

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 821

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO MEDICAL KIDNAPPING; PROVIDING LEGISLATIVE FINDINGS; AMEND-
2 ING CHAPTER 16, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
3 16-1648, IDAHO CODE, TO PROVIDE FOR MEDICAL KIDNAPPING AND TO PROVIDE
4 THAT A PARENT OR GUARDIAN SHALL HAVE CERTAIN RIGHTS; AMENDING SECTION
5 18-4501, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL COR-
6 RECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
7

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

9 SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that:

10 (1) The Fifth and Fourteenth Amendments to the United States Constitu-
11 tion prohibit the government from depriving individuals of their liberty or
12 property interests without due process of law.

13 (2) The interests and role of parents in the care, custody, and control
14 of their children are deeply rooted in our nation's history and tradition and
15 are also among the unalienable rights retained by the people under the Ninth
16 Amendment to the United States Constitution.

17 (3) Idaho has established procedures for reporting on child abuse and
18 child neglect under the Child Protective Act, Chapter 16, Title 16, Idaho
19 Code.

20 (4) Idaho has established laws for protecting parental rights under
21 Chapter 10, Title 32, Idaho Code.

22 (5) The Idaho Legislature wishes to ensure that Idaho's procedures for
23 child and adult protections cases comport with constitutional due process
24 requirements.

25 SECTION 2. That Chapter 16, Title 16, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 16-1648, Idaho Code, and to read as follows:

28 16-1648. MEDICAL KIDNAPPING -- PARENTAL RIGHTS. (1) As used in this
29 section, "medical kidnapping" means the wrongful removal of a minor under
30 eighteen (18) years of age or a vulnerable adult from a parent or guardian by
31 law enforcement, a social worker, or any other official and when:

32 (a) A parent or guardian questions or denies a potential medical treat-
33 ment or test for the child or vulnerable adult or chooses to seek a sec-
34 ond opinion when there is cause for concern that the potential medical
35 treatment or test would do harm to the child or vulnerable adult, in-
36 cluding but not limited to an allergic reaction;

37 (b) A parent or guardian brings the child or vulnerable adult for medi-
38 cal treatment or care and a child abuse or neglect screening has estab-
39 lished there is no child abuse or neglect and the child or vulnerable
40 adult is removed or placed in state care by a social worker, law enforce-
41 ment, or any other official at a treating hospital or any other medical

1 treating facility for invalid reasons, including but not limited to im-
2 minent harm or danger;

3 (c) A child or vulnerable adult has his belongings taken by a doctor,
4 nurse, staff, volunteer, social worker, or any other official without
5 parental or guardian consent, including but not limited to a service
6 or therapy animal, clothes, books, games, cellular phone, wallet, eye
7 glasses, water, or food;

8 (d) A child or vulnerable adult is denied the freedom to continue care
9 with his or her own established medical physicians and specialists;

10 (e) A child abuse specialist visits with a child when it has previously
11 been verified that no child abuse or neglect occurred;

12 (f) A child or vulnerable adult is coerced by medical staff or a volun-
13 teer into taking a medical test or medication;

14 (g) A doctor, nurse, medical staff, or volunteer takes photos, videos,
15 lab work, or x-rays or conducts medical testing, care, or treatment
16 of or on the child or vulnerable adult without consent of a parent or
17 guardian;

18 (h) A child or vulnerable adult is forced by medical staff to eat or
19 drink high-calorie or reduced-calorie meals that are not suitable for
20 the individual;

21 (i) A child or vulnerable adult is denied food, water, or other drinks,
22 including supplemental food or drinks, when medical staff has failed to
23 previously produce a meal; or

24 (j) A child or vulnerable adult is ordered to take medication or receive
25 medical tests when not required and that may cause a heart condition or
26 other medical condition or harm.

27 (2) A parent or guardian has the final decision in a child or vulner-
28 able adult's medical care and treatment. A parent or guardian shall have a
29 parental and constitutional right to seek medical treatment and make deci-
30 sions for a child or vulnerable adult when the parent or guardian believes it
31 is in the best interests of the child or vulnerable adult, including but not
32 limited to accepting or denying testing, imaging, medication, or a second
33 opinion. Such choices shall not be deemed child abuse or neglect and may not
34 be disputed, discriminated against, reported, or investigated by or to so-
35 cial services, law enforcement, or any other official. A child or vulnerable
36 adult shall not be removed from a parent or guardian and placed in state care,
37 a hospital, or any other medical treatment facility by a social worker, law
38 enforcement, or any other official without a known instance of abuse or ne-
39 glect, and an investigation in such circumstances may occur only upon a known
40 instance of abuse or neglect. Treating medical doctors, nurses, special-
41 ists, staff, and any other medical facility employees or volunteers shall
42 abide by a parent or guardian's wishes. Any reports made by a reporting per-
43 son must have actual proof, not hearsay, that a parent or guardian has acted
44 with malicious intent.

