement of the child pending further  
11 order of the court.

12 (4) If feasible, before issuing a warrant and before determining the  
13 placement of the child after the warrant is executed, the court may order a  
14 search of the relevant databases of the national crime information center  
15 system and similar state databases to determine if either the petitioner or  
16 respondent has a history of domestic violence, stalking, or child abuse or  
17 neglect.

18 (5) The petition and warrant must be served on the respondent when or  
19 immediately after the child is taken into physical custody.

20 (6) A warrant to take physical custody of a child, issued by this state  
21 or another state, is enforceable throughout this state. If the court finds  
22 that a less intrusive remedy will not be effective, it may authorize law en-  
23 forcement officers to enter private property to take physical custody of the  
24 child. If required by exigent circumstances, the court may authorize law en-  
25 forcement officers to make a forcible entry at any hour.

26 (7) If the court finds, after a hearing, that a petitioner sought an ex  
27 parte warrant under subsection (1) of this section for the purpose of harass-  
28 ment or in bad faith, the court may award the respondent reasonable attor-  
29 ney's fees, costs, and expenses.

30 (8) This chapter does not affect the availability of relief allowed un-  
31 der the law of this state other than this chapter.

32 32-1910. DURATION OF ABDUCTION PREVENTION ORDER. An abduction preven-  
33 tion order remains in effect until the earliest of:

34 (1) The time stated in the order;

35 (2) The emancipation of the child;

36 (3) The child's attaining eighteen (18) years of age; or

37 (4) The time the order is modified, revoked, vacated, or superseded by  
38 a court with jurisdiction under sections 32-11-201 through 32-11-203, Idaho  
39 Code.

40 32-1911. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and  
41 construing this uniform act, consideration must be given to the need to pro-  
42 mote uniformity of the law with respect to its subject matter among states  
43 that enact it.

44 32-1912. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
45 COMMERCE ACT. This chapter modifies, limits, and supersedes the federal  
46 electronic signatures in global and national commerce act, 15 U.S.C. 7001 et  
47 seq., but does not modify, limit, or supersede section 101(c) of that act,

1 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices  
2 described in section 103(b) of that act, 15 U.S.C. 7003(b).

3 SECTION 2. An emergency existing therefor, which emergency is hereby  
4 declared to exist, this act shall be in full force and effect on and after  
5 July 1, 2022.