The Search for a Solution to Child Snatching

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Regarding child kidnaping, the devastating effects of our current policies are clear. We have just not developed sufficient legal sanctions to prevent a parent from seizing, restraining, or concealing a child from a parent who has legal custody. Very abruptly, a child can be forced to live in a different place, with a different person, and because the absconding parent does not want to be caught, is often forced to move from place to place with no sense of permanence. Many times a kidnapping parent tries to win affection and cooperation by making a child believe the other parent does not want custody. It is obvious that we are allowing the disruption of innocent children's lives, with the result too often being long-term physical and/or psychological damage.1

Each year thousands of children disappear from their homes and families. Some children run away, others are kidnapped, many simply vanish without a trace.2 A large percentage of these missing children, however, can be classified in a unique category—they are victims of child snatching—they have been abducted from the parent entitled to legal custody by the parent not entitled to legal custody.3 Child snatching is becoming an epidemic problem among divorced and separated couples; recent studies estimate that anywhere from 25,0004 to 100,0005 children per year are victims of child snatching. In response to this growing problem, forty-eight states have adopted the Uniform Child Custody Jurisdiction Act (UCCJA)6 and the fed-

6. The following is a list of the state codifications of the UCCJA: ALA. CODE §§ 30-3-20
eral government has enacted the Parental Kidnapping Prevention Act of 1980 (PKPA). This note analyzes some of the legal issues inherent in child snatching. First, it examines the view that child snatching is a judicially created problem. The legal system in the United States has encouraged parents to snatch their own children by not according full faith and credit or res judicata status to child custody decrees.

7. See infra text accompanying notes 22-49.
8. See infra text accompanying notes 22-49.
9. [T]he doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, is con-
and by not developing a set of uniform rules by which a court can determine whether it can exercise jurisdiction in child custody matters.\textsuperscript{11} Second, this note examines the development, application, and effectiveness of both the UCCJA\textsuperscript{12} and the PKPA\textsuperscript{13} as statutory schemes aimed at resolving some of the problems created by the judiciary. Both the UCCJA and the PKPA address the type of recognition and enforcement one state must accord to the custody decrees of other states. The PKPA extends full faith and credit to custody decrees that are issued in accordance with the requirements provided in the statute.\textsuperscript{14} The UCCJA assures recognition and enforcement of custody decrees through the principle of comity.\textsuperscript{15} Both statutes create a uniform system for the exercise of a court's jurisdiction in child custody matters.\textsuperscript{16} Unless the court can meet the jurisdictional prerequisites promulgated by each statute, the court will not be able to exercise jurisdiction to issue a custody decree. Finally, this note focuses on several common law tort actions that are available to the custodial parent as an alternative means to redress the injuries incurred in child snatching.\textsuperscript{17}

\section{I. Child Snatching: A Judicially Created Problem}

The judicial system in the United States has itself encouraged noncustodial parents to resort to child snatching.\textsuperscript{18} Three factors have contributed to the escalation in the rate of child snatching. First, the Supreme Court has not extended the principle of full faith and credit to child custody decrees.\textsuperscript{19} Second, a child custody decree is not considered res judicata, but rather, is subject to modification under certain circumstances.\textsuperscript{20} Third, a uniform system for the exercise of a court's jurisdiction in child custody matters is not developed.
exercise of a court’s jurisdiction in child custody matters was lacking among the state courts that decided custody disputes. 21

A. Full Faith and Credit

The Constitution provides: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” 22 Congress, in turn, has enacted legislation that not only provides for the authentication of these acts, records, and judicial proceedings, but also declares that they “shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.” 23

The question of whether full faith and credit should be extended by a state court to custody decrees issued in other states has been presented to the Supreme Court on five separate occasions; on none of those occasions did the Supreme Court extend full faith and credit to custody decrees. In three separate instances, 24 the Court invoked the principle that custody decrees are not res judicata. 25 In New York ex rel. Halvey v. Halvey, 26 and Ford v. Ford, 27 the Court held that a state is neither required to extend full faith and credit to a custody decree nor bound to enforce it if the decree would not be considered res judicata. 28 In Kovacs v. Brewer, 29 of res judicata, the statute apparently does not alter the existing interpretation of this principle. See UCCJA § 12. 30

21. See infra text accompanying notes 54-61. The UCCJA and the PKPA have remedied this situation by proposing strict standards by which a court can exercise jurisdiction to decide a custody matter. 28 U.S.C. § 1738A(c) (Supp. IV 1980); UCCJA § 3. Historically, federal courts do not have jurisdiction to hear and decide domestic relations matters. See Lloyd v. Loefler, 694 F.2d 489, 491-92 (7th Cir. 1982).


26. See infra text accompanying notes 49-53.


the Court decided that a state court could modify a custody decree issued in a sister state if the issuing state would not consider the decree res judicata.1 Under the common law, a custody decree may be modified if the court decides that, because of changed circumstances,2 the child's best interests3 warrant such a modification. The Court in Kovacs reasoned that if the issuing forum could modify a custody decree, the court of another state would also be able to modify the decree if it too found that circumstances had changed since the decree had been originally issued.4 The Court decided that as a general principle, the full faith and credit clause of the Constitution requires only that a state extend the same effect and enforcement to another state's custody decree that it would receive in the issuing forum.5 If a custody decree is not res judicata in the issuing forum, another state "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."6

In May v. Anderson,7 the Court held that an ex parte divorce and custody decree awarding custody of the children to the resident parent, issued without personal jurisdiction over the nonresident parent, was not entitled to full faith and credit.8 Analogizing the situation in May to divisible divorce,9 the Court reasoned that a parent's right to custody was a "personal right" that could not be terminated by a court unless that court had first obtained personal jurisdiction over the parent.10 Although full faith and credit can be awarded to a divorce decree issued without personal jurisdiction over the nonresident spouse, a child custody decree that deprived a parent of custody

31. 356 U.S. at 607-08.
32. See infra text accompanying notes 51-53.
33. See infra note 51.
34. 356 U.S. at 608.
35. Halvey, 330 U.S. at 614.
36. Id. at 615.
38. 345 U.S. at 534-35. In the divorce proceeding in Wisconsin, the mother was served with process pursuant to a Wisconsin long arm statute. This statute specifically applied to divorces but was silent as to its applicability in custody proceedings. Id. at 531 n.3.
39. See Estin v. Estin, 334 U.S. 541 (1948). Under the concept of divisible divorce, an ex parte divorce decree, issued without personal jurisdiction over the nonresident spouse, would be entitled to full faith and credit only to the extent that it dissolved the marriage but would not be recognized or enforced insofar as it terminated the absent spouse's right to financial support. Id. at 549.
40. May, 345 U.S. at 534.
and that was issued without personal jurisdiction over the parent is not entitled to full faith and credit.41

The Supreme Court, in Webb v. Webb,42 avoided the question of whether full faith and credit should be extended to custody decrees by dismissing a writ of certiorari after deciding that the Court lacked jurisdiction to hear the appeal.43 The Court lacked jurisdiction to decide the full faith and credit issue because the petitioner failed to raise a federal question in the state court below, and, therefore, had not preserved grounds for an appeal to the Supreme Court.44 Although noting that the term "full faith and credit" was mentioned several times in the proceedings, the Court found that the state court did not decide the case by interpreting the full faith and credit clause of the federal Constitution, but rather, decided the custody dispute by interpreting the UCCJA—a state law.45

This failure of the Supreme Court to extend full faith and credit to child custody decrees led to instability in custody determinations. State courts, not bound by the full faith and credit clause, were free to modify the custody decrees of other states almost at will.46 State courts often issued conflicting decrees—one state awarding custody of the child to the father and another state awarding custody to the mother. Neither parents nor courts could determine which decree to follow.47 The courts appear to have encouraged child snatching by not recognizing and enforcing the decrees of other states and by providing a forum for the relitigation of other states’ custody decrees. In effect, Justice Rutledge’s concurring opinion in New York ex rel. Halvey v. Halvey,48 became a self-fulfilling prophecy:

The result seems unfortunate in that, apparently, it may make

41. Id. at 533-34. See Estin v. Estin, 334 U.S. 541 (1948). For a further discussion of personal jurisdiction and custody decrees, see infra text accompanying notes 136-91.
43. 451 U.S. at 501-02.
44. Id. at 495. Webb involved conflicting custody decrees. Florida awarded custody of the child to the mother, Georgia awarded custody to the father. See Webb v. Webb, 245 Ga. 650, 266 S.E.2d 463 (1980).
45. 451 U.S. at 496-98. Additionally, the Court did not find any mention of a federal question or “full faith and credit” in either the majority or the dissenting opinion written by the Georgia Supreme Court. Id. at 495. See 245 Ga. 650, 266 S.E.2d 463 (1980).
possible a continuing round of litigation over custody, perhaps also of abduction, between alienated parents. That consequence hardly can be thought conducive to the child's welfare. And, if possible, I would avoid such a distressing result, since I think that the controlling consideration should be the best interests of the child, not only for disposing of such cases as a matter of local policy, . . . but also for formulating federal policies of full faith and credit as well as of jurisdiction and due process in relation to such dispositions.49

B. Res Judicata

Closely related to the full faith and credit issue is the question of whether a custody decree is considered res judicata. Custody decrees are usually not considered final decrees and can be freely modified by the issuing state.50 The issuing forum may modify a custody decree upon a showing that, because of a change in circumstances, the child's best interests51 require a modification in custody; changes in circumstances arising after the issuance of the decree or factors existing at the time of the custody determination that had not been brought to the court's attention, might be sufficient to warrant a modification of the custody decree.52 If a custody decree is subject to modification in the issuing forum, the courts of a sister state, not bound by the full faith and credit clause, would be free to modify that custody decree if it too found that changed circumstances warranted a different custody arrangement.53

C. Lack of Standards

Child snatching has also been encouraged by the lack of uniform jurisdictional standards among the various state courts.54 Historically, there were three basic standards by which courts exercised

49. Id. at 619-20 (Rutledge, J., concurring).
51. Courts determine custody in accordance with the best interests of the child. In making this determination, courts examine various factors that include, but are not limited to: The wishes of the child; the interrelationship of the child and his parents or parent; the wishes of the parents as to custody; the child's relationship with siblings and other persons who might have an effect on the child; the child's adjustment to his home, his school, and the community in which he resides; and the physical and mental health of all individuals involved in the custody matter. Uniform Marriage and Divorce Act § 402, 9A U.L.A. 197-98 (1979).
52. H. Clark, supra note 50, § 17.7, at 600.
jurisdiction in custody disputes: the domicile of the child, personal jurisdiction over the contestants for custody, and the physical presence of the child within the state.

In those states in which the mere physical presence of the child was enough to confer jurisdiction on the court to issue a custody decree, the person having physical possession of the child had a tremendous tactical advantage for litigation. Thus, the present physical custodian of the child was almost always assured of gaining a favorable custody determination. A parent who had been denied the custody of the child at an earlier proceeding might resort to child snatching in order to obtain physical custody of the child. Once the parent had physical possession of the child, that parent could then go into a jurisdiction where mere physical presence of the child was enough to confer jurisdiction on the court and petition that court for a change in custody. Since custody decrees could be freely modified upon a showing of changed circumstances, usually all the parent need do was demonstrate to the court that because of changed circumstances, the child's best interests required a modification of custody. Regardless of how minute the contact among the child, the parent, and the forum, if the court felt that the child's best interests required the state to exercise jurisdiction to change the existing custody arrangement and that the court could issue a custody decree that would be effective, that court would exercise jurisdiction and modify the prior decree.

