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Parental Child-Snatching: Out of a No-Man's-Land of Law.

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COMMENTS

Parental Child-Snatching: Out Of A No-Man's-Land Of Law

Wayne Young

| | |
|--|-----|
| I. Introduction | 337 |
| II. Lack of Full Faith and Credit: The Central Problem | 338 |
| III. The Uniform Child Custody Jurisdiction Act: A Contemporary Approach To An Ancient Dilemma | 341 |
| IV. Texas: A Non-UCCJA State | 346 |
| V. The Parental Kidnaping Prevention Act of 1980: A Possible Deterrent | 347 |
| VI. Conclusion | 352 |

I. INTRODUCTION

It is estimated that as many as 100,000 children are kidnapped annually by one of the child's parents.¹ The major contributing factor to the increasing number of parents who resort to the self-help remedy of "seize and run" is the prevalence of divorce.² Child-snatching, either before or after a child custody decree, therefore, has become "quasi-accepted behavior, somewhere in a no man's land of the law."³

The security, stability, and continuity of the parent-child relationship form an integral part of a child's development.⁴ Experts agree that dis-

1. Compare 124 CONG. REC. 786 (1978) (remarks of Sen. Wallop) (conservative estimates of 25,000) with 123 CONG. REC. 102 (1977) (remarks of Rep. Moss) (estimates of 100,000).

2. See UNIFORM CHILD CUSTODY JURISDICTION ACT, Commissioners' Prefatory Note [hereinafter cited as U.C.C.J.A.]. In 1978 an estimated 1,122,000 divorces were granted. This represented almost a 100% increase from 1968. DEPT. OF HEALTH, EDUCATION, AND WELFARE, MONTHLY VITAL STATISTICS REPORT No. 12, at 2 (1979). Estimates are that in 1977, divorces affected 900,000 children, creating potential litigation in custody, visitation rights, and later, custody modification. See 123 CONG. REC. 522 (1977) (remarks of Sen. McGovern).

3. Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L. Q. 203, 203 (1981).

4. See J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 31-34 (1973); Watson, *The Children of Armageddon: Problems of Custody Following*

ruptions in child development produce damaging effects, varying only in degree with respect to a child's age and environment.⁵ The divorced parents, whether motivated by parental love, need, or the desire to antagonize the other parent, compete for the affection and possession of the child.⁶ Unfortunately, this often produces a no-win situation for the child.⁷ The losing parent frequently resorts to the remedy of self-help, and, thereby, creates an unhealthy environment for the child.⁸

II. LACK OF FULL FAITH AND CREDIT: THE CENTRAL PROBLEM

When the kidnapped child is taken to another jurisdiction, the injured parent faces two obstacles: convincing the court to recognize a foreign custody decree and persuading the same court to enforce that decree.⁹ This requires that a state give full faith and credit to the laws and policies of a sister state.¹⁰ In the past, state courts often tacitly legalized the abduction or illegal retention of children by failing to accord full faith

Divorce, 21 SYRACUSE L. REV. 55, 71 (1969). The Commissioners' Prefatory Note to the Uniform Child Custody Jurisdiction Act (UCCJA) states:

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

U.C.C.J.A., Commissioners' Prefatory Note.

5. See J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 31-34, 37-39 (1973) (effects may vary from sleeping and eating difficulties to deep emotional problems such as resentment of parent); Watson, *The Children of Armageddon: Problems of Custody Following Divorce*, 21 SYRACUSE L. REV. 55, 71 (1979) (stability of environment more important than quality).

6. See generally U.C.C.J.A., Commissioners' Prefatory Note; Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 STAN. L. REV. 703, 721-22 (1971); Krauskopf, *Child Custody Jurisdiction Under the UCCJA*, 34 MO. B. J. 383, 391 (1978); Note, *Legalized Kidnapping of Children by Their Parents*, 80 DICK. L. REV. 305, 314 (1976).

7. See U.C.C.J.A., Commissioners' Prefatory Note (child loses regardless of which parent wins, if later dragged back and forth legally or illegally).

8. See *id.* Such tactics have even resulted in death. See *Kidnapping: A Family Affair*, NEWSWEEK, Oct. 18, 1976 at 24 (both child and father killed during father's kidnapping attempt).

9. See Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J. INT'L. L. 669, 670-71 (1980).

10. Article IV, Section 1 of the United States Constitution provides, in pertinent part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state." U.S. CONST. art. IV, § 1.

and credit to child custody decrees.¹¹ Furthermore, prior laws usually condoned rather than punished child-snatching.¹² While attempts to rectify the situation on a state level were made, they met with limited success.¹³

The United States Supreme Court's first opportunity to determine the constitutional ramifications of parental kidnapping arose in *Halvey v. Halvey*.¹⁴ The Court, upholding a New York court's modification of a Florida custody decree,¹⁵ gave states full discretionary power to deal with a sister state's custody decree.¹⁶ Similarly, in *May v. Anderson*,¹⁷ the Court refused to enforce application of the full faith and credit clause, relying on the decree's invalidity due to lack of *in personam* jurisdiction.¹⁸ By refusing to denounce the transfer of children in flagrant defi-

11. See Note, *Legalized Kidnapping of Children by Their Parents*, 80 DICK. L. REV. 305, 314 (1976). Adoption of the UCCJA, current state statutes in some non-UCCJA states such as Texas, and the passage of the Parental Kidnaping Prevention Act of 1980, however, have generally eliminated the problem. See generally Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611 §§ 6-10, 94 Stat. 3568 (codified in scattered sections of 18, 28, 42 U.S.C.A. (West Supp. 1981)); TEX. FAM. CODE ANN. §§ 11.045, .052, .053, 14.10 (Vernon Supp. 1980-1981); U.C.C.J.A. § 15.

12. See *Bachman v. Mejias*, 136 N.E.2d 866, 868-69, 154 N.Y.S.2d 903, 907-08 (Fam. Ct. 1956) (parent refused to return child to grandparents as directed by Puerto Rico courts and New York court modified decree); *Dees v. McKenna*, 134 S.E.2d 644, 649 (N.C. 1964) (father took children to North Carolina and obtained custody although California decree had given mother custody). *But cf.* *Wilsonoff v. Wilsonoff*, 514 P.2d 1264, 1268 (Alaska 1973) (refused to recognize Montana custody modification issued two years after father had moved with children to Alaska).

