

By: Representative Moak

To: Judiciary B

HOUSE BILL NO. 599  
(As Sent to Governor)

1 AN ACT TO CREATE THE UNIFORM CHILD ABDUCTION PREVENTION ACT;  
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR COOPERATION AND  
3 COMMUNICATION AMONG COURTS; TO AUTHORIZE ACTIONS FOR ABDUCTION  
4 PREVENTION MEASURES; TO PROVIDE JURISDICTION; TO SPECIFY THE  
5 CONTENTS OF A PETITION; TO PROVIDE FACTORS TO DETERMINE RISK OF  
6 ABDUCTION; TO PROVIDE PROVISIONS AND MEASURES TO PREVENT  
7 ABDUCTION; TO PROVIDE FOR THE ISSUANCE OF A WARRANT TO TAKE  
8 PHYSICAL CUSTODY OF A CHILD; TO PROVIDE FOR THE DURATION OF AN  
9 ABDUCTION PREVENTION ORDER; TO ADDRESS UNIFORMITY OF APPLICATION  
10 AND CONSTRUCTION; TO PROVIDE FOR THE RELATION TO THE FEDERAL  
11 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO  
12 PROHIBIT THE BUYING AND SELLING OF CHILDREN AND UNBORN CHILDREN  
13 AND PROVIDE A PENALTY UPON CONVICTION; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1. Short Title.** This act may be cited as the  
16 Uniform Child Abduction Prevention Act.

17 **SECTION 2. Definitions.** In this act:

18 (1) "Abduction" means the wrongful removal or wrongful  
19 retention of a child.

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

22 (3) "Child-custody determination" means a judgment,  
23 decree or other order of a court providing for the legal custody,  
24 physical custody or visitation with respect to a child. The term  
25 includes a permanent, temporary, initial and modification order.

26 (4) "Child-custody proceeding" means a proceeding in  
27 which legal custody, physical custody or visitation with respect  
28 to a child is at issue. The term includes a proceeding for  
29 divorce, dissolution of marriage, separation, neglect, abuse,  
30 dependency, guardianship, paternity, termination of parental  
31 rights or protection from domestic violence.



32 (5) "Court" means an entity authorized under the law of  
33 a state to establish, enforce or modify a child-custody  
34 determination.

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

36 (7) "Record" means information that is inscribed on a  
37 tangible medium or that is stored in an electronic or other medium  
38 and is retrievable in perceivable form.

39 (8) "State" means a state of the United States, the  
40 District of Columbia, Puerto Rico, the United States Virgin  
41 Islands or any other territory or insular possession subject to  
42 the jurisdiction of the United States. The term includes a  
43 federally recognized Indian tribe or nation.

44 (9) "Travel document" means records relating to a  
45 travel itinerary, including travel tickets, passes, reservations  
46 for transportation or accommodations. The term does not include a  
47 passport or visa.

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

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

54 **SECTION 3. Cooperation and Communication Among Courts.**

55 Sections 93-27-110, 93-27-111 and 93-27-112 apply to cooperation  
56 and communications among courts in proceedings under this act.

57 **SECTION 4. Actions for Abduction Prevention Measures.** (a)

58 A court on its own motion may order abduction prevention measures  
59 in a child-custody proceeding if the court finds that the evidence  
60 establishes a credible risk of abduction of the child.

61 (b) A party to a child-custody determination or another  
62 individual or entity having a right under the law of this state or  
63 any other state to seek a child-custody determination for the



64 child may file a petition seeking abduction prevention measures to  
65 protect the child under this act.

66 (c) A prosecutor or public authority designated under  
67 Section 93-27-315 may seek a warrant to take physical custody of a  
68 child under Section 9 of this act or other appropriate prevention  
69 measures.

70 **SECTION 5. Jurisdiction.** (a) A petition under this act may  
71 be filed only in a court that has jurisdiction to make a  
72 child-custody determination with respect to the child at issue  
73 under the Uniform Child Custody Jurisdiction and Enforcement Act.

74 (b) A court of this state has temporary emergency  
75 jurisdiction under Section 93-27-204 if the court finds a credible  
76 risk of abduction.