It appeared that the law of custody determinations had become a rule of "seize-and-run." Thus, the legal system itself added impetus to child snatching. Because a custody decree is not considered res judicata, the Supreme Court held that these decrees were not entitled to full faith and credit. Since the courts in one state were not bound by the Constitution to enforce the custody decrees of other states, they were free to modify any custody decree at will. Since no uniform guidelines existed for a court to

55. H. CLARK, supra note 50, § 11.5, at 321. "The traditional definition of domicile is that it refers to a person's 'true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.'" Id. § 4.1, at 144. A child's domicile is the same as his parents, or after a divorce, the same as the parent who has been awarded custody by the court. S. KATZ, supra note 18, at 13.
57. Id.
58. Commissioners' Prefatory Note, supra note 46, at 113.
59. See supra text accompanying notes 49-53.
62. See cases cited supra note 24 and text accompanying notes 25-36.
exercise jurisdiction in a custody dispute, courts were free to conduct a custody hearing despite the presence of only minimal contacts with the child and the litigants. This led to an increase in the rate of child abductions by the noncustodial parent and a concomitant increase in the number of relitigations of custody decrees in different forums.  

II. THE UNIFORM CHILD CUSTODY JURISDICTION ACT

In response to the multiple litigations of custody decrees in different states and their often inconsistent results, and in an effort to curb the growing rate of child abductions by the noncustodial parent, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968. The general purposes of the UCCJA are: to avoid jurisdictional conflicts between state courts in matters relating to custody decisions; to promote cooperation between state courts so that a custody decree will be issued by the state most competent to decide the child's best interests; to deter the abduction of children in order to obtain a more favorable custody award; to avoid the relitigation of a custody decree in a second forum; and to facilitate the enforcement and recognition of custody decrees in other states. The UCCJA attempts to remedy the "defects" in custody determinations caused by the judicial system, particularly, the failure of the Supreme Court to extend full faith and credit to custody decrees and the absence of a uniform system of jurisdiction for those courts that render custody determinations.

To accomplish these goals and to simplify interstate custody disputes, the UCCJA establishes a uniform method by which the courts in a state that has adopted the Act can exercise jurisdiction to issue a custody decree. The UCCJA also provides that an out-of-state custody decree will be recognized and enforced in a second state, provided that the decree originally was issued in accordance with the jurisdictional prerequisites of the UCCJA. The Act awards a pref-
rence to the continuing jurisdiction of the decree-issuing forum, as long as that state meets the conditions for continuing jurisdiction provided in the Act. Finally, the UCCJA denies a forum to a petitioner for either an initial decree or the modification of an existing decree if the petitioner has abducted the child in order to litigate the custody issue in a different forum.

A. Jurisdictional Requirements of the UCCJA

Under the UCCJA, a court that is competent under state law to decide child custody matters would have jurisdiction to issue a custody decree if any one of the following four tests is met: (1) the "home state" test—where the state is the child's home state either at the time the proceeding is commenced or within six months prior to the start of the custody proceeding, and the child is not present in the forum because of his abduction or retention by someone claiming custody, and one parent still remains in the state, or (2) the "significant connection and substantial evidence" test—where the child and at least one parent have a significant connection with the forum and substantial evidence about the child's care and training is present in the forum, or (3) the "parens patriae" test—where the state must assume emergency jurisdiction because the child is either physically abandoned in the state or had been exposed to or threatened with abuse, neglect, or mistreatment, or (4) the "necessity" test—where there is no other state that would be able to satisfy the enumerated jurisdictional requirements of the UCCJA, or another state that could have exercised jurisdiction consistent with the Act has declined to do so because the forum state is a more appropriate place to decide the custody issue and the child's best interests re-

69. Id. § 14.
70. Id. § 8.
71. Home state is defined in the UCCJA as:
[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 or other period.

Id. § 2(5).
72. Id. § 3(a)(1).
73. Id. § 3(a)(2).
74. Id. § 3(a)(3). For the exercise of emergency jurisdiction in a case of child snatching, see Vorpal v. Lee, 99 Wis. 2d 7, 298 N.W.2d 222 (1980)(The court properly exercised emergency jurisdiction even though the children were physically present before the court as a result of their abduction by their mother who took the children from the father's custody because he had abused and mistreated them.)
quire that the forum exercise jurisdiction. Although four separate bases for the exercise of a court’s jurisdiction are provided, jurisdiction that is based on either the home state test or the significant connection and substantial evidence test is preferable. Under the UCCJA, the mere physical presence of the child in the forum, except in the exercise of emergency jurisdiction or the absence of another forum, is insufficient, by itself, to confer jurisdiction on the court. Conversely, the child’s physical presence, while desirable, is not a prerequisite.

In order to achieve its goals of stability in child custody arrangements, to avoid both forum shopping and jurisdictional competition among the various states, and to deter child snatching, the UCCJA sets forth strict standards by which an existing custody decree can be modified in a different state. The UCCJA provides that:

If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

Thus, the UCCJA grants almost exclusive continuing jurisdiction to the state that first issued the custody decree, provided that that court can exercise jurisdiction under the standards provided by the UCCJA. All petitions for the modification of a custody decree must be addressed to the decree-issuing state as long as that state maintains sufficient contact with at least one of the litigants. It is only when all of the involved parties no longer reside in the decree-issuing forum that jurisdiction to modify a custody decree would shift to another state that could meet the jurisdictional requirements of the UCCJA.

Under the jurisdictional requirements of the UCCJA, a court may exercise jurisdiction in a custody matter after the child has re-
sided in the state for at least six months prior to the commencement of the proceeding. Under these circumstances, it would appear that a parent, who snatches his own child and then resides with the child in a state for at least six months, could petition the court, after the expiration of that six month period, for the modification of an existing custody decree. The parent could then claim that the forum has jurisdiction not only as the child's home state but also as a state with significant connections to the child and parent. The parent might also claim that the contacts between the child and the decree-issuing state have so weakened that the original state no longer can exercise jurisdiction over the custody matter consistent with the UCCJA's requirements.

The Supreme Court of Oregon in *In re Custody of Ross,* rejected such an argument. *Ross* involved a proceeding by the mother to enforce a Montana custody decree in Oregon after the child had been snatched and concealed in Oregon by the father for approximately twenty months. The Oregon trial court denied enforcement of the Montana decree, ordered a new custody hearing, and awarded the father custody of the child. The trial court found that two bases existed for its exercise of jurisdiction. First, Oregon was now the child's home state because the child resided in the state for more than six months. Second, the child had a significant connection with the state and substantial evidence concerning the child's care and training existed there. Although the Oregon Court of Appeals affirmed the trial court's findings, the Oregon Supreme Court reversed the decision and enforced the Montana decree.

In deciding whether Montana had continuing jurisdiction over its decree, the Oregon Supreme Court applied the significant connection and substantial evidence test of jurisdiction. The court had no

84. *Id.* § 3(a)(1).
86. The father took the child from Montana prior to the couple's divorce. The mother subsequently obtained a divorce in Montana and a decree awarding her custody of the child.
291 Or. at 265-66, 630 P.2d at 354-55.
87. *Id.* at 266, 630 P.2d at 355.
88. *Id.* at 273 n.13, 630 P.2d at 359 n.13 (text of the trial court's oral opinion).
89. *In re Custody of Ross,* 47 Or. App. 631, 614 P.2d 1225 (1980) (Montana could no longer exercise jurisdiction because it had no significant connections with the child nor was it the child's home state).
90. 291 Or. at 281, 630 P.2d at 364.
91. See supra text accompanying note 73. The Oregon Supreme Court acknowledged the fact that after the passage of six months, the forum state could become the child's home state. 291 Or. at 270-71, 630 P.2d at 358.
difficulty in concluding that substantial evidence concerning the child still existed in Montana and that the mother still maintained a significant connection with that state. The court only had to determine whether, after an absence of twenty months, the child retained the type of significant connection with Montana that would satisfy the UCCJA's requirements for a state's exercise of continuing jurisdiction. The court concluded that the child still had a significant connection with Montana even if the connection was based primarily on the mother's residence there since "the relationship between mother and child is itself a significant [connection]." The court noted that implementation of the UCCJA's deterrence policy could not be effective if the decree-issuing state's jurisdiction was allowed to expire after the passage of a mere six months.

By recognizing that the mere passage of time neither automatically confers jurisdiction on the forum state nor breaks the connection between the child and the decree-issuing forum, courts may provide a deterrent to child snatching. A parent who takes the child in violation of an existing custody decree and resides in a different state for six months in the hopes that custody can be relitigated may find the court unwilling to exercise jurisdiction. The snatching parent's only recourse would be to return to the decree-issuing state and to attempt to relitigate the custody issue there. A parent with knowledge of these potential difficulties may turn first to the issuing forum. As long as one parent remains a resident of the decree-issuing state, the courts in another state can find that the child retains a

92. 291 Or. at 275, 630 P.2d at 360. To reach this conclusion, the court noted that since the child was born in Montana and resided there until her abduction, there was a significant amount of evidence in that state regarding the child's care. In addition, the child's mother and sibling still resided in Montana.

93. Id. at 276, 630 P.2d at 361. The court, however, did delineate additional factors that supported its conclusion of a significant connection. See supra note 92.

94. 291 Or. at 276, 630 P.2d at 361. However, the court also recognized that with each day following an abduction, the connection with the decree-issuing state grows weaker. Ultimately, it is possible for the decree-issuing state to lose jurisdiction to modify or enforce its own custody decree in a child snatching situation. See id., 630 P.2d at 361. The court explicitly limited its decision to the facts of the case, i.e., a 21 month abduction and concealment will not divest the decree state of jurisdiction. Id. at 279, 630 P.2d at 363.


significant connection with that state.\textsuperscript{97} This would enable the original-decree state to exercise continuing jurisdiction over the custody matter;\textsuperscript{98} a court in a second forum will have no choice but to decline jurisdiction. This may add to the UCCJA's deterrence of child snatching since the abducting parent will have no place to relitigate the matter except in the original decree-issuing state.

B. "Clean Hands" and the UCCJA

The UCCJA codified the equitable doctrine of "clean hands"\textsuperscript{99} in order to further its policies of deterring child snatching.\textsuperscript{100} When a petitioner for an initial custody decree has wrongfully\textsuperscript{101} removed the child from one state, a court may decline to exercise jurisdiction. In those situations where a custody decree has not been rendered in any state and a parent removes the child from one state and attempts to litigate custody as an initial matter in a different state, that court, even though able to exercise jurisdiction under the UCCJA's requirements,\textsuperscript{102} has the discretion to refuse to hear the custody petition, as long as the child's best interests would not be jeopardized by the court's refusal of jurisdiction.\textsuperscript{103} However, the

\textsuperscript{97} See Ross, 291 Or. at 276, 630 P.2d at 361; UCCJA § 14 Commissioners' Note, 9 U.L.A. 154 (1979). Cf. UCCJA §§ 3(a)-(b), 14 (Discussing respectively: (i) the home state and the significant connection and substantial evidence tests of jurisdiction; and (ii) modification jurisdiction).

\textsuperscript{98} See UCCJA § 14 Commissioners' Note, 9 U.L.A. 154 (1979); Bodenheimer, supra note 66, at 214-15.