13. See MINN. STAT. ANN. § 609.26 (West Supp. 1981) (obtaining or retaining child in violation of existing custody order is a felony); N.C. GEN. STAT. § 14-320.1 (1969) (transporting child outside state with intent to violate custody order is a felony); TEX. PENAL CODE ANN. art. 25.03 (Vernon 1966) (interference with child custody order is third degree felony); Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011, 1015-18 (1977) (few cases have held that taking child after custody order is wrongful conduct, and prosecution and conviction seldom occur); 55 N.C. L. REV. 1275, 1282-85 (1977) (fear of criminal conviction not a deterrent if parent unaware and criminal laws generally ineffective outside state's own borders).

14. 330 U.S. 610 (1947).

15. *Id.* at 614-15. The Supreme Court held that Florida custody decrees were not final judgments as they were subject to modification. *Id.* at 612. "The State of the forum," therefore, "has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered." *Id.* at 615.

16. *Id.* at 615; accord *Kovacs v. Brewer*, 356 U.S. 604, 608 (1958) (changed circumstances warranting modification); *cf.* *Halvey v. Halvey*, 330 U.S. 610, 619-20 (1947) (Rutledge, J., concurring) (recognizing potential litigation problems in plurality's decision). See also *Ford v. Ford*, 371 U.S. 187, 194 (1962) (Virginia's order of dismissal not binding; therefore, child custody could be determined by South Carolina courts).

17. 345 U.S. 528 (1953).

18. See *id.* at 532.

ance of court orders, the *May* Court encouraged forum shopping, thereby allowing parents to seek a jurisdiction favorable to their position.¹⁹

Courts have exercised some restraint in modifying foreign custody decrees through application of the doctrines of "clean hands,"²⁰ "comity,"²¹ and *res judicata*.²²

Since the application of these doctrines is discretionary, they have not been applied evenly, and the result is a body of law which is uncertain and unpredictable.²³ Undoubtedly, the failure to accord full faith and credit to child custody decrees has been the major impetus behind paren-

19. Frank, *The End of Legal Kidnapping in Pennsylvania: The Development of a Decided Public Policy*, 25 VILL. L. REV. 784, 785 (1980). See, e.g., *Ford v. Ford*, 371 U.S. 187, 192-94 (1962) (mother filed for custody in South Carolina although Virginia court had awarded custody to husband); *Kovacs v. Brewer*, 356 U.S. 604, 607 (1958) (although mother obtained modification of New York decree and awarded custody, grandfather awarded custody by North Carolina); *May v. Anderson*, 345 U.S. 528, 534 (1953) (mother who refused to return children after visit awarded custody by Ohio court although Wisconsin court had awarded father custody).

20. Under the "clean hands" doctrine, equity will deny relief to an individual who seeks judicial remedy if the person, through his prior actions, violated "conscience, or good faith, or other equitable principle" *Franklin v. Franklin*, 283 S.W.2d 483, 486 (Mo. 1955). See *Leathers v. Leathers*, 328 P.2d 853, 856-57 (Cal. Dist. Ct. App. 1958) (court refused to modify decree based on clean hands doctrine because petitioner violated Illinois custody decree); *Forsyth v. Forsyth*, 546 P.2d 117, 120 (Wash. Ct. App. 1976) (court refused to modify decree based on doctrine of clean hands because appellant violated decree by removing children from state). *But cf.* *Walker v. Bourland*, 39 Cal. Rptr. 243, 249 (Dist. Ct. App. 1964) (court refused to honor Texas custody modification of California custody decree). See generally A. EHRENZWEIG, *A TREATISE ON CONFLICT OF LAWS* 293-300 (1962); Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345, 357 (1953); Ratner, *Child Custody In a Federal System*, 62 MICH. L. REV. 795, 798 (1964).

21. The doctrine of comity generally means a state will give effect to another state's laws and decrees out of deference and mutual respect. *Hilton v. Guyot*, 159 U.S. 113, 165 (1895). See *Fahrenbruch v. Taber*, 453 P.2d 601, 606 (Colo. 1969); *Hedrick v. Hedrick*, 571 P.2d 1217, 1219 (Okla. 1977). *But cf.* *Mirras v. Mirras*, 202 So.2d 887, 892-93 (Fla. Dist. Ct. App. 1967) (doctrine of comity discretionary).

22. See *McMillin v. McMillin*, 158 P.2d 444, 445-46 (Colo. 1945); *Wilburn v. Wilburn*, 210 A.2d 832, 834 (D.C. 1965); Note, *Prevention of Child Stealing: The Need For a National Policy*, 11 LOY. L.A. L. REV. 829, 838 (1978).

23. Compare *Wilsonoff v. Wilsonoff*, 514 P.2d 1264, 1267 (Alaska 1973) (Alaska court refused to rigidly apply full faith and credit and honor Montana custody modification awarding custody to mother) and *Leathers v. Leathers*, 328 P.2d 853, 856 (Cal. Dist. Ct. App. 1958) (court refused to modify decree based on unclean hands doctrine because petitioner had violated custody decree) with *Lyerla v. Lyerla*, 403 P.2d 989, 994-96 (Kan. 1965) (court allowed modification based on changed circumstances) and *Anderson v. Anderson*, 153 N.W.2d 627, 631 (Wis. 1967) (Wisconsin court allowed decree to be modified since not considered final). See generally Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 981-82 (1977).

tal child-snatching.²⁴

III. THE UNIFORM CHILD CUSTODY JURISDICTION ACT: A CONTEMPORARY APPROACH TO AN ANCIENT DILEMMA

Two of the primary purposes of the Uniform Child Custody Jurisdiction Act (UCCJA)²⁵ are to eliminate relitigation of custody decrees in other states²⁶ and end court practices which protect the kidnapping parent.²⁷ To attain these results, the UCCJA encourages interstate cooperation by providing specific guidelines for initial jurisdiction,²⁸ jurisdiction modification,²⁹ and emergency jurisdiction,³⁰ and thus permits the court

24. See, e.g., *Larson v. Larson*, 252 N.W. 329, 330 (Minn. 1934) (Minnesota court awarded custody to mother although custody had been awarded to father by sister state); *Roebuck v. Roebuck*, 508 P.2d 1057, 1061 (Mont. 1973) (Montana court awarded custody to mother although Oregon court previously awarded custody to father); *Dees v. McKenna*, 134 S.E.2d 644, 649 (N.C. 1964) (father took children to North Carolina and obtained custody although California decree had given mother custody).