77 **SECTION 6. Contents of Petition.** A petition under this act  
78 must be verified and include a copy of any existing child-custody  
79 determination, if available. The petition must specify the risk  
80 factors for abduction including the relevant factors described in  
81 Section 7 of this act. Subject to Section 93-27-209(5), if  
82 reasonably ascertainable, the petition must contain:

83 (1) The name, date of birth and gender of the child;  
84 (2) The customary address and current physical location  
85 of the child;

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

88 (4) A statement of whether a prior action to prevent  
89 abduction or domestic violence has been filed by a party or other  
90 individual or entity having custody of the child and the date,  
91 location and disposition of the action;

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



96 (6) Any other information required to be submitted to  
97 the court for a child-custody determination under Section  
98 93-27-209.

99 **SECTION 7. Factors to Determine Risk of Abduction.** (a) In  
100 determining whether there is a credible risk of abduction of a  
101 child, the court shall consider any evidence that the petitioner  
102 or respondent:

103 (1) Has previously abducted or attempted to abduct the  
104 child;

105 (2) Has threatened to abduct the child;

106 (3) Has recently engaged in activities that may  
107 indicate a planned abduction, including:

108 (A) Abandoning employment;

109 (B) Selling a primary residence;

110 (C) Terminating a lease;

111 (D) Closing bank or other financial management  
112 accounts, liquidating assets, hiding or destroying financial  
113 documents or conducting any unusual financial activities;

114 (E) Applying for a passport or visa or obtaining  
115 travel documents for the respondent, a family member or the child;  
116 or

117 (F) Seeking to obtain the child's birth  
118 certificate or school or medial records;

119 (4) Has engaged in domestic violence, stalking or child  
120 abuse or neglect;

121 (5) Has refused to follow a child-custody  
122 determination;

123 (6) Lacks strong familial, financial, emotional or  
124 cultural ties to the state or the United States;

125 (7) Has strong familial, financial emotional or  
126 cultural ties to another state or country;

127 (8) Is likely to take the child to a country that:



128 (A) Is not a party to the Hague Convention on the  
129 Civil Aspects of International Child Abduction and does not  
130 provide for the extradition of an abducting parent or for the  
131 return of an abducted child;

132 (B) Is party to the Hague Convention on the Civil  
133 Aspects of International Child Abduction but:

134 (i) The Hague Convention on the Civil Aspects  
135 of International Child Abduction is not in force between the  
136 United States and that country;

137 (ii) Is noncompliant according to the most  
138 recent compliance report issued by the United States Department of  
139 State; or

140 (iii) Lacks legal mechanisms for immediately  
141 and effectively enforcing a return order under the Hague  
142 Convention on the Civil Aspects of International Child Abduction;

143 (C) Poses a risk that the child's physical or  
144 emotional health or safety would be endangered in the country  
145 because of specific circumstances relating to the child or because  
146 of human rights violations committed against children;

147 (D) Has laws or practices that would:

148 (i) Enable the respondent, without due cause,  
149 to prevent the petitioner from contacting the child;

150 (ii) Restrict the petitioner from freely  
151 traveling to or exiting from the country because of the  
152 petitioner's gender, nationality, marital status or religion; or

153 (iii) Restrict the child's ability legally to  
154 leave the country after the child reaches the age of majority  
155 because of a child's gender, nationality or religion;

156 (E) Is included by the United States Department of  
157 State on a current list of state sponsors of terrorism;

158 (F) Does not have an official United States  
159 diplomatic presence in the country; or



160 (G) Is engaged in active military action or war,  
161 including a civil war, to which the child may be exposed;

162 (9) Is undergoing a change in immigration or  
163 citizenship status that would adversely affect the respondent's  
164 ability to remain in the United States legally;

165 (10) Has had an application for United States  
166 citizenship denied;

167 (11) Has forged or presented misleading or false  
168 evidence on government forms or supporting documents to obtain or  
169 attempt to obtain a passport, a visa, travel documents, a social  
170 security card, a driver's license or other government-issued  
171 identification card or has made a misrepresentation to the United  
172 States government;

173 (12) Has used multiple names to attempt to mislead or  
174 defraud; or

175 (13) Has engaged in any other conduct the court  
176 considers relevant to the risk of abduction.

177 (b) In the hearing on a petition under this act, the court  
178 shall consider any evidence that the respondent believed in good  
179 faith that the respondent's conduct was necessary to avoid  
180 imminent harm to the child or respondent and any other evidence  
181 that may be relevant to whether the respondent may be permitted to  
182 remove or retain the child.