\textsuperscript{99} Under this doctrine "'He who comes into equity must come with clean hands.'" D. Dobbs, \textit{Handbook on the Law of Remedies} § 2.4, at 45 (1973). A person coming to an equity court seeking relief for some claim will be denied a remedy if that person has unclean hands. "It is only when the plaintiff's improper conduct is the source, . . . of his equitable claim, that he is to be barred because of this conduct." \textit{Id.} at 46.

\textsuperscript{100} UCCJA § 8.

\textsuperscript{101} Under the clean hands provision of the UCCJA, "wrongful" does not mean that a custody "right" has been violated. If there has been no custody determination rendered by a court, both parents have a right to custody of the child. The taking of a child by one parent prior to the issuance of a custody decree, therefore, violates no legal "right". However, the taking of the child is "wrongful" in the sense that "one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction." UCCJA § 8 Commissioners' Note, 9 U.L.A. 142-43 (1979).

\textsuperscript{102} See supra text accompanying notes 71-75.

\textsuperscript{103} See Stevens v. Stevens, 177 N.J. Super. 167, 425 A.2d 1081 (App. Div. 1981) (The mother removed the child from Arizona in September, 1979, and brought him to New Jersey prior to any divorce or custody hearing in Arizona. On the same day, the father obtained an injunction prohibiting the removal of the child from Arizona. Arizona awarded him custody of the child in 1980. New Jersey dismissed the mother's petition for a custody hearing because, by violating the Arizona injunction, the mother engaged in the type of reprehensible conduct the UCCJA is attempting to curtail.)
UCCJA also provides for mandatory denial of jurisdiction if a custody decree has been violated:

Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.104

The application of the clean hands doctrine provides additional deterrence to child snatching. If courts refuse to allow a snatching parent to relitigate custody in their forum, a parent would have to go to the state that originally issued the custody decree. If the noncustodial parent knows that his only hope for obtaining custody of the child lies in a modification proceeding in the original forum, he may first resort to the proper legal channels, i.e., a petition for modification of custody based on changed circumstances presented to the decree-issuing forum, before resorting to child snatching.

C. The Child's Best Interests and The Court's Discretion

Under the UCCJA, a court is given discretion to base its jurisdictional decision on an assessment of the child's best interests.105 The court will have to determine whether the child will be harmed more by the denial of jurisdiction than by the actual abduction by the parent.106 The court's dilemma is intensified when the child has been with the abducting parent for an extended period of time. The courts in New York,107 New Jersey,108 and California109 have all

104. UCCJA § 8(b) (emphasis added). See, e.g., Etzion v. Evans, 247 Ga. 390, 276 S.E.2d 577 (1981); litigated in New York sub nom. Evans v. Evans, 112 Misc. 2d 337, 447 N.Y.S.2d 200 (Sup. Ct. 1982) (Courts in Georgia and Israel denied the father a forum to relitigate custody because he had snatched the child twice).
105. See UCCJA §§ 3(a)(2), 7(c), 8(b).
106. UCCJA § 8 Commissioners' Note, 9 U.L.A. 143 (1979). It must be noted that the psychological effects of child snatching on the abducted child can be significant. Divorce in general and child snatching in particular can rob the child of the foundation of trust and security that is so important in the early years. See generally L. Stone & J. Church, Childhood & Adolescence: Psychology of the Growing Person 101-12, 532 (3d ed. 1973). The fear, helplessness, and confusion that besiege a child who is constantly being moved from parent to parent or from town to town can sometimes be extremely traumatic. See generally Child-Snatching Called Threat to Children's Psyches, Lawyers' Survival, 8 Fam. L. Rep. (BNA) 2702-04 (Sept. 28, 1982).
held that the child should be returned to the custodial parent.

In In re Nehra v. Uhlar, the New York Court of Appeals determined that two abducted children would not suffer irreparable harm if they were returned to their father's custody, despite the fact that they had been snatched by their mother four years earlier.

The Court of Appeals determined that, as in all custody matters, the children's best interests must be protected. The court noted that, whenever possible, the "continual shifting of custody from one parent to another is to be avoided."

Recognizing that any change in custody might be temporarily disruptive to the children, the court decided that this factor alone was not dispositive. The Nehra court proposed a hierarchy of factors for courts to consider when making custody determinations in similar situations:

Priority, not as an absolute but as a weighty factor, should, in the absence of extraordinary circumstances, be accorded to the first custody awarded in litigation or by voluntary agreement. Similarly qualified priority should also be accorded to the judgment of the court of greatest concern with the welfare of the children, that is, the court of domicile, residence, and legal dissolution of the severed marriage. Denigrated in rank should be the consequences of child-snatching, flight from the courts of jurisdiction, and defiance of legal process and judgments. Denigrated in rank, to some degree, should also be the natural or manipulated 'satisfaction' of


110. 43 N.Y.2d 242, 372 N.E.2d 4, 401 N.Y.S.2d 168 (1977). Although this case was litigated subsequent to the passage of the UCCJA in the New York legislature, it was decided in the Court of Appeals prior to the effective date of the Act in New York. The Court of Appeals, nevertheless, applied the principles and policies of the UCCJA in rendering its decision. See 43 N.Y.2d at 249-50, 372 N.E.2d at 7-8, 401 N.Y.S.2d at 172.

111. 43 N.Y.2d at 251-52, 372 N.E.2d at 9, 401 N.Y.S.2d at 173. In Nehra, a Michigan court awarded custody of the children to the father. The mother snatched them and took them to New York where the Family Court awarded her custody. Id. at 246-47, 372 N.E.2d at 5-6, 401 N.Y.S.2d at 170. The family court decision was reversed by the New York Appellate Division. 57 A.D.2d 653, 393 N.Y.S.2d 472 (3d Dep't 1977). The mother and children then moved to New Jersey where she instituted custody proceedings while a further appeal was pending in the New York Court of Appeals. New Jersey stayed its proceedings until New York rendered its decision. 43 N.Y.2d at 247, 372 N.E.2d at 6, 401 N.Y.S.2d at 170.

112. 43 N.Y.2d at 246, 372 N.E.2d at 5, 401 N.Y.S.2d at 169.

113. Id. at 250, 372 N.E.2d at 8, 401 N.Y.S.2d at 172 (citations omitted).

114. Id. at 248, 372 N.E.2d at 7, 401 N.Y.S.2d at 171.
young abducted children with the homes where they presently abide.\textsuperscript{118}

The court determined that the mere fact that the children had resided with the mother for over four years was insufficient to qualify as a change in circumstances that would warrant a modification of the original custody decree;\textsuperscript{116} the children were returned to the father pursuant to the original decree.\textsuperscript{117}

Returning the snatched child to the custodial parent, even after the child had been held by the noncustodial parent for several years, provides an additional deterrent to child snatching. A parent might snatch a child with the hope that, after a few years, a court will recognize that circumstances have changed sufficiently to nullify the original custody decree and award custody to the abducting parent.\textsuperscript{118} The courts, however, by returning the child to the custodial parent, put the noncustodial parent on notice that he or she cannot abduct the child and retain him in violation of a valid custody decree.

\textsuperscript{115} Id. at 251, 372 N.E.2d at 9, 401 N.Y.S.2d at 173.
\textsuperscript{116} Id. at 250, 372 N.E.2d at 8, 401 N.Y.S.2d at 172.
\textsuperscript{117} Id. at 251-52, 372 N.E.2d at 9, 401 N.Y.S.2d at 173. New Jersey, however, disagreed with the New York Court of Appeals. In Nehra v. Uhlar, 168 N.J. Super. 187, 402 A.2d 264 (App. Div.), certif. denied, 81 N.J. 413, 408 A.2d 807 (1979), the court reversed a lower court decision awarding custody of the children to the father. The court reasoned that the children's best interests required that a full custody hearing be held in New Jersey since almost nine years had passed since the Michigan custody decree had been originally issued. Id. at 194, 402 A.2d at 268. The court also noted that psychological studies of the children indicated that their return to the custody of their father may have an adverse effect on their development. Id. at 196, 402 A.2d at 268.

In In re Marriage of Hopson, 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (Dist. Ct. App. 1980), the California court agreed with the New York Court of Appeals and applied the principles outlined in Nehra, 43 N.Y.2d 242, 372 N.E.2d 4, 401 N.Y.S.2d 168 (1977). In Hopson, the court determined that the children should be returned to the custody of the mother pursuant to an Arizona custody decree, despite the fact that the children had been living with their father in Tennessee for approximately seventeen months following their abduction. 110 Cal. App. 3d at 906, 168 Cal. Rptr. at 360. For a further discussion of this case, see infra text accompanying notes 124-34.

New Jersey, in Van Haren v. Van Haren, 171 N.J. Super. 12, 407 A.2d 1242 (App. Div. 1979), a case involving a "double snatch", returned custody of the children to the parent who was awarded custody under the original decree. The mother was originally awarded temporary custody of the children by a New Jersey court. The father then snatched the children and obtained a custody decree in South Carolina. The mother then resnatched the children and brought them to New Jersey. The father sought enforcement of the South Carolina decree in New Jersey, but the court denied recognition of that decree. Id. at 15-16, 407 A.2d at 1243-44. A custody hearing was held in New Jersey and custody was awarded to the mother. This decision was affirmed on appeal with the court deciding that the children's best interests would be served by awarding custody to the mother. Id. at 22-23, 407 A.2d at 1247.

\textsuperscript{118} See Nehra, 43 N.Y.2d at 250, 372 N.E.2d at 8, 401 N.Y.S.2d at 172.
and then expect to win legal custody of the child.\textsuperscript{119}

\section*{D. Full Faith and Credit and the UCCJA}

The Supreme Court's refusal to extend full faith and credit to child custody decrees, thereby denying the recognition and enforcement of these decrees in all courts of the United States, has been one of the factors contributing to the increase in child snatching.\textsuperscript{120} The drafters of the UCCJA sought to remedy this situation by providing for the recognition and enforcement of an out-of-state custody decree in those states that have adopted the UCCJA under the principle of comity,\textsuperscript{121} rather than as an extension of the full faith and credit clause.\textsuperscript{122} The UCCJA provides:

\begin{quote}
The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accord with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.\textsuperscript{123}
\end{quote}

When presented with a petition to enforce an out-of-state custody decree, the court must examine all of the factual circumstances of the case to determine whether the UCCJA's requirements have been met. In \textit{In re Marriage of Hopson},\textsuperscript{124} the California Court of Appeals had to decide which, if either, of two outstanding and conflicting custody decrees should be recognized and enforced. Arizona originally awarded custody of the children to the mother. After the mother and children moved to California, the father petitioned the Arizona court for a modification of the custody decree.\textsuperscript{125} While the

\begin{itemize}
\item \textsuperscript{119} However, there may be certain situations where the court may not have any other alternative but to award custody of the child to the snatching parent, as in the case where the custodial parent is not fit to care for the child or cannot provide an adequate home for the child, or where the child has been held by the snatching parent for an extremely long time. \textit{Id.} at 250-51, 372 N.E.2d at 8, 401 N.Y.S.2d at 172-73.
\item \textsuperscript{120} \textit{See supra} text accompanying notes 22-49.
\item \textsuperscript{121} Comity is the doctrine by which the courts of one state will grant "deference, respect, and, occasionally, recognition, to the decrees of another state's courts." S. KATZ, \textit{supra} note 18, at 55.
\item \textsuperscript{122} \textit{See UCCJA \S} 13.
\item \textsuperscript{123} \textit{Id.} (emphasis added). \textit{See UCCJA \S} 13 Commissioners' Note, 9 U.L.A. 151 (1979).
\item \textsuperscript{124} 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (1980).
\item \textsuperscript{125} \textit{Id.} at 889, 168 Cal. Rptr. at 349. The Arizona decree prohibited the removal of the children without the court's permission. \textit{Id.}
\end{itemize}
proceeding was pending, he snatched the children from California and took them to Tennessee where he instituted custody proceedings within four days.\(^{128}\) One year after the children were snatched, the Tennessee court, fully aware of the Arizona decree and the father's conduct in bringing the children to Tennessee, held a full custody hearing and found that the children's best interests required that they remain in their father's custody.\(^{127}\) Both parents then sought to enforce their respective decrees in California. The California Superior Court accorded full faith and credit to the Tennessee judgment.\(^{128}\)