25. The National Conference of Commissioners on Uniform Laws adopted the UCCJA in 1968.

26. The Act discourages child-snatching by removing the parents' expectation of obtaining legal custody after snatching the child. See 6 WM. MITCHELL L. REV. 461, 470 (1980).

27. See U.C.C.J.A. § 1, Commissioners' Note. The Act's remedial character was designed to eliminate objectionable features of prior laws. *Id.*

28. U.C.C.J.A. § 3(a); see, e.g., *Bias v. Bias*, 374 So.2d 64, 64 (Fla. Dist. Ct. App. 1979) (Florida court had proper jurisdiction since child was out-of-state in violation of Florida decree); *Sharp v. Aarons*, 420 N.Y.S.2d 1013, 1014 (Fam. Ct. 1979) (New York court had jurisdiction although mother moved to England with child and father moved to Wisconsin); *Mayer v. Mayer*, 283 N.W.2d 591, 595 (Wis. Ct. App. 1979) (Wisconsin court did not lose home state jurisdiction because father moved out-of-state). See also U.C.C.J.A. § 3(a)(2) (personal jurisdiction over all parties not required); Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L. Q. 203, 204-05 (1981); Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1000 (1977).

29. U.C.C.J.A. § 14. Under section 14 of the Act a state may only modify a foreign state's custody decree when the foreign state no longer has jurisdiction or declines to assume jurisdiction. *Id.*; see, e.g., *Pierce v. Pierce*, 287 N.W.2d 879, 882 (Iowa 1980) (in order for court to modify decree, court rendering decree must not have jurisdiction or decline to assume it); *Settle v. Settle*, 556 P.2d 962, 966-67 (Or. 1976) (jurisdiction to modify Indiana custody decree because of best interests of children and significant contacts with Oregon existed); *Fernandez v. Rodriguez*, 411 N.Y.S.2d 134, 138 (Sup. Ct. 1978) (New York court could modify Puerto Rican decree as Puerto Rican court had no jurisdiction).

30. U.C.C.J.A. § 3(a)(3). Under section 3(a)(3), a state may assume emergency jurisdiction to protect a child within the state who has been abandoned or has been or is in danger of being abused. *Id.*; see *Roberts v. Dist. Ct.*, 596 P.2d 65, 68-69 (Colo. 1979) (Colorado court refused to modify California decree because emergency situation was not demonstrated); *Young v. Dist. Ct.*, 570 P.2d 249, 250-51 (Colo. 1977) (father's unsupported and disputed claims that child was in bad circumstances with mother does not justify emergency jurisdic-

best able to protect the child's interest to decide which parent obtains custody.³¹ Additionally, the UCCJA encourages cooperation and communication among courts of different jurisdictions to aid in resolving jurisdictional conflicts.³² Under the UCCJA, jurisdiction is limited to the child's home state,³³ or to a state having significant connections with the child and his family.³⁴ To prevent a parent from delaying or prohibiting a home state from exercising its proper function, the Act enables the court

tion); *Trujillo v. Trujillo*, 378 So.2d 812, 815 (Fla. Dist. Ct. App. 1979) (father's accusation that mother was on drugs dispelled by copy of certificate dismissing charges); *Breneman v. Breneman*, 284 N.W.2d 804, 807 (Mich. Ct. App. 1979) (Michigan court modified Illinois custody decree because of child abuse); *Hricko v. Stewart*, 415 N.Y.S.2d 747, 749 (Fam. Ct. 1979) (modification declined because emergency situation of child abandonment could not be shown). Emergency jurisdiction, however, confers only limited temporary authority, pending the results in the state having jurisdiction under the Act. See *Schwander v. Schwander*, 145 Cal. Rptr. 325, 329 (Dist. Ct. App. 1978); *Fry v. Ball*, 544 P.2d 402, 408 (Colo. 1975); Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 992-95 (1977).

31. U.C.C.J.A. § 7; see *Fry v. Ball*, 544 P.2d 402, 407 (Colo. 1975); Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011, 1019 (1977).

32. See U.C.C.J.A. § 6 (court will not exercise jurisdiction under act if a proceeding is pending in another jurisdiction); *id.* § 7 (court may decline jurisdiction under Act if another jurisdiction is more appropriate); *id.* § 16 (court of each state will maintain registry of out-of-state custody decrees); *id.* § 17 (court clerk will provide certified copies upon request); *id.* § 18 (court may provide for taking of testimony in another state); *id.* § 19 (court may request hearings or studies in another state including orders to appear); *id.* § 20 (courts will provide assistance to courts of other states); *id.* § 21 (court will preserve custody documents and will provide for other jurisdictions upon request); *id.* § 22 (court upon taking jurisdiction shall request certified copies of records from other jurisdictions).

33. See *id.* § 2(5). "Home state," as used in the Act, means:

[T]he state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month period or other period

.....
Id. § 2(5).

34. *Id.* § 3(a)(2); see *Allison v. Super. Ct.*, 160 Cal. Rptr. 309, 311-12 (Dist. Ct. App. 1979) (divorce decree, custody order, modification of order, residence of mother and birthplace of children considered significant connections); *Etter v. Etter*, 405 A.2d 760, 763-64 (Md. Ct. Spec. App. 1979) (mother established residence, child attending school considered significant connections). *But cf.* *Neal v. Super. Ct.*, 148 Cal. Rptr. 841, 842-43 (Dist. Ct. App. 1978) (act of mother bringing child to California not sufficient to meet significant connections requirement). The child's home state is viewed as being in the best position to collect the evidence and maintain continuity of authority. See generally Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011, 1019 (1977).

to make a determination regarding the child's custody without the parent's presence, provided proper notice is given.³⁵ Such a custody decree is enforceable in any state which has adopted the UCCJA.³⁶ The UCCJA also eliminates the problems encountered when jurisdiction is based on the child's physical presence³⁷ by prohibiting other states from modifying custody decrees,³⁸ and by providing for summary application of the full faith and credit clause.³⁹ Section 23 of the UCCJA extends the Act to international custody decrees.⁴⁰ Since the UCCJA is not a reciprocal act,

35. See U.C.C.J.A. § 4 (reasonable notice will be given to all concerned parties prior to action by the court); *id.* § 5 (notice calculated to provide actual notice required for persons outside of state); *id.* § 12 (custody decree rendered by court with proper jurisdiction is binding on all parties, providing proper notice was given). See generally Frank, *The End of Legal Kidnapping in Pennsylvania: The Development of a Decided Public Policy*, 25 VILL. L. REV. 784, 797-98 (1979-80); Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795, 818 (1964).

