

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 438

BY SCOTT

AN ACT

1 RELATING TO CHILD CUSTODY; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION
2 18-4506, IDAHO CODE, TO PROVIDE THAT THE INFLECTION OF CERTAIN MENTAL
3 INJURIES IN CERTAIN INSTANCES SHALL CONSTITUTE CHILD CUSTODY INTERFER-
4 ENCE, TO REVISE A PROVISION REGARDING AN AFFIRMATIVE DEFENSE, TO PRO-
5 VIDE THAT LAW ENFORCEMENT SHALL MAKE A REASONABLE ATTEMPT TO CONTACT A
6 DEFENDANT IN CERTAIN INSTANCES AND TO PROVIDE A PENALTY AND TO MAKE A
7 TECHNICAL CORRECTION; AND AMENDING SECTION 32-717, IDAHO CODE, TO PRO-
8 VIDE THAT CERTAIN DIVORCE DECREES SHALL BE MAINTAINED IN A DATABASE.
9

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

11 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to
12 recognize that parental alienation is the systematic brainwashing of chil-
13 dren, with the sole purpose of destroying a loving relationship they once
14 shared with a parent, that deprives children of their right to love and be
15 loved by both parents.

16 SECTION 2. That Section 18-4506, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 18-4506. CHILD CUSTODY INTERFERENCE DEFINED -- DEFENSES -- PUNISH-
19 MENT. 1. A person commits child custody interference if the person, whether
20 a parent or other, or agent of that person, intentionally and without lawful
21 authority:

22 (a) Takes, entices away, keeps or withholds any minor child from a
23 parent or another person or institution having custody, joint cus-
24 tody, visitation or other parental rights, whether such rights arise
25 from temporary or permanent custody order, or from the equal custodial
26 rights of each parent in the absence of a custody order; ~~or~~

27 (b) Takes, entices away, keeps or withholds a minor child from a parent
28 after commencement of an action relating to child visitation or custody
29 but prior to the issuance of an order determining custody or visitation
30 rights; or

31 (c) Inflicts mental injury as defined in section 16-1602, Idaho Code,
32 on a child through the use of manipulation or psychological abuse in-
33 cluding, but not limited to, parental alienation that creates a signif-
34 icant developmental pathology, personality disorder pathology or delu-
35 sional-psychiatric pathology as diagnosed by a mental health profes-
36 sional licensed under chapter 18 or 23, title 54, Idaho Code.

37 2. It shall be an affirmative defense to a violation of the provisions
38 of subsection 1. (a) or (b) of this section that:

39 (a) The action is taken to protect the child from imminent physical
40 harm;

1 (b) The action is taken by a parent fleeing from imminent physical harm
 2 to himself, provided that the parent offers written proof of imminent
 3 physical harm from a credible source that includes, but is not limited
 4 to, a licensed physician, a law enforcement officer or a court of compe-
 5 tent jurisdiction. Hearsay of imminent physical harm alone shall not be
 6 considered an affirmative defense under this paragraph;

7 (c) The action is consented to by the lawful custodian of the child; or

8 (d) The child is returned within twenty-four (24) hours after expira-
 9 tion of an authorized visitation privilege.

10 3. When a violation of the provisions of subsection 1. (a) or (b) of this
 11 section occurs, law enforcement officials shall make a reasonable attempt
 12 to contact the defendant by telephone and inform him that failure to return
 13 the child as soon as reasonably possible will result in issuance of an arrest
 14 warrant. If the attempt to reach the defendant by telephone is unsuccessful
 15 or if the defendant refuses to return the child, law enforcement officials
 16 shall request that an arrest warrant be issued upon twenty-four (24) hours
 17 of failure to return the child, or immediately, if facts of urgency are pre-
 18 sent.

19 4. A violation of the provisions of subsection 1. (a) or (b) of this sec-
 20 tion shall be a felony, unless the defendant did not take the child outside
 21 the state, and the child was voluntarily returned unharmed prior to the de-
 22 fendant's arrest, in which case the violation shall be reduced to a misde-
 23 meanor. A violation of the provisions of subsection 1. (c) of this section
 24 shall be a misdemeanor.