183 **SECTION 8. Provisions and Measures To Prevent Abduction.**

184 (a) If a petition is filed under this act, the court may  
185 enter an order that must include:

186 (1) The basis for the court's exercise of jurisdiction;

187 (2) The manner in which notice and opportunity to be  
188 heard were given to the persons entitled to notice of the  
189 proceeding;

190 (3) A detailed description of each party's custody and  
191 visitation rights and residential arrangements for the child;



192           (4) A provision stating that a violation of the order  
193 may subject the party in violation to civil and criminal  
194 penalties; and

195           (5) Identification of the child's country of habitual  
196 residence at the time of the issuance of the order.

197           (b) If, at a hearing on a petition under this act or on the  
198 court's own motion, the court after reviewing the evidence finds a  
199 credible risk of abduction of the child, the court shall enter an  
200 abduction prevention order. The order must include the provisions  
201 required by subsection (a) and measures and conditions, including  
202 those in subsections (c), (d) and (e), that are reasonably  
203 calculated to prevent abduction of the child, giving due  
204 consideration to the custody and visitation rights of the parties.  
205 The court shall consider the age of the child, the potential harm  
206 to the child from an abduction, the legal and practical  
207 difficulties of returning the child to the jurisdiction if  
208 abducted and the reasons for the potential abduction, including  
209 evidence of domestic violence, stalking or child abuse or neglect.

210           (c) An abduction prevention order may include one or more of  
211 the following:

212           (1) An imposition of travel restrictions that require  
213 that a party traveling with the child outside a designated  
214 geographical area provide the other party with the following:

215                   (A) The travel itinerary of the child;

216                   (B) A list of physical addresses and telephone  
217 numbers at which the child can be reached at specified times; and

218                   (C) Copies of all travel documents;

219           (2) A prohibition of the respondent directly or  
220 indirectly:

221                   (A) Removing the child from this state, the United  
222 States or another geographic area without permission of the court  
223 or the petitioner's written consent;



224 (B) Removing or retaining the child in violation  
225 of a child-custody determination;

226 (C) Removing the child from school or a child-care  
227 or similar facility; or

228 (D) Approaching the child at any location other  
229 than a site designated for supervised visitation;

230 (3) A requirement that a party register the order in  
231 another state as a prerequisite to allowing the child to travel to  
232 that state;

233 (4) With regard to the child's passport:

234 (A) A direction that the petitioner place the  
235 child's name in the United States Department of State's Child  
236 Passport Issuance Alert Program;

237 (B) A requirement that the respondent surrender to  
238 the court or the petitioner's attorney any United States or  
239 foreign passport issued in the child's name, including a passport  
240 issued in the name of both the parent and the child; and

241 (C) A prohibition upon the respondent from  
242 applying on behalf of the child for a new or replacement passport  
243 or visa;

244 (5) As a prerequisite to exercising custody or  
245 visitation, a requirement that the respondent provide:

246 (A) To the United States Department of State  
247 Office of Children's Issues and the relevant foreign consulate or  
248 embassy, an authenticated copy of the order detailing passport and  
249 travel restrictions for the child;

250 (B) To the court:

251 (i) Proof that the respondent has provided  
252 the information in subparagraph (A); and

253 (ii) An acknowledgment in a record from the  
254 relevant foreign consulate or embassy that no passport application  
255 has been made, or passport issued, on behalf of the child;



256 (C) To the petitioner, proof of registration with  
257 the United States Embassy or other United States diplomatic  
258 presence in the destination country and with the Central Authority  
259 for the Hague Convention on the Civil Aspects of International  
260 Child Abduction, if that convention is in effect between the  
261 United States and the destination country, unless one (1) of the  
262 parties objects; and

263 (D) A written waiver under the Privacy Act, 5 USCS  
264 Section 552a as amended, with respect to any document, application  
265 or other information pertaining to the child authorizing its  
266 disclosure to the court and the petitioner; and

267 (6) Upon the petitioner's request, a requirement that  
268 the respondent obtain an order from the relevant foreign country  
269 containing terms identical to the child-custody determination  
270 issued in the United States.

271 (d) In an abduction prevention order, the court may impose  
272 conditions on the exercise of custody or visitation that:

273 (1) Limit visitation or require that visitation with  
274 the child by the respondent be supervised until the court finds  
275 that supervision is no longer necessary and order the respondent  
276 to pay the costs of supervision;

277 (2) Require the respondent to post a bond or provide  
278 other security in an amount sufficient to serve as a financial  
279 deterrent to abduction, the proceeds of which may be used to pay  
280 for the reasonable expenses of recovery of the child, including  
281 reasonable attorney's fees and costs if there is an abduction; and

282 (3) Require the respondent to obtain education on the  
283 potentially harmful effects to the child from abduction.