36. See U.C.C.J.A. § 15 (provides for the filing and enforcement of out-of-state custody decrees); *id.* § 3 (provides for original jurisdiction in child custody cases).

37. *Id.* § 3(b) (physical presence of child not sufficient to confer jurisdiction except under circumstances such as abuse or neglect); see *Matteson v. Matteson*, 379 So.2d 677, 680 (Fla. Dist. Ct. App. 1980) (court having initial jurisdiction should have declined to exercise jurisdiction because children resided in another state for three years); *Priscilla S. v. Albert B.*, 424 N.Y.S.2d 613, 616 (Fam. Ct. 1980) (home state had jurisdiction although children in New York). *But cf.* *Neal v. Super. Ct.*, 148 Cal. Rptr. 841, 843 (Dist. Ct. App. 1978) (mother's illegal act of taking child to California does not establish significant connection with California to justify modification of Arkansas decree); *In re Lemond*, 395 N.E.2d 1287, 1287 (Ind. Ct. App. 1979) (Indiana court prohibited from modifying Hawaiian custody decree because Hawaii is child's home state); *Pierce v. Pierce*, 287 N.W.2d 879, 883-84 (Iowa 1980) (Iowa court unable to modify Florida decree because Florida exercised jurisdiction one month prior to petition); *Sexton v. Sexton*, 397 N.E.2d 425, 426 (Ohio Ct. App. 1978) (court refused to honor foreign custody decree after learning father obtained custody by compelling mother to sign agreement in return for promise to pay child support).

38. U.C.C.J.A. § 13 (recognition of out-of-state custody decrees); *id.* § 14 (modification of out-of-state custody decrees); see *Theresa H. v. Pasquale G.*, 424 N.Y.S.2d 652, 653-54 (Fam. Ct. 1980) (New York court permitted to modify California decree because home now New York); *Fernandez v. Rodriguez*, 411 N.Y.S.2d 134, 138, n. 5 (Sup. Ct. 1978) (New York court could modify Puerto Rican decree because decree no longer met jurisdictional prerequisites under Act).

39. Section 15 provides for the procedural application of full faith and credit to a sister state's custody decree. U.C.C.J.A. § 15; see, e.g., *In re Steiner*, 152 Cal. Rptr. 612, 616 (Dist. Ct. App. 1979) (California enforced Colorado modification of California decree as husband failed to prove Colorado lacked jurisdiction to modify initial decree); *Baird v. Baird*, 374 So.2d 60, 63 (Fla. Dist. Ct. App. 1979) (father failed to prove Arizona's modification of Florida decree was defective and Florida enforced modification); *Roehl v. O'Keefe*, 256 S.E.2d 375, 377 (Ga. 1979) (Georgia court properly upheld North Carolina decree where certified copy on file).

40. See U.C.C.J.A. § 23. Two attempts have been made to deal with the problem of child abductions on an international level: the Strasbourg Convention and the Hague Conference. See Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J.

a custody decree of a non-UCCJA state will be given full recognition if it meets the Act's jurisdictional requirements.⁴¹ The UCCJA, however, includes a *forum non conveniens* section,⁴² a clean hands section,⁴³ and a section to prevent simultaneous proceedings in two or more states.⁴⁴ The

INT'L. L. 669, 688-96 (1980). Unlike the Strasbourg Convention, which deals specifically with problems of European countries, the Hague Conference is open to any country desiring to become a member. *See id.* at 691-96. In 1980, twenty-three countries, including the United States, were members. *See id.* at 691-92. Resolution of international child kidnapping entails problems similar to those encountered within the United States, *i.e.* non-participating states and countries become havens for child-snatchers. *See id.* at 697.

41. U.C.C.J.A. § 13; *see* Priscilla S. v. Albert B., 424 N.Y.S.2d 613, 617-18 (Fam. Ct. 1980) (New York recognized Vermont's custody decree although Vermont had not adopted UCCJA); Bergstrom v. Bergstrom, 271 N.W.2d 546, 551-52 (N.D. 1978) (Washington D.C. decree recognized in North Dakota although Washington D.C. had not adopted UCCJA). *Cf.* Fernandez v. Rodriguez, 411 N.Y.S.2d 134, 138 (Sup. Ct. 1978) (New York not required to enforce Puerto Rican decree because it did not comply with Act's jurisdictional requirement and UCCJA not adopted).

Hawaii is the only state to have adopted a reciprocity clause. *See* HAWAII REV. STAT. § 583-1(b) (1976). *See generally* Bodenheimer, *International State Custody: Initial and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L. Q. 203, 205 (1981).

42. U.C.C.J.A. § 7. The doctrine of *forum non conveniens* refers to a court's discretionary power to decline jurisdiction because it would be more convenient to the parties and justice would be better served by trying the case in another forum. *Johnson v. Spider Staging Corp.*, 555 P.2d 997, 999 (Wash. 1976); *see, e.g.*, *Palm v. Super. Ct.*, 158 Cal. Rptr. 786, 790-91 (Dist. Ct. App. 1979) (court can stay proceedings if inconvenient forum); *Etter v. Etter*, 405 A.2d 760, 765 (Md. Ct. of Spec. App. 1979) (Delaware court properly relinquished jurisdiction because Maryland was a more appropriate forum). *See generally* Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 995-97 (1977).