The California Court of Appeals, however, after examining the circumstances surrounding the custody award in Tennessee, reversed the decision and recognized the Arizona decree.\(^{129}\) The California court was compelled under its own law to apply the UCCJA even though the UCCJA had not been adopted in Tennessee at the time the father instituted the custody proceeding.\(^{130}\) California denied recognizing the Tennessee decree on two basic grounds. First, Tennessee failed to meet any of the jurisdictional requirements of the UCCJA.\(^{131}\) Second, Tennessee should have applied the clean hands doctrine and refused to exercise jurisdiction.\(^{132}\) Because Tennessee violated several provisions of the UCCJA, California neither recognized nor enforced that state's decree.\(^{133}\) Since Arizona had already

\(^{126}\) Id. at 890, 168 Cal. Rptr. at 350. Arizona subsequently dismissed the father's proceeding and granted the mother permission to move to California with the children. Id.

\(^{127}\) Id. Tennessee was also aware that California had charged the father with the crime of felony child stealing at the time it rendered its decision. Id.

\(^{128}\) Id. at 891, 168 Cal. Rptr. at 350.

\(^{129}\) Id. at 907, 168 Cal. Rptr. at 361.

\(^{130}\) Id. at 902, 168 Cal. Rptr. at 357.

\(^{131}\) Id. at 894-95, 168 Cal. Rptr. at 352-53. Tennessee was not the children's home state when the action was commenced in that state in October, 1977. The children had lived in California for eight months before the action in Tennessee was begun. The children were only present in Tennessee for four days. California and not Tennessee was the children's home state. Id. at 890, 894, 168 Cal. Rptr. at 350, 352. See supra text accompanying notes 71-72.

The California court, however, recognized that technically Tennessee might have been able to meet the significant connection and substantial evidence test of jurisdiction since the children and the father had lived in Tennessee for seventeen months before the actual custody hearing was held in Tennessee in March, 1979. 110 Cal. App. 3d at 895, 168 Cal. Rptr. at 353. See supra text accompanying note 73.

\(^{132}\) 110 Cal. App. 3d at 890, 168 Cal. Rptr. at 355. See UCCJA § 8; supra text accompanying notes 99-105.

\(^{133}\) In addition to failing to meet the jurisdictional requirements of Section 3 of the UCCJA and not applying the clean hands doctrine of Section 8, Tennessee also violated other sections of the UCCJA including Section 6, which requires a court to stay or dismiss its proceeding if a custody proceeding is pending in another jurisdiction and to communicate with the
adopted the UCCJA and had issued the original custody decree consistent with its provisions, recognition of that state's decree was mandatory in California.\textsuperscript{134}

The UCCJA has attempted to close the gaps left open by the Supreme Court's denial of full faith and credit to custody decrees. By insuring that under certain circumstances a custody decree will be recognized and enforced in another forum, the UCCJA may deter child snatching. By virtually guaranteeing that a prior custody decree will be enforced, courts are denying a forum to snatching parents to relitigate the custody issue. Even if an abducting parent is able to relitigate custody successfully in a different forum, that decree will not be recognized or enforced in a state that is governed by the UCCJA.

\section*{E. Due Process and the UCCJA}

In a plurality decision in \textit{May v. Anderson},\textsuperscript{135} the Supreme Court held that a custody decree issued by a court that had not first obtained personal jurisdiction over a nonresident parent was not entitled to full faith and credit in the court of another state.\textsuperscript{136} The due process clause of the fourteenth amendment limits a state court's jurisdictional power to enter a judgment affecting the rights and interests of a nonresident litigant\textsuperscript{137} to those situations in which personal jurisdiction is first obtained. The Supreme Court has determined that satisfaction of due process \textit{"requires only that in order to subject a [nonresident] defendant to a [personal] judgment . . . he have certain minimum contacts with it such that the maintenance of the suit does not offend \textquoteright\textquoteright traditional notions of fair play and substantial

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{134} 110 Cal. App. 3d at 902-03, 168 Cal. Rptr. at 357-58. California also ordered that a new, full custody hearing be held to protect the best interests of the children since circumstances had changed since the Arizona decree had originally been issued. \textit{Id.} at 903, 168 Cal. Rptr. at 358. California determined that it was the best place to hold the hearing because Arizona no longer had any jurisdiction over the matter. Even though there is a presumption of a state's continuing jurisdiction over its own custody decrees, the ties with Arizona had been broken. None of the litigants involved had lived in Arizona for over three years. Arizona could not meet either the home state test or the significant connection and substantial evidence tests of jurisdiction. \textit{Id.}
\item\textsuperscript{135} 345 U.S. 528 (1953) (plurality opinion).
\item\textsuperscript{136} \textit{Id.} at 533-34.
\item\textsuperscript{137} \textit{See} Kulko \textit{v. Superior Court}, 436 U.S. 84, 91 (1978); U.S. CONS.T, amend. XIV, § 1.
\end{itemize}
\end{footnotesize}
justice.` 138 Minimum contacts have been defined as "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." 139 Due process also requires that a defendant be given notice reasonably calculated, under all of the circumstances involved in the case, to give actual notice to all interested parties that an action is pending and to afford them an opportunity to be present and heard during the litigation. 140

In Kulko v. Superior Court, 141 the Supreme Court applied these principles to the area of family law. The Kulkos were married in California; at the time of the marriage both parties were residents and domiciliaries of New York. 142 The couple lived in New York after the marriage and remained residents until their separation; the wife then moved to California. 143 Pursuant to a Haitian divorce decree, the father was granted custody of the children during the school year; the mother was granted custody during school holidays and summer vacation. 144 Granting his daughter's request, the father permitted her to live with the mother in California during the school year. The couple's other child moved to California without the father's acquiescence. One month later the mother sued her ex-husband in California for custody and child support. 145

Although the father did not contest California's jurisdiction to litigate the custody issue, he appeared specially 146 to contest the court's in personam jurisdiction regarding the support issue. 147 The Supreme Court held that California lacked personal jurisdiction over

142. 436 U.S. at 86-87. The marriage took place during the husband's three day stopover during a military tour of duty. Id. at 86.
143. Id. at 87.
144. Id. The divorce decree incorporated their New York separation agreement. The husband also agreed to pay the wife child support for the time that the children were in her custody. Id.
145. Id. at 87-88.
147. 436 U.S. at 88.
the defendant to decide the support issue\textsuperscript{148} because he did not purposefully benefit from any activity relating to California; he did not have sufficient minimum contacts with that state to warrant the court's exercise of personal jurisdiction over him.\textsuperscript{149} "[T]he mere act of sending a child to California to live with her mother is not a commercial act and connotes no intent to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction."\textsuperscript{150} The Court, in \textit{Kulko}, made one of the basic requirements of due process and personal jurisdiction, i.e., minimum contacts between the forum state and the nonresident defendant, applicable in the area of domestic relations adjudication.\textsuperscript{151}

The interpretation of personal jurisdiction requiring the nonresident defendant to have minimum contacts with the forum and notice and opportunity to be heard has important implications relating to the validity of a custody decree issued consistent with the UCCJA. The UCCJA provides that "reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child."\textsuperscript{152} The UCCJA, however, does not make any provision for actual personal jurisdiction over the nonresident contestant.\textsuperscript{153} Jurisdiction under the UCCJA is based not on

\textsuperscript{148} Id. at 94.
\textsuperscript{149} Id. at 96. The Court also weighed several other factors in reaching its decision, including the fact that the father's cause of action did not arise either from any physical damages to any person or property in California caused by the father or from any interstate commercial enterprise of the father. It arose from the father's personal domestic relations. \textit{Id.} at 96-97.
\textsuperscript{150} Id. at 101.
\textsuperscript{152} UCCJA \textsection 4; \textit{id.} Commissioners' Note, 9 U.L.A. 130 (1979). The drafters of the UCCJA also note that notice and opportunity to be heard is a prerequisite to the validity, recognition, and enforcement of a custody decree issued under the UCCJA. \textit{See id.} \textsection 12 Commissioners' Note, 9 U.L.A. 149, 150 (1979). The UCCJA also requires that notice calculated to give actual notice be given to nonresidents. UCCJA \textsection 5. Notice, under the provisions of the UCCJA, may be given by personal delivery of process outside the state, by return receipt mail, by publication as directed by the court, or pursuant to the jurisdictional requirements of the state in which service of process is to be made. \textit{Id}. The PKPA also provides that notice and opportunity to be heard be given to the litigants. \textit{See 28 U.S.C.} \textsection 1738A(e) (Supp. IV 1980).
\textsuperscript{153} \textit{See UCCJA} \textsection 3; Bodenheimer, \textit{supra} note 64, at 1231-35. \textit{See also} UCCJA \textsection 12 Commissioners' Note, 9 U.L.A. 150 (1979). In commenting on the binding effect of a custody decree, the commissioners noted that "[t]here is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from support actions . . . are proceedings in rem or proceedings affecting status." \textit{Id}. For a discussion of custody proceedings as status determinations, see \textit{infra} text accompanying notes 164-71. The
the minimum contacts that the nonresident contestant may have with the forum state, but rather on the maximum contacts that the child has with the forum. Because the UCCJA does not require a court to obtain personal jurisdiction over a nonresident custody litigant before issuing a custody decree, the validity of such a decree is questionable—the Supreme Court held in May v. Anderson that a custody decree is not entitled to full faith and credit unless the issuing court had personal jurisdiction over the nonresident parent. A decree may also be invalid unless it first satisfies the due process requirement of minimum contacts between the nonresident and the forum.