25 45. Any reasonable expenses incurred by a lawful custodian in locating
 26 or attempting to locate a child taken in violation of the provisions of sub-
 27 section 1. (a) or (b) of this section may be assessed against the defendant at
 28 the court's discretion in accordance with chapter 53, title 19, Idaho Code.

29 SECTION 3. That Section 32-717, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 32-717. CUSTODY OF CHILDREN -- BEST INTEREST. (1) In an action for di-
 32 vorce the court may, before and after judgment, give such direction for the
 33 custody, care and education of the children of the marriage as may seem nec-
 34 essary or proper in the best interests of the children. The court shall con-
 35 sider all relevant factors which may include:

36 (a) The wishes of the child's parent or parents as to his or her custody;

37 (b) The wishes of the child as to his or her custodian;

38 (c) The interaction and interrelationship of the child with his or her
 39 parent or parents, and his or her siblings;

40 (d) The child's adjustment to his or her home, school, and community;

41 (e) The character and circumstances of all individuals involved;

42 (f) The need to promote continuity and stability in the life of the
 43 child; and

44 (g) Domestic violence as defined in section 39-6303, Idaho Code,
 45 whether or not in the presence of the child.

46 (2) If the parent has a disability as defined in this section, the par-
 47 ent shall have the right to provide evidence and information regarding the
 48 manner in which the use of adaptive equipment or supportive services will en-
 49 able the parent to carry out the responsibilities of parenting the child.

1 The court shall advise the parent of such right. Evaluations of parental
2 fitness shall take into account the use of adaptive equipment and support-
3 ive services for parents with disabilities and shall be conducted by, or with
4 the assistance of, a person who has expertise concerning such equipment and
5 services. Nothing in this section shall be construed to create any new or
6 additional obligations on state or local governments to purchase or provide
7 adaptive equipment or supportive services for parents with disabilities.

8 (3) In any case where the child is actually residing with a grandparent
9 in a stable relationship, the court may recognize the grandparent as having
10 the same standing as a parent for evaluating what custody arrangements are in
11 the best interests of the child.

12 (4) As used in this chapter:

13 (a) "Adaptive equipment" means any piece of equipment or any item that
14 is used to increase, maintain or improve the parenting capabilities of a
15 parent with a disability.

16 (b) "Disability" means, with respect to an individual, any mental or
17 physical impairment which substantially limits one (1) or more ma-
18 jor life activities of the individual including, but not limited to,
19 self-care, manual tasks, walking, seeing, hearing, speaking, learn-
20 ing or working, or a record of such an impairment, or being regarded as
21 having such an impairment. Disability shall not include transvestism,
22 transsexualism, pedophilia, exhibitionism, voyeurism, other sexual
23 behavior disorders, substance use disorders, compulsive gambling,
24 kleptomania or pyromania. Sexual preference or orientation is not
25 considered an impairment or disability. Whether an impairment sub-
26 stantially limits a major life activity shall be determined without
27 consideration of the effect of corrective or mitigating measures used
28 to reduce the effects of the impairment.

29 (c) "Supportive services" means services which assist a parent with a
30 disability to compensate for those aspects of their disability which
31 affect their ability to care for their child and which will enable
32 them to discharge their parental responsibilities. The term includes
33 specialized or adapted training, evaluations, or assistance with ef-
34 fective use of adaptive equipment, and accommodations which allow a
35 parent with a disability to benefit from other services, such as braille
36 texts or sign language interpreters.

37 (5) Nothing in this chapter shall be construed to allow discrimination
38 on the basis of disability. In any case where the disability of a parent is
39 found by the court to be relevant to an award of custody of a child, the court
40 shall make specific findings concerning the disability and what effect, if
41 any, the court finds the disability has on the best interests of the child.

42 (6) With reference to this section, when an active member of the Idaho
43 national guard has been ordered or called to duty as defined in section
44 46-409, Idaho Code, or when a member of the military reserve is ordered to
45 active federal service under title 10, United States Code, such military
46 service thereunder shall not be a substantial or material and permanent
47 change in circumstance to modify by reducing the member's previously decreed
48 child custody and visitation privileges.

49 (7) All divorce decrees that contain child custody and visitation priv-
50 ileges for children who are currently under eighteen (18) years of age shall

1 be maintained in a statewide registry or database that is easily accessible
2 to law enforcement officials.