43. U.C.C.J.A. § 8; *see, e.g.*, *Barcus v. Barcus*, 278 N.W.2d 646, 650 (Iowa 1979) (Iowa court had discretion to refuse honoring Illinois custody decree where petitioner wrongfully removed child from state); *In re Potter*, 377 N.E.2d 536, 538-39 (Ohio Juv. Ct. 1978) (petitioner had improperly retained custody of child after visit); *Williams v. Zacher*, 581 P.2d 91, 93-94 (Or. Ct. App. 1978) (father wrongfully took child from mother). The provision will prohibit a court from exercising modification jurisdiction where the petitioner, without the legal guardian's consent, has improperly taken or retained the child. *See* U.C.C.J.A. § 8, Commissioner's Note. An exception to the clean hands doctrine is made if it is in the child's best interest, such as in cases of child abuse or neglect. *See id.* § 8, Commissioners' Note. *But cf.* *Green v. Green*, 276 N.W.2d 472, 475 (Mich. Ct. App. 1978) (clean hands doctrine inapplicable although father removed child from state prior to custody decree because temporary custody awarded in sister state). *See generally* Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 VILL. L. REV. 458 (1977-78) (discussing the various approaches used by states regarding child abuse problem). For an excellent discussion of the application of the clean hands doctrine, *see* Frank, *The End of Legal Kidnapping In Pennsylvania: The Development of a Decided Public Policy*, 25 VILL. L. REV. 784, 799-809 (1980).

44. U.C.C.J.A. § 6; *see* *Palm v. Super. Ct.*, 158 Cal. Rptr. 786, 792 (Dist. Ct. App. 1979) (California court properly relinquished jurisdiction when informed that North Dakota as-

UCCJA, therefore, enables a state to decline jurisdiction to modify a decree when another forum is more appropriate, the petitioner has acted improperly, or where action is pending in another state.

Because the UCCJA is a uniform act, its effectiveness is limited to states adopting the Act. At the present time, five states, the District of Columbia, Puerto Rico, and the territories of the United States have failed to adopt the Act.⁴⁵ Without nationwide adoption, the few states that have not adopted the UCCJA remain virtual havens for the child-snatching parent.⁴⁶

Furthermore, the UCCJA fails to successfully eliminate all of the conditions that encourage the "seize and run" remedy of child-snatching.⁴⁷ The UCCJA does not provide a means of locating an abducting parent who disappears before or after custody has been adjudicated,⁴⁸ nor does it provide a penalty for the abductor.⁴⁹ Thus, unless the victim-parent is able to locate the abducting parent, or the abducting parent brazenly initiates modification proceedings, an abducting parent may remain insulated from the UCCJA's purview by remaining undiscovered.⁵⁰ Until Con-

sumed jurisdiction); *Etter v. Etter*, 405 A.2d 760, 762-63 (Md. Ct. Spec. App. 1979) (petitions filed in Maryland and Delaware, and Delaware stayed proceedings).

45. States were slow in adopting the UCCJA. During the first nine years after its enactment, the Act was adopted by only nine states. Since then, however, the Act has been adopted by all but the following: Massachusetts, Mississippi, South Carolina, Texas, West Virginia, and the District of Columbia.

46. See Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J. INT'L. L. 669, 682 (1980). But see TEX. FAM. CODE §§ 11.045, .052, .053, 14.10 (Vernon Supp. 1980-1981). Texas has enacted statutes which accomplish the major objectives of the UCCJA. See *id.* §§ 11.045, .052, .053, 14.10.

47. Because of its dependence on total enactment by all of the states, the UCCJA has failed to totally achieve its purpose, *i.e.* resolution of jurisdictional disputes between states regarding child custody decrees and parental child-snatching problems. See 6 WM. MITCHELL L. REV. 461, 471 (1980). A reciprocity clause such as Hawaii's, which enables a state to refuse application of the UCCJA to non-UCCJA states, will also defeat the Act's objective unless the Act is adopted by all of the states. See HAWAII REV. STAT. § 583-1(b) (1976).

48. See Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1000-01 (1977).

49. See Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J. INT'L. L. 669, 682 (1980). But cf. *Greenberg v. Greenberg*, 365 N.Y.S.2d 400, 402-04 (1975) (New York court adjudged non-custodial mother who fled with her child in contempt in absentia; court's judgment ordered mother's imprisonment); CAL. PENAL CODE § 278 (Deering Supp. 1981) (provides imprisonment and fine for both abduction or concealment of minor child and for violation of custody decree by rightful custodian); TEX. PENAL CODE ANN. art. 23.03 (Vernon Supp. 1980-1981) (interference with child custody decree is third degree felony punishable by imprisonment and fine).

50. See Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1000-01 (1977); Foster & Freed, *A Legislative Beginning to Child-*

gress or the Supreme Court mandates application of the full faith and credit clause, a truly effective solution to child-snatching will not exist.⁵¹

IV. TEXAS: A NON-UCCJA STATE

Without adopting the Act, Texas courts and legislatures have alleviated some of the jurisdictional conflicts that the UCCJA was designed to resolve. Section 11.045 of the Texas Family Code,⁵² which determines original jurisdiction in a suit affecting the parent-child relationship, is analogous to section 3 of the UCCJA.⁵³ Furthermore, section 11.052 of the Texas Family Code⁵⁴ addresses the issue of continuing original jurisdiction in child custody cases.⁵⁵ Section 11.052⁵⁶ provides that, unless there is a written agreement by all parties to continue a court's original jurisdiction, the court loses jurisdiction to modify the decree if the managing conservator and the child move to another state and establish and maintain a residence for six months or more.⁵⁷ The Texas Family Code also contains a provision governing the recognition of out-of-state decrees affecting a child, which resembles section 13 of the UCCJA.⁵⁸ Additionally, an individual's right to custody of a child may be challenged by a writ of habeas corpus.⁵⁹ Section 14.10 of the Texas Family Code directs courts to honor valid foreign custody decrees.⁶⁰ Further, unless the rendering court lacked jurisdiction, or the children have not been in the possession and control of the petitioner for at least six months prior to the filing of the

Snatching Prevention, 17 TRIAL 36, 37 (April 1981).

51. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

52. TEX. FAM. CODE ANN. § 11.045 (Vernon Supp. 1980-1981).

53. Compare *id.* § 11.045 (Vernon Supp. 1980-1981) (sets out guidelines for determining original jurisdiction for Texas courts) with U.C.C.J.A. § 3 (sets out procedures for determining original jurisdiction). Texas courts also employ section 11.051 of the Family Code in exercising child custody jurisdiction. See *Oubre v. Oubre*, 575 S.W.2d 363, 365-66 (Tex. Civ. App.—San Antonio 1978, no writ) (mother who had moved to Florida required to return to Texas to defend suit). *But cf.* *Thornlow v. Thornlow*, 576 S.W.2d 697, 699 (Tex. Civ. App.—Corpus Christi 1979, no writ) (Texas long-arm statute could not reach wife who was not a Texas resident), *cert. denied*, 100 S. Ct. 1596 (1980).