Courts in different jurisdictions, however, have recognized and enforced custody decrees issued in accordance with the UCCJA's jurisdictional standards, provided that the due process requirements of notice and opportunity to be heard are satisfied, even if the court did not first obtain personal jurisdiction over the nonresident litigant. In Perry v. Ponder, the Texas Court of Civil Appeals held that it was not a violation of due process to adjudicate the custody of a child who is a resident of the forum state where the nonresident parent does not have minimum contacts with the forum. The Perry court first distinguished the situation found in Kulko from a pure custody proceeding. The litigation in Kulko involved a child support order, which is considered similar to a claim for a debt imposing a

154. See UCCJA § 3; supra text accompanying notes 71-78.
156. See supra text accompanying notes 151-52.
157. See Goldfarb v. Goldfarb, 246 Ga. 24, 268 S.E.2d 648 (1980)(Georgia Supreme Court holding that due process is not violated where there is a sufficient nexus between the court and the child so that the court is in a position to inform itself as to the best interests of the child); Yearta v. Scroggins, 245 Ga. 831, 268 S.E.2d 151 (1980)(custody judgment rendered without personal jurisdiction over one parent will be recognized and enforced where the nonresident litigant received notice of a custody proceeding by certified mail but failed to respond); Perry v. Ponder, 604 S.W.2d 306 (Tex. Civ. App. 1980). See also Bodenheimer & Neeley-Kvarne, Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko, 12 U.C.D. L. Rev. 229 (1979).
158. 604 S.W.2d 306 (Tex. Civ. App. 1980). Perry is not a case involving the UCCJA. Texas has not as yet enacted the UCCJA, but has adopted two statutes that are equivalent to the UCCJA's provisions for jurisdiction and recognition of out-of-state custody decrees. The Perry court recognized that even though Texas had not adopted the UCCJA, that fact did not preclude Texas' adoption of the underlying principles of the UCCJA insofar as they were consistent with Texas' case law. Id. at 317.
159. Id. at 313.
personal judgment obligating the defendant to pay money to the plaintiff. Insofar as a personal obligation is the subject of the litigation, a court cannot enter a binding decree unless the requirements of due process, i.e., minimum contacts and notice and opportunity to be heard, are met.\footnote{161 \ref{161}}

The Perry court, however, concluded that custody is more like a status determination,\footnote{162 \ref{162}} which can be litigated and enforced by the state in which the child resides. Unlike an action for support, a custody determination would not require any affirmative action on the part of the nonresident parent; the only consequence of a default on the part of the nonresident custody litigant would be a reduction of his rights under the custody decree rather than an increase of any obligation that may be imposed upon him by the court.\footnote{163 \ref{163}}

The Supreme Court apparently has recognized an exception from the strict requirements of personal jurisdiction and due process for status determinations. In Pennoyer v. Neff,\footnote{164 \ref{164}} the Court raised the possibility that status adjudications may be exempted from the traditional notion of personal jurisdiction based on actual physical presence of the nonresident defendant in the forum. The Pennoyer Court clarified its holding by stating:

\begin{quote}
[W]e do not mean to assert, by any thing we have said, that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on
\end{quote}

\begin{footnotes}
\item[161.] 604 S.W.2d at 312-13. In addition to an adjudication of the custody issue, Perry involved an action for child support. \textit{Id.} at 310-11. \textit{See supra} text accompanying notes 141-51. In Perry, the court sustained a lower court decision upholding the father’s special appearance. The court held that the father, an Alabama resident, lacked sufficient minimum contacts with Texas to support the state’s exercise of jurisdiction to impose a money judgment against him. \textit{Id.} at 312.

\item[162.] Status determinations include those matters about “which the forum state may have such an interest that its courts may reasonably make an adjudication affecting that relationship, even though one of the parties to the relationship may have had no personal contacts with the forum state.” \textit{Id.} at 314. A custody determination has traditionally been considered a status determination. H. Clark, \textit{supra} note 50, § 11.5, at 319. Other status adjudications include divorce and adoption proceedings. Bodenheimer & Neeley-Kvarme, \textit{supra} note 157, at 240.

\item[163.] 604 S.W.2d at 313.

\item[164.] 95 U.S. 714 (1877).
\end{footnotes}
within its territory.\textsuperscript{165}

A century later, in \textit{Shaffer v. Heitner},\textsuperscript{166} the Court appeared to have reaffirmed the exemption of status determinations from the requirements of due process and personal jurisdiction. In a footnote, the Court stated that "[w]e do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudication of status, are inconsistent with the standard of fairness."\textsuperscript{167}

The \textit{Shaffer} footnote sets forth a two pronged test for the exception to the minimum contact rule: First, there must be a status adjudication; second, there must be specialized rules for a court's exercise of jurisdiction in the matter.\textsuperscript{168} The UCCJA appears to satisfy both prongs of this test. First, the drafters of the UCCJA have retained the traditional notion that custody adjudications are status determinations.\textsuperscript{169} Second, the UCCJA proposes specific bases upon which a court can exercise jurisdiction: the home state test, the significant connection and substantial evidence test, and parens patriae jurisdiction.\textsuperscript{170} Under the status exception, a court could issue a valid and binding custody decree without fully satisfying the minimum contacts requirement.\textsuperscript{171}

Regardless of the compelling implications of these two instances of Supreme Court dicta, the holding of \textit{May v. Anderson} that custody decrees must be issued with personal jurisdiction over the non-resident litigant\textsuperscript{172} is still a controlling factor in a court's decision to recognize an out-of-state custody decree.\textsuperscript{173} The court in \textit{Perry v. Ponder}, however, believed that the \textit{May} decision was not applicable where the custody decree had been issued by the state in which the child and at least one parent resided.\textsuperscript{174} The court proposed four rea-
sons for this conclusion. First, since May involved a custody decree issued by a court that had no actual contact with the children at the time the decree was issued, the Perry court suggested that May be "limited to a situation in which the court that rendered the custody decree had no physical access to the child." The Perry court determined that the May opinion had to be examined in light of the Court's later interpretation of due process and personal jurisdiction in Shaffer v. Heitner. Finally, the Perry court concluded that the May Court did not consider the children's best interests, the controlling factor in all child custody disputes today. The Perry court concluded that, in all probability, the Supreme Court today would not apply the May holding to a custody determination issued without personal jurisdiction over the nonresident litigant in a situation involving a child who is a resident of the forum state.

A court's willingness to recognize and enforce a custody decree obtained without the personal jurisdiction over the nonresident contestant may have several important implications. Where one parent abducts the child before a custody decree has been issued, the non-state or the presence of a significant connection between the child, the parent, and the forum, and substantial evidence concerning the child's care and training present in the forum. See UCCJA § 3.

175. 604 S.W.2d at 320. In May, the children and the mother were residents of Ohio and not Wisconsin, the decree-issuing state. See 345 U.S. at 530.
176. 604 S.W.2d at 320.
177. Id. In May, Justice Burton delivered the opinion for four justices; Justice Frankfurter concurred; Justice Jackson, Justice Reed, and Justice Minton all dissented; Justice Clark took no part in the decision. See 345 U.S. at 528, 535, 536, 542.
178. 604 S.W.2d at 320 (citation omitted).
179. 345 U.S. at 536 (Frankfurter, J., concurring).
180. 604 S.W.2d at 321. See supra text accompanying notes 166-68.
181. 604 S.W.2d at 321.
182. Id.
snatching parent would be able to obtain a custody decree pursuant to the jurisdictional requirements of the UCCJA without first obtaining personal jurisdiction over the abducting parent. This decree would then be binding in any court in which the snatching parent tries to litigate the custody issue; once again, the snatching parent would have no court available in which to litigate custody. As long as the decree has been issued in accordance with the jurisdictional requirements of the UCCJA, that decree would be recognized and enforced in those states governed by the UCCJA. The drafters of the UCCJA and the courts that are governed by this Act apparently have heeded the prophetic warning of Justice Jackson in his dissenting opinion in *May v. Anderson*:

The Court's decision holds that the state in which a child and one parent are domiciled and which is primarily concerned about his welfare cannot constitutionally adjudicate controversies as to his guardianship. The state's power here is defeated by the absence of the other parent. The convenience of a leave-taking parent is placed above the welfare of the child, but neither party is greatly aided in obtaining a decision. The Wisconsin courts cannot bind the mother, and the Ohio courts cannot bind the father. A state of the law such as this, where possession apparently is not merely nine points of the law but all of them and self-help the ultimate authority, has little to commend it in legal logic or as a principle of order in a federal system.

The individual states, by enacting the UCCJA, are attempting to remedy the defects in child custody determinations caused by the judicial system. By refusing to exercise jurisdiction in those situa-

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183. See UCCJA § 3.
184. See id. Commissioners' Note, 9 U.L.A. 123 (1979); id. § 13 Commissioners' Note, 9 U.L.A. 151-52. However, notice and opportunity to be heard must be given to the absent parent. See supra note 152.
185. UCCJA § 3.
186. Id. § 13. See supra text accompanying notes 121-34.
188. Id. at 539 (Jackson, J., dissenting) (emphasis added). Mr. Justice Jackson further noted that:

Personal jurisdiction of all parties to be affected by a proceeding is highly desirable, to make certain that they have had valid notice and opportunity to be heard. But the assumption that it overrides all other considerations and in its absence a state is constitutionally impotent to resolve questions of custody flies in the face of our own cases.

*Id.* at 541 (Jackson, J., dissenting). Mr. Justice Jackson was referring to those instances where the state of domicile of one party can issue a valid divorce decree without obtaining personal jurisdiction over the other party. *Id.* (Jackson, J., dissenting).
tions where a parent comes to court to litigate custody after that parent has snatched the child, the courts are denying the snatching parent a forum for the litigation of the custody issue. Whether the reason for the denial of jurisdiction is the court’s failure to meet the jurisdictional standards of the UCCJA,\(^\text{189}\) the existence of another court’s continuing jurisdiction over an existing custody decree,\(^\text{190}\) or the unclean hands of the petitioner,\(^\text{191}\) the doors of the courthouse are closed to the abducting parent.

III. The Parental Kidnapping Prevention Act of 1980

On December 28, 1980, President Carter signed into law the Parental Kidnapping Prevention Act of 1980 (PKPA),\(^\text{192}\) the first federal statute to address the problem of interstate parental abductions.\(^\text{193}\) During the previous decade, Congress had become aware that child snatching was becoming a major problem. The lack of effective state and federal criminal sanctions, and the Supreme Court’s determination that the full faith and credit clause does not apply to custody decrees, were seen as the major causes of the problem.\(^\text{194}\) Although the UCCJA was enacted by individual states as an attempt to solve these problems, it was not—indeed, could not be—as effective as a federal statute might be, since by definition a federal statute would establish uniformity among the states.

Thus, in 1980, the PKPA was enacted to establish a federal uniform standard for a court’s exercise of jurisdiction in custody matters and to determine the effect that a state court must give to the custody decrees of sister states.\(^\text{195}\) The general purposes of the PKPA are similar to those of the UCCJA: To promote cooperation among courts deciding child custody matters so that a custody decision can

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189. UCCJA § 3. See supra text accompanying notes 71-78.
190. See supra text accompanying notes 79-83.
191. UCCJA § 8. See supra text accompanying notes 99-104.
be issued by the state best able to protect the child’s welfare; to facilitate the enforcement and recognition of custody decrees in other states; to discourage interstate custody disputes; to avoid conflicts and competitions between courts deciding custody matters; and to deter child snatching.196

There are three separate provisions of the PKPA. First, a state is required to extend full faith and credit to a custody decree issued in another state if that decree was issued consistent with the jurisdictional requirements of the PKPA.197 Second, the use of the Federal Parent Locator Service is extended to enable specified authorities to locate parents who have taken, restrained, or concealed their children.198 Third, the PKPA extends the application of the Fugitive Felon Act199 to instances of child snatching, thereby enabling federal officers to assist state agencies in locating and apprehending fugitives from state justice.200

A. Jurisdictional Requirements of the PKPA

The PKPA provides that “[t]he appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided . . . any child custody determination made consistently with the provisions of this section by a court of another State.”201 Thus, a custody decree issued in compliance with the jurisdictional requirements of the PKPA will be given full faith and credit in every court of the United States.