45 (3) If a child or vulnerable adult has a medical reason, including but
46 not limited to influenza, gastrointestinal issues, or a compromised immune
47 system, such reason shall not be excluded as a valid cause or part of a cause
48 for which a parent or guardian has brought a child or vulnerable adult in for
49 medical treatment. It shall not be assumed that abuse or neglect has oc-

1 curred, that social services are required, or that an investigation on the
2 part of child protective services is required.

3 (4) When a parent or guardian brings a child in for medical care at a
4 doctor's office, urgent care clinic, hospital, or other medical treatment
5 facility and after a screening for child abuse or neglect has established
6 there was not abuse or neglect, then no further reporting or investigation
7 by a doctor, nurse, staff, volunteer, social worker, law enforcement, or any
8 other person or official shall be conducted.

9 (5) When a social worker, psychiatrist, or psychologist visits with a
10 parent, guardian, child, or vulnerable adult and concludes that no further
11 investigation is warranted, then no doctor, nurse, staff, social worker,
12 law enforcement, or any other person or official shall conduct any further
13 questioning regarding abuse or neglect and may provide only medical care or
14 treatment.

15 (6) If a parent, guardian, child, or vulnerable adult feels mistreated
16 by a doctor, nurse, staff, or volunteer at a medical facility, there is a
17 right to leave the facility and seek further medical care at another facility
18 on the person's own accord and without any involvement by a social worker,
19 law enforcement, or any other official.

20 (7) If a doctor, nurse, staff, volunteer, social worker, or any other
21 person at a medical facility contacts child protective services, adult pro-
22 tective services, or law enforcement after no initial indication of abuse or
23 neglect is found, such person may be subject to the provisions of sections
24 16-1607 and 56-1008, chapter 45, title 18, and chapter 10, title 32, Idaho
25 Code, and any resulting child protection case shall be terminated.

26 (8) Any person who commits medical kidnapping as described in this sec-
27 tion shall be subject to:

28 (a) Loss of licensure as provided in title 54, Idaho Code;

29 (b) The provisions of chapter 45, title 18, Idaho Code;

30 (c) Registration in the Idaho child protection central registry and the
31 national child abuse and neglect data system; and

32 (d) If the individual has full or partial custody of a child or vulner-
33 able adult, an investigation and requirements by child and family ser-
34 vices or adult protective services that includes but is not limited to:

35 (i) A full psychological evaluation; and

36 (ii) Attendance of in-depth courses on parenting, nutrition, spe-
37 cial needs of individuals, and trauma. Such courses shall not be
38 taught by a social worker.

39 (9) When a medical kidnapping as defined in this section involving a
40 child occurs, a parent or guardian may report such child as a missing child as
41 defined in section 18-4508, Idaho Code.

42 (10) Medical staff, including doctors, nurses, volunteers, or other of-
43 ficials, shall not use inappropriate language or any other discriminatory or
44 derogatory references to describe a child or vulnerable adult in their care.
45 A person who uses such language may be subject to a cause of action from a par-
46 ent or guardian.

47 (11) If a child or vulnerable adult is subject to a medical kidnapping
48 under this section, the parent or guardian shall have a cause of action
49 against the individuals involved for damages and attorney's fees.

1 SECTION 3. That Section 18-4501, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 18-4501. ~~KIDNAPING~~ KIDNAPPING DEFINED. ~~Every person who wilfully:~~ (1)
4 A person is guilty of kidnapping if the person willfully:

5 ~~1-~~ (a) Seizes, confines, inveigles, or kidnaps another, with intent to
6 cause him or her, without authority of law, to be secretly confined or
7 imprisoned within this state, or to be sent out of this state, or in any
8 way held to service or kept or detained against his or her will; ~~or~~

9 ~~2-~~ (b) Leads, takes, entices away, or detains a child under the age
10 of ~~sixteen~~ eighteen (168) years, with intent to keep or conceal ~~it~~ the
11 child from its a custodial parent, guardian, or other person having law-
12 ful care or control thereof, or with intent to steal any article upon the
13 person of the child; ~~or~~

14 ~~3-~~ (c) Abducts, entices, or by force or fraud unlawfully takes or car-
15 ries away another at or from a place without the state, or procures, ad-
16 vises, aids, or abets such an abduction, enticing, taking, or carrying
17 away, and afterwards sends, brings, has, or keeps such person, or causes
18 him or her to be kept or secreted within this state; ~~or~~

19 ~~4-~~ (d) Seizes, confines, inveigles, leads, takes, entices away, or
20 kidnaps another against his will to extort money, property, or any other
21 thing of value or obtain money, property, or reward or any other thing of
22 value for the return or disposition of such person ~~is guilty of kidnap-~~
23 ~~ing.~~

24 (2) "Kidnapping" shall be deemed to include "medical kidnapping" as de-
25 scribed in section 16-1648, Idaho Code.

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