54. TEX. FAM. CODE ANN. § 11.052 (Vernon Supp. 1980-1981).

55. *Id.*

56. *Id.*

57. *Id.*

58. Compare *id.* § 11.053 (Vernon Supp. 1980-1981) (requires recognition of out-of-state decrees affecting a child by Texas courts) with U.C.C.J.A. § 13 ("recognition of out-of-state custody decrees").

59. See *Strobel v. Thurman*, 565 S.W.2d 238, 239 (Tex. 1978); TEX. FAM. CODE ANN. § 14.10 (Vernon Supp. 1980-1981).

60. See *Alston v. Rains*, 589 S.W.2d 481, 483 (Tex. Civ. App.—Texarkana 1979, no writ); TEX. FAM. CODE ANN. § 14.10 (Vernon Supp. 1980-1981).

petition, section 14.10 requires the court to disregard a cross action or a pending motion to modify the decree.⁶¹ When a writ of habeas corpus is filed, and the right to custody of the child is not governed by a court order, section 14.10(e) provides that the court will direct the return of the child to the petitioner only if the court determines that the petitioner has a superior right to the child as provided by section 12.04 of the Texas Family Code.⁶² Section 25.03 of the Texas Penal Code prohibits interference with child custody orders⁶³ and is broad enough to include persons other than kidnapping parents.⁶⁴ Under section 25.03, anyone who knowingly takes or retains a child outside of Texas in violation of a custody decree commits a third degree felony.⁶⁵ The objectives of other sections of the Act can be achieved by applying certain principles of law recognized by Texas courts.⁶⁶ The doctrine of *forum non conveniens* can be applied to achieve results similar to those obtained through the use of section 7 of the UCCJA.⁶⁷ In addition, the doctrine of clean hands can be applied to deny a petitioner's request to modify a custody decree.⁶⁸

61. *Cf. Beverly v. Beverly*, 567 S.W.2d 618, 620-21 (Tex. Civ. App.—Waco 1978, writ *dism'd*) (possession of children by divorced mother for eight days during Christmas insufficient to terminate father's possession under 14.10(b)).

62. *See Garza v. Schilling*, 576 S.W.2d 147, 150 (Tex. Civ. App.—Corpus Christi 1978, no writ); TEX. FAM. CODE ANN. §§ 12.04, 14.10(e) (Vernon Supp.1980-1981).

63. TEX. PENAL CODE ANN. § 25.03 (Vernon Supp. 1980-1981); *see Roberts v. State*, 619 S.W.2d 161, 163-64 (Tex. Crim. App. 1981).

64. Searcy & Patterson, *Practice Commentary*, TEX. PENAL CODE ANN. § 25.03 (Vernon 1974).

65. TEX. PENAL CODE ANN. § 25.03 (Vernon 1974). Return of the child to Texas within seven days of the commission of the offense, however, is a defense to prosecution. *Id.*

66. *Id. Compare* U.C.C.J.A. § 7 (court may decline jurisdiction under Act if other forum more appropriate) *with Johnson v. Spider Staging Corp.*, 555 P.2d 997, 999 (Wash. 1976) (under equitable doctrine of *forum non conveniens*, court has discretionary power to decline jurisdiction when convenience of parties and justice better served if tried in another forum) *with Franklin v. Franklin*, 283 S.W.2d 483, 486 (Mo. 1955) (under equitable doctrine of clean hands, court will not aid party seeking relief if party's prior conduct violated good conscience, good faith or other equitable principle).

67. *Compare Johnson v. Spider Staging Corp.*, 555 P.2d 997, 999 (Wash. 1976) (under doctrine of *forum non conveniens*, court has discretionary power to decline jurisdiction when convenience of parties and justice better served if tried in another forum) *with* U.C.C.J.A. § 7 (court may decline jurisdiction under Act if other forum is more appropriate).

68. *See, e.g., Zelios v. City of Dallas*, 568 S.W.2d 173, 175 (Tex. Civ. App.—Dallas 1978, writ *ref'd n.r.e.*) (doctrine cannot be invoked by party who committed intentional wrong); *Reed v. James*, 113 S.W.2d 580, 583 (Tex. Civ. App.—San Antonio, 1938 writ *dism'd*) (court would not aid party because of prior conduct); *Sanders v. Cauley*, 113 S.W. 560, 561-62 (Tex. Civ. App. 1908, no writ) (party could not receive aid from equity court under clean hands doctrine because of prior misconduct).

V. THE PARENTAL KIDNAPING PREVENTION ACT OF 1980: A POSSIBLE DETERRENT

While not a panacea for child-snatching, the Parental Kidnaping Prevention Act of 1980 (PKPA)⁶⁹ provides a starting point for amelioration of the child-snatching problem.⁷⁰ Discouraging interstate controversies, avoiding jurisdictional competition, and deterring interstate abductions are some of the objectives of the PKPA.⁷¹ The PKPA's definition of "state," however, appears to prohibit its international application.⁷²

The PKPA will definitely aid in reducing jurisdictional conflict among the states by establishing a uniform method for the recognition and enforcement of child custody decrees. The PKPA makes three significant contributions: a full faith and credit clause,⁷³ the use of the Federal Parent Locator Service,⁷⁴ and the application of the Federal Fugitive Felon Act to child-snatching cases.⁷⁵ Extension of the full faith and credit clause to child custody decrees will have a significant effect on case law by applying a single standard, in lieu of present jurisdictional variations.⁷⁶

The PKPA will serve as a strong deterrent to forum shopping by removing the child-snatcher's incentive to take the child to a more

69. Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611 §§ 6-10, 94 Stat. 3568 [hereinafter cited as P.K.P.A.] (codified in scattered sections of titles 18, 28, 42 U.S.C.A. (West Supp. 1981)).

70. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

71. P.K.P.A., *supra* note 69, at § 7(1)(c)(1)-(6) (not codified).

72. Compare U.C.C.J.A. § 23 (extends Act to international area) with P.K.P.A., *supra* note 69, at § 8 (codified in 28 U.S.C.A. § 1738A(a)(8) (Supp. 1980)) (definition of "State" limited to a "State of the U.S., the Dist. of Col., the commonwealth of Puerto Rico, or a territory or possession of U.S.").