The PKPA proposes standards for a court’s exercise of jurisdiction that are similar to those in the UCCJA.202 These include jurisdiction based on the child’s home state; a significant connection with the forum and substantial evidence existing in the state concerning

196. Id. § 7(c), 94 Stat. 3566, 3569 (codified at 28 U.S.C. § 1738A note (Supp. IV 1980)).
202. See supra text accompanying notes 71-75; UCCJA § 3.
the child's care and training; parens patriae jurisdiction; and the lack of another forum in which to litigate custody because either another state declined to exercise jurisdiction or because no other state could meet any of the other enumerated jurisdictional bases.\textsuperscript{203} The PKPA also provides for a court's continuing jurisdiction over its own custody decrees.\textsuperscript{204}

Although in essence, the PKPA adopted the jurisdictional requirements of the UCCJA,\textsuperscript{208} several important differences remain. First, the UCCJA is not a reciprocal law among the states; it can be fully implemented and enforced by each individual state that enacts it,\textsuperscript{208} but its policies and procedures are only binding among those states that have enacted it. The PKPA, however, as a federal statute, must be enforced in all states. It preempts any state statutory provision that conflicts with any of its provisions.\textsuperscript{207}

Second, the UCCJA requires a state to recognize and enforce another state's custody decree only if the issuing state had either adopted the Act or issued the decree according to its provisions. Custody decrees of non-UCCJA states would be entitled to recognition and enforcement in a UCCJA-state only if they had been issued under standards similar to those incorporated in the UCCJA.\textsuperscript{208} Recognition and enforcement is accorded to another state's custody decree as a matter of comity under state law.\textsuperscript{209} The PKPA mandates that full faith and credit be awarded to all custody decrees issued in accordance with the jurisdictional requirements of the

\begin{thebibliography}
\item 203. 28 U.S.C. § 1738A(c)(2) (Supp. IV 1980).
\item 204. \textit{Id.} § 1738A(d).
\item 205. \textit{Compare} 28 U.S.C. § 1738A(c) (Supp. IV 1980) (jurisdictional requirements of the PKPA) \textit{with} UCCJA § 3 (jurisdictional requirement of the UCCJA).
\item 206. \textit{See} Commissioners' Prefatory Note, \textit{supra} note 46, at 114.
\item 208. UCCJA § 13; \textit{see supra} text accompanying notes 123-24.
\item 209. \textit{See generally} S. KATZ, \textit{supra} note 18, at 55-82. The UCCJA, however, does not preclude a state from awarding full faith and credit to another state's custody decree, if it is a policy of the state to do so. UCCJA § 13 Commissioners' Note, 9 U.L.A. 151 (1979). \textit{See} Shermer v. Cornelius, 278 S.E.2d 349 (W. Va. 1981) (West Virginia court awarded full faith and credit to a New York custody decree).
\end{thebibliography}
Third, although home state jurisdiction is preferable under the UCCJA, a court could exercise jurisdiction if the forum meets any of the other enumerated bases of jurisdiction, such as, significant connection and substantial evidence, parens patriae, or lack of another forum that can exercise jurisdiction consistent with the UCCJA. The PKPA grants almost exclusive continuing jurisdiction to the child's home state for the determination of child custody matters. Although other bases for a court's jurisdiction are provided in the PKPA, they are of only secondary importance. In Virginia E.E. v. Alberto S.P., the court interpreted the addition of the words "it appears that no other State would have jurisdiction under subparagraph (A) [the home state test]" in the introductory sentence to the significant connection and substantial evidence test as a federal mandate that home state jurisdiction has priority over all the other bases of jurisdiction provided in the PKPA. The PKPA is procedurally more rigid than the UCCJA, allowing the court less discretion in its determination of whether it can exercise jurisdiction. By providing even stricter standards for a court's jurisdiction, the PKPA makes it more difficult for the abducting parent to find a forum in which custody can be litigated.

Fourth, the UCCJA codified the clean hands doctrine requiring

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210. 28 U.S.C. § 1738A(a) (Supp. IV 1980). See Pierce v. Pierce, 640 P.2d 899 (Mont. 1982) (a custody decree issued under the UCCJA's standards is entitled to full faith and credit under the requirements of the PKPA); Virginia E.E. v. Alberto S.P., 110 Misc. 2d 448, 440 N.Y.S.2d 979 (Fam. Ct. 1981) (New York is not required to extend full faith and credit to a California custody decree where California failed to meet the jurisdictional requirements of the PKPA).


212. UCCJA § 3.


217. See 110 Misc. 2d at 455, 440 N.Y.S.2d at 983-84. A further factor that suggests the conclusion that home state jurisdiction is exclusive and has priority over all other bases of jurisdiction is the absence of the word "or" between the various subparagraphs of the PKPA's jurisdiction provision. See 28 U.S.C. § 1738A(c)(2) (Supp. IV 1980). Compare 28 U.S.C. § 1738A(c)(2) with UCCJA § 3.

a court to decline jurisdiction in a case of child snatching, as long as
the child’s best interests would not be harmed. Although one of
the express purposes of the PKPA is to “deter interstate abductions
and other unilateral removals of children undertaken to obtain cus-
tody and visitation awards,” the statute falls short of absolutely
denying jurisdiction in instances of child snatching. Since the federal
statute does not contain a clean hands provision, the court may look
to the UCCJA to determine whether it should decline jurisdiction in
instances of child snatching.

B. Modification of a Custody Decree Under the PKPA

The PKPA precludes a court in one state from modifying the
custody decrees of other states unless certain conditions are met. The
PKPA provides:

A court of a State may modify a determination of the custody
of the same child made by a court of another State, if—
(1) it has jurisdiction to make such a child custody determina-
tion; and
(2) the court of the other State no longer has jurisdiction, or it
has declined to exercise such jurisdiction to modify such
determination.

In In re Leslie L.F. v. Constance F., the family court in New York
developed a scheme by which a court could determine whether it had
jurisdiction under the PKPA to modify the custody decree of another
state. The first step involves determining whether the original de-
cree is entitled to full faith and credit under the PKPA. If the cus-
tody decree had been issued in compliance with the requirements of
the PKPA, it would be entitled to full faith and credit.

219. UCCJA § 8; see supra text accompanying notes 99-104.
1738A note (Supp. IV 1980)).
223. Id. § 1738A(f).
224. 110 Misc. 2d 86, 441 N.Y.S.2d 911 (Fam. Ct. 1981). This case involved a petition
to modify a California custody decree.
225. New Mexico has also proposed an analytical process similar to the one proposed in
226. 110 Misc. 2d at 88, 441 N.Y.S.2d at 914. See 28 U.S.C. § 1738A(a) (Supp. IV
1980). In Leslie L.F., New York determined that California satisfied the jurisdictional require-
ments of the PKPA to render an initial custody decree. California had been the child’s home
The second step involves the determination of whether the court has jurisdiction to modify that decree. The court must determine whether it can exercise jurisdiction under its own state law and whether the decree-issuing state can no longer exercise continuing jurisdiction over its own decree. Under the PKPA, a court's jurisdiction over its own custody decree continues as long as "the requirement that such court has jurisdiction under the law of such State continues to be met and such State remains the residence of the child or of any contestant." The court, therefore, must look to the state law of the decree-issuing forum to determine whether that state still retains jurisdiction over its own custody decree.

The third step involves an inquiry into whether the forum state has jurisdiction to modify the decree under its own state law. A state must first examine the UCCJA's provision for modification to determine whether the decree was originally issued under factual circumstances that would satisfy the Act's jurisdictional standards. If these standards are met, the decree would be entitled to recognition. Under the UCCJA, a court can modify a custody decree if the decree-issuing state cannot exercise "jurisdiction under jurisdictional prerequisites substantially in accordance with [the UCCJA]." It is important to note that it is the second court and

state for more than six months prior to the commencement of the custody action and was the child's home state at the time of the initial proceeding. 110 Misc. 2d at 89, 441 N.Y.S.2d at 914. See 28 U.S.C. § 1738A(c)(2)(A) (Supp. IV 1980).


228. 110 Misc. 2d at 89, 441 N.Y.S.2d at 914-15.

229. 28 U.S.C. § 1738A(d) (Supp. IV 1980). A court only has continuing jurisdiction over a custody decree issued consistently with the requirements of the PKPA. Id.

230. 110 Misc. 2d at 89, 441 N.Y.S.2d at 915. See also Flannery v. Stephenson, 416 So. 2d 1034, 1038 (Ala. Civ. App. 1982) (Alabama can properly exercise continuing jurisdiction over its own decree where it was issued in compliance with the PKPA and one parent remains a resident of the state. This jurisdiction was not affected by the determination of a court in Michigan where that decree was not issued in compliance with the PKPA.) William R.B v. Cynthia B, 108 Misc. 2d 920, 439 N.Y.S.2d 265 (Fam. Ct. 1981) (New York will defer its jurisdiction to a Connecticut court which has continued to exercise jurisdiction over the decree.) In Leslie L.F., New York determined that California, under its own version of the UCCJA, did not satisfy any of the jurisdictional prerequisites. 110 Misc. 2d at 95-96, 441 N.Y.S.2d at 915. California could not exercise continuing jurisdiction over its own custody decree pursuant to the PKPA and New York could exercise jurisdiction to modify the decree. Id. at 92, 441 N.Y.S.2d at 916. See 28 U.S.C. § 1738A(f).

231. 110 Misc. 2d at 92, 441 N.Y.S.2d at 916.

232. UCCJA § 14; see supra text accompanying notes 81-83.

233. 110 Misc. 2d at 95, 441 N.Y.S.2d at 918.

234. UCCJA § 14(a). In Leslie L.F., New York concluded that California could not meet the UCCJA's standards for continuing jurisdiction. 110 Misc. 2d at 95-98, 441 N.Y.S.2d at 918-19.
not the decree-issuing court that determines whether the original forum still possesses continuing jurisdiction over the custody decree.\(^{235}\)

By providing for the exclusive continuing jurisdiction of the decree-issuing court, the PKPA makes it more difficult for an abducting parent to find a forum in which the custody issue can be litigated. By narrowing the number of appropriate forums where a parent can litigate the custody issue, the PKPA may eventually eliminate interstate custody disputes between parents. Child snatching may be effectively deterred through the stricter modification standards of the PKPA. If a court cannot entertain a petition for the modification of a custody decree of another state, the abducting parent will be forced to return to the original decree-issuing forum for any custody modification proceedings.

C. The Fugitive Felon Act and Child Snatching

The PKPA extends the application of the Fugitive Felon Act\(^ {236} \) to cases of "parental kidnaping and interstate or international flight to avoid prosecution under applicable State felony statutes."\(^ {237} \) The Fugitive Felon Act provides that:

> Whoever moves or travels in interstate or foreign commerce with intent . . . to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both.\(^ {238} \)

The Fugitive Felon Act empowers the Federal Bureau of Investigation (FBI) to aid state law enforcement officers in the search for and the apprehension of fugitives from state justice.\(^ {239} \) Before a fugitive felon warrant is issued for a snatching parent, the state must demonstrate to the federal authorities that it is willing to extradite and prosecute the abducting parent as a felon under the applicable state child snatching statute.\(^ {240} \) Once the fugitive felon is apprehended,

\(^{235}\) 110 Misc. 2d at 96, 441 N.Y.S.2d at 918.