284 (e) To prevent imminent abduction of a child, a court may:

285 (1) Issue a warrant to take physical custody of the  
286 child under Section 9 of this act or the law of this state other  
287 than this act;



288           (2) Direct the use of law enforcement to take any  
289 action reasonably necessary to locate the child, obtain return of  
290 the child or enforce a custody determination under this act or the  
291 law of this state other than this act; or

292           (3) Grant any other relief allowed under the law of  
293 this state other than this act.

294           (f) The remedies provided in this act are cumulative and do  
295 not affect the availability of other remedies to prevent  
296 abduction.

297           **SECTION 9. Warrant to Take Physical Custody of Child.** (a)

298 If a petition under this act contains allegations, and the court  
299 finds that there is a credible risk that the child is imminently  
300 likely to be wrongfully removed, the court may issue an ex parte  
301 warrant to take physical custody of the child.

302           (b) The respondent on a petition under subsection (a) must  
303 be afforded an opportunity to be heard at the earliest possible  
304 time after the ex parte warrant is executed, but not later than  
305 the next judicial day unless a hearing on that date is impossible.  
306 In that event, the court shall hold the hearing on the first  
307 judicial day possible.

308           (c) An ex parte warrant under subsection (a) to take  
309 physical custody of a child must:

310           (1) Recite the facts upon which a determination of a  
311 credible risk of imminent wrongful removal of the child is based;

312           (2) Direct law enforcement officers to take physical  
313 custody of the child immediately;

314           (3) State the date and time for the hearing on the  
315 petition; and

316           (4) Provide for the safe interim placement of the child  
317 pending further order of the court.

318           (d) If feasible, before issuing a warrant and before  
319 determining the placement of the child after the warrant is  
320 executed, the court may order a search of the relevant databases



321 of the National Crime Information Center system and similar state  
322 databases to determine if either the petitioner or respondent has  
323 a history of domestic violence, stalking or child abuse or  
324 neglect.

325 (e) The petition and warrant must be served on the  
326 respondent when or immediately after the child is taken into  
327 physical custody.

328 (f) A warrant to take physical custody of a child, issued by  
329 this state or another state, is enforceable throughout this state.  
330 If the court finds that a less intrusive remedy will not be  
331 effective, it may authorize law enforcement officers to enter  
332 private property to take physical custody of the child. If  
333 required by exigent circumstances, the court may authorize law  
334 enforcement officers to make a forcible entry at any hour.

335 (g) If the court finds, after a hearing, that a petitioner  
336 sought an ex parte warrant under subsection (a) for the purpose of  
337 harassment or in bad faith, the court may award the respondent  
338 reasonable attorney's fees, costs and expenses.

339 (h) This act does not affect the availability of relief  
340 allowed under the law of this state other than this act.

341 **SECTION 10. Duration of Abduction Prevention Order.** An  
342 abduction prevention order remains in effect until the earliest  
343 of:

344 (1) The time stated in the order;  
345 (2) The emancipation of the child;  
346 (3) The child's attaining eighteen (18) years of age;

347 or

348 (4) The time the order is modified, revoked, vacated or  
349 superseded by a court with jurisdiction under Sections 93-27-201  
350 through 93-27-203.

351 **SECTION 11. Uniformity of Application and Construction.** In  
352 applying and construing this uniform act, consideration must be



353 given to the need to promote uniformity of the law with respect to  
354 its subject matter among states that enact it.

355 **SECTION 12. Relation to Electronic Signatures in Global and**  
356 **National Commerce Act.** This act modifies, limits and supersedes  
357 the federal Electronic Signatures in Global and National Commerce  
358 Act, 15 USCS Section 7001, et seq., but does not modify, limit or  
359 supersede Section 101(c) of the act, 15 USCS Section 7001(c), of  
360 that act or authorize electronic delivery of any of the notices  
361 described in Section 103(b) of that act, 15 USCS Section 7003(b).

362 **SECTION 13.** (1) Selling, buying, offering to sell and  
363 offering to buy a child or an unborn child is prohibited and, upon  
364 conviction, shall be punishable by a fine not to exceed Twenty  
365 Thousand Dollars (\$20,000.00), imprisonment in the custody of the  
366 Department of Corrections for a term not to exceed ten (10) years,  
367 or both.

368 (2) This section shall not be construed so as to prohibit  
369 any payment to an entity licensed for child placing or as  
370 otherwise authorized under Section 43-15-117.

371 **SECTION 14.** This act shall take effect and be in force from  
372 and after July 1, 2009.