73. P.K.P.A., *supra* note 69, at § 8 (codified in 28 U.S.C.A. § 1738A (Supp. 1980)).

74. P.K.P.A., *supra* note 69, at § 9 (codified in 42 U.S.C. § 654 (Supp. III 1979)). The parent locator service was established to assist in locating parents who default in child support payments. The service provides only limited information—most recent address and place of employment—to authorized persons. 42 U.S.C. § 653 (1976).

75. P.K.P.A., *supra* note 69, at § 10 (codified in 18 U.S.C.A. § 1073 (Supp. 1980)). The Fugitive Felon Act was enacted to punish a person who flees a state to avoid prosecution, or custody or confinement after conviction. The individual must have committed a felony offense and would be tried in the Federal District Court where the original offense was committed. The Act provides for a fine of \$5,000.00 or imprisonment for not more than five years, or both. See 18 U.S.C. § 1073 (1976); Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

76. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981). Compare *O'Shea v. Brennan*, 387 N.Y.S.2d 212, 215 (Sup. Ct. 1976) (full faith and credit does not apply to custody decrees) and *Ellis v. Nickerson*, 604 P.2d 518, 519 (Wash. Ct. App. 1979) (full faith and credit clause does not apply to child custody decrees) with P.K.P.A., *supra* note 69, at § 8(a) (codified in 28 U.S.C.A. § 1738A (Supp. 1980)) (custody determinations due full faith and credit if they comply with Act).

favorable forum to obtain custody.⁷⁷ Under the PKPA, courts will no longer be able to deny application of the full faith and credit clause to child custody decrees due to lack of finality in such decrees⁷⁸ or by assuming a change of circumstances.⁷⁹ Application of the full faith and credit clause to child custody decrees, coupled with strict limitations on the modification of decrees, will facilitate the establishment of a uniform system for recognizing and enforcing child custody decrees.⁸⁰ Further, under the PKPA, courts need not resort to such doctrines as clean hands, *res judicata*, or comity in order to give full faith and credit application to a sister state's custody decree, but rather will be able to enforce a sister state's custody decree by applying section 8 of the PKPA.⁸¹

Should the abducting parent choose to remain underground, the PKPA enables use of the Federal Parent Locator Service.⁸² Previously, a parent-victim was forced to employ a private detective to locate his abducted child.⁸³ This remedy was not available to many victim-parents due to the expense involved.⁸⁴ The Federal Parent Locator Service provides a substantial financial savings to the parent-victim.⁸⁵ States, however, are not

77. See P.K.P.A., *supra* note 69, at § 7(c)(4) (not codified); *id.* at § 8(a) (codified in 28 U.S.C.A. § 1738A (Supp. 1980)). See generally 6 WM. MITCHELL L. REV. 461, 472 (1980).

78. Compare *Halvey v. Halvey*, 330 U.S. 610, 614 (1947) (custody decrees not final, therefore, not due full faith and credit) with P.K.P.A., *supra* note 69, at § 8(a) (codified in 28 U.S.C.A. 1738A (Supp. 1980)) (custody determinations due full faith and credit if they comply with Act).

79. Compare *Kovacs v. Brewer*, 356 U.S. 604, 608 (1958) (custody decree may be modified because of changed circumstances) with P.K.P.A., *supra* note 69, at § 8 (codified in 28 U.S.C.A. § 1738A(d) (Supp. 1980)) (court's jurisdiction continues and cannot be modified by other jurisdictions as long as state remains the residence of child or any contestant).

80. See P.K.P.A., *supra* note 69, at § 8(a) (codified in 28 U.S.C.A. § 1738A (Supp. 1980)). Unlike the UCCJA, the PKPA mandates strict application of full faith and credit to custody decrees and only permits modification when rendering court no longer has jurisdiction or declines to assume jurisdiction.

81. Compare *McMillin v. McMillin*, 158 P.2d 444, 445-56 (Colo. 1945) (Colorado recognized Michigan custody decree under doctrine of *res judicata*) and *Abreu v. Abreu*, 261 N.Y.S.2d 687, 690-91 (1965) (New York court recognized Alabama custody decree as matter of comity) and *Forsythe v. Forsythe*, 546 P.2d 117, 120 (Wash. Ct. App. 1976) (Washington court recognized California decree based on doctrine of clean hands) with P.K.P.A. § 8 (codified in 28 U.S.C.A. § 1738A (Supp. 1980)) (requires that full faith and credit be accorded child custody decrees of sister states if they comply with Act).

82. See P.K.P.A., *supra* note, 69 at § 9 (codified in 42 U.S.C. § 654 (Supp. III 1979)). The PKPA, therefore, surpasses the UCCJA which is completely ineffective in this type of situation. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

83. See Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 1001 (1977).

84. *Id.* at 1001.

85. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17

required to contract for the Federal Parent Locator Service.⁸⁶ Thus, abduction of a child prior to the issuance of a court order in a state which has not contracted with the Federal Parent Locator Service may enable the abductor to remain safely underground.⁸⁷ Moreover, full utilization of the Federal Parent Locator Service will, in all probability, be delayed due to administrative and procedural implementation problems.

The PKPA expressly declares the Federal Fugitive Felon Act is applicable to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable state felony statutes.⁸⁸ Such application makes an abducting parent guilty of a federal offense, thereby permitting the states to obtain assistance from the Federal Bureau of Investigation (FBI).⁸⁹ Classification of parental kidnapping as a federal offense, coupled with FBI intervention, should function as a deterrent to parental kidnapping.⁹⁰ The PKPA, therefore, provides punishment and a means of enforcement, both of which were lacking in the UCCJA.⁹¹ Two obstacles, however, will militate against implementation of section 10 of the PKPA. The first obstacle is the traditional "hands-off" policy shared by police, prosecutors and the FBI.⁹² This attitude is predi-

TRIAL 36, 37 (April 1981).

86. P.K.P.A., *supra* note 69, at § 9 (codified in 42 U.S.C. § 654 (Supp. III 1979)). The Federal Parent Locator's dependence on contracting may subject the Federal Parent Locator Service to the same limitation that confronted the UCCJA, which is its dependence on adoption by the states. Compare U.C.C.J.A., Commissioners' Prefatory Note (effectiveness dependent on state adoption) and 6 WM. MITCHELL L. REV., 461, 467 (1980) (UCCJA has failed to provide comprehensive solution because effectiveness depends on adoption by all states) with P.K.P.A., *supra* note 69, at § 9 (codified in 42 U.S.C. § 654 (Supp. 1980)) (agreement with state has to be signed before state can use locator service).

