

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

**INTERIM
BILL**

Senate Bill 562

By Senators Oliverio, Queen, Taylor, Woelfel, and
Charnock

[Introduced February 20, 2025; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §48-32-101, §48-32-102, §48-32-103, §48-32-104, §48-32-105, §48-32-106,
3 §48-32-106, §48-32-107, §48-32-108, §48-32-109, §48-32-110, and §48-32-111, relating
4 to the Uniform Child Abduction Prevention Act; providing citation; defining terms; providing
5 for communication and cooperation among courts; identifying parties who may seek relief;
6 setting forth jurisdictional requirements; identifying required contents of petition; providing
7 factors for determination of risk of abduction; identifying measures to prevent abductions;
8 providing requirements in court order; identifying child removal warrant procedures; setting
9 forth duration of abduction prevention orders; and providing for uniformity in application of
10 law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. THE UNIFORM CHILD ABDUCTION PREVENTION ACT.

§48-32-101. **Title.**

1 This article may be cited as the Uniform Child Abduction Prevention Act.

§48-32-102. Definitions.

1 As used in this article the terms shall mean as follows:

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

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

4 (3) "Child-custody determination" means a judgment, decree, or other order of a family
5 court, circuit court, or other court authorized under the law of a state providing for the legal custody,
6 physical custody, or visitation with respect to a child. The term includes a permanent, temporary,
7 initial, and modification order.

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

(5) "Court" means any circuit court, family court, or other court authorized under the law of a state to establish, enforce, or modify a child-custody determination.

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

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

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

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

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

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

§48-32-103. Cooperation and communication among courts.

The cooperation and communication provisions of the Uniform Child Custody Jurisdiction and Enforcement Act found in §48-20-110, §48-20-111, and §48-20-112 of this code shall apply to cooperation and communications among courts in proceedings under this article.

§48-32-104. Actions for abduction prevention measures.

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

(b) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this [act].

(c) A prosecutor or public authority designated under §48-20-315 of this code may seek a

warrant to take physical custody of a child under §48-32-109 or other appropriate prevention measures.

§48-32-105. Jurisdiction.

(a) A petition pursuant to the provisions of this article may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue.

(b) A court of this state has temporary emergency jurisdiction under §48-20-204 and §48-20-303 of this code if the court finds a credible risk of abduction.

§48-32-106. Contents of Petition.

(a) A petition filed pursuant to this article must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the factual basis for the satisfaction of the risk factors for abduction, including the relevant factors described in §48-32-107 of this code.

(b) Subject to the requirements of §48-32-209(e) of this code, if reasonably ascertainable, the petition must also contain:

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

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

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

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

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

(6) Any other information required to be submitted to the court for a child-custody determination under §48-32-209.

§48-32-107. Factors to Determine Risk of Abduction.

1 (a) In determining whether there is a credible risk of abduction of a child, the court shall
2 consider any evidence that the petitioner or respondent:

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

4 (2) Has threatened to abduct the child;

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

6 (A) Abandoning employment;

7 (B) Selling a primary residence;

8 (C) Terminating a residential lease;

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

11 (E) Applying for a passport or visa or obtaining travel documents for the respondent, a
12 family member, or the child; or

13 (F) Seeking to obtain the child's birth certificate or school or medical records;

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

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

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

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

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

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

23 (B) Is a party to the Hague Convention on the Civil Aspects of International Child
24 Abduction but:

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

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

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

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

34 (D) Has laws or practices that would:

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

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

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

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

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

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

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

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

49 (11) Has forged or presented misleading or false evidence on government forms or
50 supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social
51 Security card, a driver's license, or other government-issued identification card or has made a
52 misrepresentation to the United States government;

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

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

56 (b) In the hearing on a petition made pursuant to this article, the court shall consider any
57 evidence that the respondent believed in good faith that the respondent's conduct was necessary
58 to avoid imminent harm to the child or respondent and any other evidence that may be relevant to
59 whether the respondent may be permitted to remove or retain the child.

§48-32-108. Provisions and measures to prevent abduction.

1 (a) If a petition is filed pursuant to this article, the court may enter an order that shall
2 include:

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

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

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

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

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

12 (b) If, at a hearing on a petition pursuant to this article or on the court's own motion, the
13 court after reviewing the evidence finds a credible risk of abduction of the child, the court shall
14 enter an abduction prevention order. The order must include the provisions required by
15 subsection (a) of this sections and measures and conditions, including those in subsections (c),
16 (d), and (e) of this section, that are reasonably calculated to prevent abduction of the child, giving
17 due consideration to the custody and visitation rights of the parties. The court shall consider the
18 age of the child, the potential harm to the child from an abduction, the legal and practical difficulties

of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

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

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

(A) The travel itinerary of the child;

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

(C) Copies of all travel documents;

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

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

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

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

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

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

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

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

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

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

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

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

50 (B) To the court:

51 (i) Proof that the respondent has provided the information in paragraph (A) of this
52 subdivision; and

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

55 (C) To the petitioner, proof of registration with the United States Embassy or other United
56 States diplomatic presence in the destination country and with the Central Authority for the Hague
57 Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect
58 between the United States and the destination country, unless one of the parties objects; and

59 (D) A written waiver under the Privacy Act, 5 U.S.C. Section 552a [as amended], with
60 respect to any document, application, or other information pertaining to the child authorizing its
61 disclosure to the court and the petitioner; and

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

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

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

70 (2) Require the respondent to post a bond or provide other security in an amount sufficient

71 to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the
72 reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if
73 there is an abduction; and

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

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

77 (1) Issue a warrant to take physical custody of the child under §48-32-109 of this code or
78 pursuant to the child custody laws of this state;

79 (2) Direct the use of law enforcement to take any action reasonably necessary to locate the
80 child, obtain return of the child, or enforce a custody determination under this [act] or the law of this
81 state other than this [act]; or

82 (3) Grant any other relief allowed under the law of this state other than this [act].

83 (f) The remedies provided in this article are not exclusive and do not affect the availability
84 of other remedies to prevent abduction.

§48-32-109. Warrant to take physical custody of child.

1 (a) If a petition pursuant to this article contains allegations, and the court finds that there is
2 a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an
3 ex parte warrant to take physical custody of the child.

4 (b) The respondent on a petition under subsection (a) of this section must be afforded an
5 opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not
6 later than the next judicial day unless a hearing on that date is impossible. In that event, the court
7 shall hold the hearing on the first judicial day possible.

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

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

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

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

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

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

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

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

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

(h) This article does not affect the availability of additional relief allowed under the law of this state.

§48-32-110. Duration of Abduction Prevention Order.

An abduction prevention order remains in effect until the earliest of:

(1) The time stated in the order;

(2) The emancipation of the child;

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

(4) The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under Uniform Child Custody Jurisdiction and Enforcement Act as provided in §48-20-101 et seq. of this code.

§48-32-111. Uniformity of application.

- 1 In applying and construing this uniform act, consideration must be given to the need to
- 2 promote uniformity of the law with respect to its subject matter among states that enact it.

NOTE: The purpose of this bill is to provide for the creation of the Uniform Child Abduction Prevention Act.

This bill was recommended for passage during the 2025 legislative session by the Commission on Interstate Cooperation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.