\(^{240}\) Justice Dep't Scored For Flouting Parental Kidnapping Act's Mandate, 7 FAM. L. REP, (BNA) 2739, 2741 (Oct. 6, 1981); 126 CONG. REC. S15,945 (daily ed. Dec. 9, 1980).
the FBI does not participate in the felon's extradition to the state from which he fled.\textsuperscript{241} Instead, the federal charges usually are dropped and the felon is turned over to the local state authorities to await extradition and prosecution by the state requesting the fugitive felon warrant.\textsuperscript{242} The application of the Fugitive Felon Act and the involvement of the FBI in instances of child snatching are dependent on a state's classification of child snatching as a felony.\textsuperscript{243}

\textsuperscript{241} Justice Dep't Scored For Flouting Parental Kidnapping Act's Mandate, 7 FAM. L. REP. (BNA) 2739, 2741 (Oct. 6, 1981). The Fugitive Felon Act is not a substitute for a state's extradition warrant for a fugitive felon. The FBI would only extradite the fugitive felon if he was to be subjected to a federal prosecution. Id.

\textsuperscript{242} Id.; Beach, 535 F. Supp. at 563; 126 CONG. REC. S15,945 (daily ed. Dec. 9, 1980).

\textsuperscript{243} 18 U.S.C. §§ 1073, 1073 note (Supp. IV 1980); see supra text accompanying notes 227-37.

The Fugitive Felon Act would be applicable in the following states that classify child stealing, child snatching, custodial interference, or parental kidnapping (abduction) as a felony: ALASKA STAT. § 11.41.320 (1978)(felony if the child is removed from the state); ARIZ. REV. STAT. ANN. § 13.1302 (1978); ARK. STAT. ANN. § 41-2411 (1977)(felony if the child is removed from the state); CAL. PENAL CODE § 278.5 (West Supp. 1982); COLO. REV. STAT. § 18-3-304 (1978); DEL. CODE ANN. tit. 11 § 785 (Supp. 1982)(felony if the child is removed from the state); FLA. STAT. ANN. § 787.04 (West Supp. 1982)(felony if the child is removed contrary to a valid court order); GA. CODE ANN. § 26-1312 (Supp. 1982)(interstate interference with custody is a felony if the child is either removed from the state or taken from another state and brought into Georgia); HAWAII REV. STAT. § 707-726 (Supp. 1981)(felony if the child is removed from the state); IDAHO CODE §§ 18-4501 to -4503 (1979); ILL. ANN. STAT. ch. 38, § 10-5 (Smith-Hurd 1979); IND. CODE ANN. § 35-42-3.3 (West 1979)(felony if the child is removed from the state); IOWA CODE ANN. § 710.6 (West 1979)(felony if the child is removed from the state in violation of a custody order); KAN. STAT. ANN. § 21-3422a (1981) (aggravated interference with custody is a felony); LA. REV. STAT. ANN. § 14:45 (West Supp. 1982); ME. REV. STAT. ANN. tit. 17A, § 303 (Supp. 1982); MD. ANN. CODE art. 27, § 2A (Supp. 1982)(felony if the child is removed from the state); MASS. GEN. LAWS ANN. ch. 265, § 26A (West Supp. 1982)(felony if the child is exposed to danger); MICH. COMP. LAWS ANN. § 750.350 (Supp. 1982) (felony only if the child had been adopted and is taken by the natural parent); MINN. STAT. ANN. § 609.26 (West Supp. 1982)(felony only if the child is not returned within fourteen days); MISS. CODE ANN. § 97-3-53 (Supp. 1982); MO. ANN. STAT. § 565.150 (Vernon 1979)(felony if the child is removed from the state in violation of a custody order); MONT. CODE ANN. § 45-5-304 (1981); NEB. REV. STAT. § 28-316 (1979)(felony if the child is taken in violation of a valid custody decree); NEV. REV. STAT. § 200.359 (1979)(felony if the child is taken in violation of a valid custody decree); N.H. REV. STAT. ANN. § 633 (1973)(kidnapping is a felony); N.M. STAT. ANN. § 30-4-4 (1978)(felony if the child is removed from the state); N.Y. PENAL LAW § 135.50 (McKinney Supp. 1982-1983); N.C. GEN. STAT. § 14-320.1 (1981); N.D. CENT. CODE § 14-14-22.1 (1981)(felony if the child is removed from the state; incorporated into the UCCJA); OHIO REV. CODE ANN. § 2905.04 (Page 1982)(felony if the child is removed from the state); OKLA. STAT. ANN. tit. 10, § 1627 (West Supp. 1981)(incorporated into the UCCJA); OR. REV. STAT. §§ 163.245, -257 (1981); R.I. GEN. LAWS § 11-26-1.1 (1981)(felony if the child is removed from the state in violation of an existing custody decree); S.C. CODE ANN. § 16-17-495 (LAW. Co-op. Supp. 1982); S.D. CODED LAWS ANN. § 22-19-10 (Supp. 1982)(felony if the child is removed from the state); TENN. CODE ANN. § 39-2-303 (1982); TEX. PENAL CODE ANN. § 25.03 (Vernon Supp. 1982); UTAH CODE ANN. § 76-5-303 (Supp. 1981)(felony if the child is removed from the state); Vt.
Although the application of the Fugitive Felon Act to instances of child snatching would seem to provide an added deterrent to child snatching, this deterrence may be more apparent than real, especially in view of the court's holding in *Beach v. Smith.*

In *Beach,* the federal district court in California had to decide whether the custodial parent of a snatched child had standing to challenge the Justice Department's refusal to issue a warrant under the Fugitive Felon Act, as extended by the PKPA, for the arrest of the mother and paternal grandfather who had snatched the child from the paternal grandparents' home in California and fled to Texas. After charging them with felony child stealing, California issued arrest and extradition warrants. On two separate occasions, the district attorney requested that fugitive felon warrants be issued for the child snatchers; the Justice Department, however, denied the requests.

The Fugitive Felon Act would probably not apply in the following states that classify child stealing, child snatching, custodial interference, or parental kidnaping (abduction) as either a misdemeanor, a lesser offense, or no offense at all:

- **AL**: *Code § 13A-6-45 (1982)* (relatives are exempted from the offense of interference with custody);
- **CT**: *Gen. Stat. § 53a-98 (Supp. 1982)* (custodial interference is a misdemeanor where a relative takes the child; but § 53a-97 provides that it is a felony if the child is exposed to danger or taken out of the state);
- **DC**: *Code Ann. § 22-2101 (1981)* (kidnapping is a felony, but parents are exempted);
- **KY**: *Rev. Stat. Ann. § 509.070 (Bobbs-Merrill Supp. 1982)* (custodial interference is a felony, but relatives are exempted);
- **N.J**: *Stat. Ann. § 2C:13-4 (West Supp. 1982)* (interference with custody is a disorderly persons offense);
- **WASH**: *Rev. Code Ann. § 9A.40.050 (1975)*;
- **W.VA**: *Code § 61-2-14 (1977)* (kidnapping or concealing a child is a felony, but parents are exempted).

244. *535 F. Supp. 560 (S.D. Cal. 1982).*
245. Standing involves the question "of whether 'a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *L. Tribe, American Constitutional Law* § 3-17 at 79 (1978) (footnote omitted).
246. *535 F. Supp. at 562.* They were not apprehended in Texas and subsequently fled to New Mexico. At the time of the father's suit, their whereabouts were unknown. *Id.*
247. *Id.* In addition to felony child stealing, they were also charged with felony burglary and battery because, during the snatching, the maternal grandfather struck and threatened the paternal grandmother.
248. The district attorney's first request for a warrant was denied because the requirement that there be a showing by "independent and credible information that the child is in a condition of abuse or neglect" before a warrant is issued for a snatching parent was not met. *Id.* Even after the father obtained a psychologist's report stating that the child suffered "psychological injury" from the abduction, the Justice Department still refused to issue the warrant.
The district court questioned the father’s standing to contest the Justice Department’s denial of the warrants. To have standing, the father had to establish that a connection existed between the injury that he suffered and the department’s refusal to issue the warrants. Since the court characterized the father’s injury as “the violation of his legal right to custody of [the child] as established by [a custody decree],” it decided that there was no connection between the father’s injury and the remedy sought.

The court concluded that even if the fugitive warrant had been issued, the father’s injury probably would not have been remedied; were a federal warrant issued, the child could only be returned to the custodial parent by indirect means. The warrant is issued, not for the child, but only for the arrest of the snatching parent and any accomplices that parent may have. Once the fugitive parent is located and arrested, the FBI agents are neither required not authorized to search for the child; nor are they required to place the located child in the custody of the proper local authorities or the custodial parent. The court in Beach concluded that “the effect of the issuance of the warrant for [the mother and grandfather] upon the return of [the child] to her father is wholly speculative.”

The extension of the Fugitive Felon Act to instances of child

rant. Id.

The requirement that there must be evidence that the child might be abused or mistreated by the abducting parent before a fugitive felon warrant is issued is being eliminated by the Justice Department in 1983. U.S. OKs CUSTODY WARRANTS, Newsday, January 2, 1983, at 19, col. 3.

249. 535 F. Supp. at 563.
250. Id. The court rejected the father’s characterization of the injury that he suffered. The father claimed that his injury was “the denial of a federal remedy established by the [PKPA].” Id. at 562. The court opined that this characterization would seem to indicate that the father himself would be entitled to seek a federal warrant. Id. The right to obtain a warrant under the Fugitive Felon Act is reserved to state law enforcement authorities. Although the PKPA extended the Fugitive Felon Act to include child snatching, the court could not find any indication of congressional intent to change the requirements and allow an individual to obtain a federal warrant. Id. The court concluded that because the father was just a member of the class of persons who would be protected by the statute, “the refusal, to issue a warrant, does not result in an injury separate from the injury caused by the underlying criminal act.”

Id.

251. Id. at 563.
252. Id.
253. Id. The court further noted that even if the child is placed in the custody of the local authorities of the state where the child is found, that state is not obligated, under the PKPA, to recognize and enforce the prior custody decree unless it had been issued in accordance with the PKPA’s jurisdictional standards. Id.; see supra text accompanying notes 195-210.

254. 535 F. Supp. at 563-64.
snatching was added to the PKPA as a compromise proposal. Its effectiveness as a deterrent to child snatching, however, falls short of the effectiveness of the proposal it replaced. When the PKPA was first introduced in the Senate in 1978, the bill contained a proposal that would have made "restraint of a minor by a parent" a federal misdemeanor and would have permitted the FBI to investigate child snatchings sixty days after the local law enforcement authorities and the parent locator service were notified. The PKPA, however, was not passed by Congress in that session. It was again introduced in the Senate in 1979, this time containing a provision that would have made it a federal misdemeanor for a parent, relative, or other specified person to take the child in violation of a custody decree issued in accordance with the PKPA's jurisdictional requirements and transport that child across state lines. The bill created two separate offenses: restraining a child "without good cause for more than thirty days," punishable by a fine of $10,000, or imprisonment of not more than thirty days, or both; and concealing a child and holding "him in a place where he is not likely to be found for more than seven days," punishable by a fine of $10,000, or imprisonment of not more than six months, or both. The FBI would be able to investigate the child snatching sixty days after the local law enforcement authorities had been notified by the person who is entitled to legal custody of the child and the assistance of the state parent locator service had been requested. This provision might have effectively eliminated the parental exemption from the federal kidnaping statute. Although the PKPA passed in the Congress, the criminalization provision of the bill was eliminated and a compromise proposal extending the Fugitive Felon Act to instances of child snatching was substituted and enacted.