87. See 42 U.S.C. § 653(a) (1976); P.K.P.A., *supra* note 69, at § 9 (codified in 42 U.S.C. § 654 (Supp. III 1979)).

88. 18 U.S.C. § 1073 (1976). See P.K.P.A., *supra* at note 69, at § 10 (codified in 18 U.S.C.A. § 1073 (Supp. 1980)). The PKPA, therefore, reverses several administrative rulings by the attorney general denying such application of the Federal Fugitive Felon Act. Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

89. See P.K.P.A., *supra* at note 69, at § 10(a) (codified in 18 U.S.C.A. § 1073 (Supp. 1980)).

90. See *id.*

91. Compare P.K.P.A., *supra* note 69, at § 10 (codified in 18 U.S.C.A. § 1073 (Supp. 1980)) (child-snatching a federal offense) and *id.* § 8 (codified in 28 U.S.C.A. § 1738A (Supp. 1980)) (full faith and credit given foreign custody decree) and *id.* § 9 (codified in 42 U.S.C. § 654 (Supp. III 1979)) (parent locator service) with U.C.C.J.A., Commissioners' Prefatory Note (UCCJA requires adoption by states to be effective) and 6 WM. MITCHELL L. REV. 461, 471 (1980) (UCCJA depends on total enactment by the states for effectiveness).

92. See Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011, 1016 (1977); Note, *Law and Treaty Responses to International Child Abductions*, 20 VA. J. INT'L. L. 669, 685-86 (1980).

cated on the supposition that child-snatching is basically a family dispute.⁹³ The second obstacle to the effective implementation of section 10 of the PKPA is the requirement that child-snatching be classified as a felony, and that a warrant must be issued by the state authorities before the Fugitive Felon Act can be applied.⁹⁴ Under most modern statutes kidnapping is considered a felony.⁹⁵ These statutes either exclude child abductions or classify them separately under child-stealing statutes, varying only in their form and scope.⁹⁶ Thus, in order to derive the maximum benefit from section 10 of the PKPA and enable the Federal Fugitive Felon Act to apply, states must elevate parental child-stealing to felony status.⁹⁷

The primary limitation of the PKPA is its ineffectiveness in those instances where the child is abducted prior to a court order. An abduction occurring prior to the issuance of a court order or formation of an agreement is outside the purview of the PKPA.⁹⁸ The PKPA, therefore, is inoperative in the most prevalent situation—where a parent, anticipating failure to obtain custody or refusing to resort to the courts, abducts the child before a court order has been issued.⁹⁹

Previous attempts to extend the FBI's responsibility to include searching for parental child-snatchers have met with resistance. See N.Y. TIMES, Nov. 15, 1979, § C, at 14 col. 5.

93. 4 FAM. L. REP. 2548, 2550 (BNA 1978).

94. See 18 U.S.C. § 1073 (1976); Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981).

95. E.g. CONN. GEN. STAT. ANN. § 53a-92, 94 (West 1958) (kidnapping second or first degree felony); MINN. STAT. ANN. § 609.25(2) (West Supp. 1981) (kidnapping felony status); TEX. PENAL CODE ANN. § 20.03(c) (Vernon 1974) (kidnapping is third degree felony). If the kidnapper is a relative, it is an affirmative defense to prosecution. TEX. PENAL CODE ANN. § 20.03(b)(2) (Vernon 1974); see R. PERKINS, CRIMINAL LAW 180 (2d ed. 1969).

96. See R. PERKINS, CRIMINAL LAW 181-82 (2d ed. 1969); Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981); Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. J. 1011, 1015 (1977). Even the draftsman of the Model Penal Code excluded ordinary child-snatching from its kidnapping and abduction provisions, inasmuch as the Code refers to kidnapping or taking a child without the permission of the parent, guardian, or other lawful custodian. See MODEL PENAL CODE §§ 212.1, .4 (1962) (kidnapping and interference with custody); cf. TEX. PENAL CODE ANN. art 25.03 (Vernon 1977) (interference with child custody decree classified as third degree felony).

97. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 38 (April 1981). Such modifications would also assist in extradition cases. *Id.* at 38.

98. Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL, 36, 37 (April 1981). The enforcement aspect of the PKPA is only applicable if a court order has been issued. See P.K.P.A., *supra* note 69, at §§ 8(a), 10(a) (codified in 18 U.S.C.A. § 1073 (Supp. 1980)).

99. See Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 38 (April 1981).

The PKPA, however, does not preclude one from obtaining an enforceable order subsequent to the abduction, if the Act's "home state" requirement is met.¹⁰⁰ Two commentators have suggested that this limitation could be eliminated by enacting laws making "wrongful taking or withholding" a felony.¹⁰¹ These commentators, however, believe that severe criminal sanctions would not be necessary since felony status serves as an aid to extradition and initiation of FBI intervention rather than as a form of retribution.¹⁰²

VI. CONCLUSION

Although it appears that we are finally emerging "out of a no-man's land of law," our judicial system is still a long way from absolute resolution of the problem of parental child-snatching. It has become manifestly clear that any real solution to the child-snatching problem lies in federal legislation. The PKPA will provide a far more effective solution than can be achieved by individual states, or through the collective efforts of a uniform act such as the UCCJA. The most important contribution of the PKPA is application of full faith and credit to child custody decrees. Such application of the full faith and credit clause provides a sound and uniform foundation for the recognition and enforcement of child custody decrees. Congressional enactment of the Parental Kidnapping Prevention Act of 1980, though only a beginning, brings us one step closer to a comprehensive solution.

100. Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 37 (April 1981); see P.K.P.A., *supra* note 68, at § 8(a) (codified in 28 U.S.C.A. § 1738A (Supp. 1980)) (P.K.P.A. requires that custody decrees of other states be accorded full faith and credit if consistent with the Act).

101. Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 38 (April 1981). See generally P.K.P.A., *supra* note 69, at § 8(a) (codified in 28 U.S.C.A. § 1738A (Supp. 1980)).

102. Foster & Freed, *A Legislative Beginning to Child-Snatching Prevention*, 17 TRIAL 36, 38 (April 1981).