257. S. 105, 96th Cong., 1st Sess., 125 Cong. Rec. 739, 741 (1979). Persons who could be convicted under this provision include: "[R]elatives by blood or marriage, guardians, foster parents, and agents of such persons." Id. at 741.
258. Id.
259. Id.
260. See 126 Cong. Rec. S15,943 (daily ed. Dec. 9, 1980). Although the Parental Kidnaping Prevention Act of 1980 is the "official" title of Pub. L. No. 96-611, 94 Stat. 3566, the PKPA was attached as a rider to a bill "to amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration." See PKPA, Pub. L. No. 96-611, 94 Stat. 3566. There are eleven sections to Pub. L. No. 96-611; only sections 6-10 contain the provisions of the PKPA. Id.
CHILD SNATCHING

Perhaps Congress should reconsider the exclusion of criminal sanctions against the snatching parent in the PKPA. Although the Fugitive Felon Act was extended to include child snatching, the actual deterrent effect of the statute is questionable. By its own terms, the statute is applicable only in those states that classify child snatching as a felony. In order to deter child snatching more effectively, a strong uniform law on the federal level to criminalize child snatching and eliminate the parental exemption from the federal kidnapping statute is needed. Child snatching might be further deterred if every state amended its child snatching statute to impose stricter penalties against a parent who snatches his own child. Although many states classify child snatching as a felony, several states restrict the felony designation only to those instances where the child is taken out of the state, exposed to danger, or taken in violation of a valid custody decree. Georgia has created the felony of "interstate interference with custody" imposing sanctions not only against those parents who snatch their children in Georgia and take them out of that state, but also against those parents who snatch their children from any other state and bring them into Georgia to conceal them from the custodial parent. Perhaps if every state enacted statutes similar to Georgia’s child snatching provision, child snatching might be effectively eliminated.

261. Except in New Jersey where a high misdemeanor is sufficient to invoke the Fugitive Felon Act. 18 U.S.C. § 1073 (1976); For those states that classify child snatching as a felony, see supra note 243. For those states that classify child snatching as a misdemeanor or a lesser offense, see supra note 243. 262. See supra note 243.

263. See, e.g., ARK. STAT. ANN. § 41-2411 (1977); HAWAII REV. STAT. § 707-726 (Supp. 1981). For other states that require that the child be removed from the state before felony sanctions will be imposed, see supra note 243.


265. See, e.g., FLA. STAT. ANN. § 787.04 (Supp. 1982); MO. ANN. STAT. § 565.150 (Vernon 1979). For other states that impose felony sanctions when the child is taken in violation of a custody order, see supra note 243.

266. GA. CODE ANN. § 26-1312 (Supp. 1982).

267. Id. Although states have statutes that impose criminal sanctions for child snatching, conviction and the imposition of fines and imprisonment are rare. See, e.g., People v. Hyatt, 18 Cal. App. 3d 618, 96 Cal. Rptr. 156 (1971)(the snatching father was found guilty of child stealing by a jury and was granted probation; as part of the probation, the father was required to pay the mother the reasonable expenses she incurred in attempts to regain custody of the children); State v. McCormick, 273 N.W.2d 624 (Minn. 1978)(the Supreme Court of Minnesota found that the statute making it a felony to detain one’s own child outside the state was unconstitutional because it involved an illegitimate extension of the state’s territorial power). For a further discussion of criminal sanctions in child snatching, see S. KATZ, supra note 18, at 89-98.
IV. THE EFFECTIVENESS OF THE PKPA AND THE UCCJA

Both the PKPA and the UCCJA will provide some deterrence to child snatching by precluding a parent who snatches his child from litigating custody in a second forum. The application of both statutes, however, is limited. Because both are jurisdictional statutes, the implementation of the Acts' provisions is dependent upon the noncustodial snatching parent's attempt to institute custody proceedings in a new and different forum. In most instances, both statutes would require the court of the second forum to decline jurisdiction in the matter and defer its jurisdiction to the court that first issued the custody decree. Neither statute, however, would have any deterrent effect on parents who snatch their children and who do not attempt to relitigate the custody issue in a second forum.

Although both the UCCJA and the PKPA are operable in instances of child snatching, their application in custody disputes is not strictly limited to instances of parental abduction of the child. Both statutes are applicable in any interstate child custody proceeding. In E.E.B. v. D.A., a case that did not involve child abduction, the New Jersey Supreme Court applied both the PKPA and the UCCJA to an interstate custody dispute between the adoptive parents of a child and the natural mother who wanted the return of the child. The New Jersey court found that, although one of the major purposes of the PKPA, as suggested by its title, is to deter interstate parental kidnapping in custody disputes, the statute applies to any interstate dispute between persons seeking custody of a child.

Perhaps the applicability of both statutes to all interstate custody disputes accounts for the lack of sanctions against the snatching

268. See supra text accompanying notes 71-105, 120-34, 201-21.
269. See, e.g., 28 U.S.C. § 1738A(a), (d), (f), (g) (Supp. IV 1980); UCCJA §§ 6, 7, 8, 13, 14.
271. 89 N.J. 595, 446 A.2d 872 (1982).
272. An unwed mother gave her child up for adoption. One week after she signed the surrender form for the Welfare Department in Ohio, she orally revoked her consent for the adoption of the child. Id. at 599, 446 A.2d at 873. The natural mother later petitioned the Ohio court for a writ of habeas corpus, but the writ was denied. Id. While the mother's appeal was pending, the adoptive parents and the child moved to New Jersey because of the adoptive father's work. Id. at 599-600, 446 A.2d at 874. The adoptive parents did not leave Ohio "to evade an Ohio court order." Id. at 602, 446 A.2d at 875.
273. 89 N.J. at 598-602, 446 A.2d at 873-75.
parent in either statute. Both the UCCJA and the PKPA only provide that a snatching parent will be denied a forum in which to litigate the custody issue.\textsuperscript{276} If child snatching is to be deterred, it may become necessary to impose some type of penalty against the abducting parent. Although the imposition of criminal penalties against the abducting parent might prove to be the best deterrent to child snatching, the imposition of civil sanctions, such as fines that would increase with the length of time that the noncustodial parent retained the child may also aid in deterring a parent from snatching his own child.\textsuperscript{276}

V. COMMON LAW TORTS AS DETERRENTS TO CHILD SNATCHING

The UCCJA and the PKPA are statutory schemes whose primary purpose is to preclude a court’s exercise of jurisdiction to modify or issue custody decrees in instances of child snatching. Although both statutes do make some provisions for the recovery of travel expenses, attorney’s fees, and other litigation-related expenses,\textsuperscript{277} the custodial parent’s primary means of recovering damages has been through the application of several common law tort actions to child snatching. Courts have recognized that child snatching may lead to recovery of damages for the intentional infliction of emotional harm,\textsuperscript{278} civil conspiracy,\textsuperscript{278} and even malpractice and negligence actions by the custodial parent against the abducting parent’s attorney.\textsuperscript{280} Additionally, the abducted child is entitled to recover dam-


\textsuperscript{276} See, e.g., Lloyd v. Loeffler, 539 F. Supp. 998, 1005 (E.D. Wis.), aff’d, 694 F.2d 489 (7th Cir. 1982) (the court imposed a punitive damage award of $25,000 against a snatching mother that was to be increased at the rate of $2,000 per month until the child was returned to the custodial father).

\textsuperscript{277} See 28 U.S.C. § 1738A note (Supp. IV 1980); UCCJA §§ 7(g), 8(c), 11(c), 15(b), 19, 20(c).


\textsuperscript{279} See Fenslage v. Dawkins, 629 F.2d 1107 (5th Cir. 1980); Lloyd v. Loeffler, 539 F. Supp. 998 (E.D. Wis.), aff’d, 694 F.2d 489 (7th Cir. 1982). “[A] civil conspiracy is a ‘combination of two or more persons by some concerted action to accomplish some unlawful purpose or to accomplish by unlawful means some purpose not in itself unlawful.’” Lloyd, 539 F. Supp. at 1003 (citations omitted).

\textsuperscript{280} See McEvoy v. Helikson, 277 Or. 781, 562 P.2d 540 (1977)(The court found that
ages for false imprisonment from the abducting parent.\(^{281}\)

Although bringing a tort action against the abducting parent will not guarantee the child's return to the custodial parent, it will reimburse the custodial parent for expenses incurred in attempts to regain custody of the child.\(^{282}\) Because these actions are brought in tort, courts have allowed the custodial parent to recover not only compensatory damages to indemnify the parent for actual costs expended, but also have awarded large punitive damages awards. In *Fenslave v. Dawkins*,\(^{283}\) the custodial mother was awarded $65,000 in compensatory damages for the abduction of the child, and an additional aggregate amount of $65,000 was assessed against the five defendants who participated in the child snatching.\(^{284}\) In *Kajtazi v. Kajtazi*,\(^{285}\) the custodial mother was awarded $14,950 for the loss of services of the child and for her wounded feelings, $5,000 in legal fees, and $100,000 as a punitive damage award for "the intentional and malicious act of abducting the infant."\(^{286}\) The abducted child was entitled to recover damages for false imprisonment against the abducting father. The court awarded the child $5,980 for the actual time of his false imprisonment (calculated at the rate of $20 per day for each day the child was held), $5,000 for the actual false imprisonment, and $50,000 in punitive damages for "the intentional and malicious act of falsely imprisoning" him.\(^{287}\)

By recognizing that tort actions are available to the custodial parent in instances of child snatching, the courts are willing to compensate the custodial parent for the injuries suffered, both monetary and emotional, as a result of the snatching incident. By awarding compensatory damages, courts are reimbursing the custodial parent for the amounts expended in attempts to locate the child and regain

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283. 629 F.2d 1107 (5th Cir. 1980).
284. Id. at 1109. The punitive damage award was assessed against each defendant as follows: $25,000 against the father; $15,000 against his parents; $15,000 against his sister; and $10,000 against his brother. Id.
286. Id. at 21-22.
287. Id. at 21.
custody. By imposing punitive damage awards, the courts, in effect, are punishing the snatching parent for his actions.

Courts have also recognized that the very act of snatching the child is itself the actionable tort of unlawful interference with the custody of a person entitled to such custody.\footnote{See Lloyd v. Loeffler, 539 F. Supp. 998 (E.D. Wis.), aff'd, 694 F.2d 489 (7th Cir. 1982); Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978).} The Restatement (Second) of Torts\footnote{Restatement (Second) of Torts § 700 (1977).} recognized that it is a tort to cause a minor child to leave or not return home: “One who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent.”\footnote{Id. comment c.} According to the Restatement (Second), if both parents are entitled to custody of the child and one parent snatches the child, the other parent cannot maintain an action against the abducting parent. If, however, one parent had been awarded sole custody of the child, that parent could maintain a cause of action against the noncustodial parent who snatches the child.\footnote{Id. comment g. The Restatement (Second) would also allow the parent to recover for any expenses “incurred or likely to be incurred in treating or caring for the child if it has suffered illness or other bodily harm as a result of the defendant’s tortious conduct.” Id.} The Restatement (Second) would permit the custodial parent to recover damages for the loss of society of the child, the emotional distress the parent suffers from the child’s abduction, and the reasonable expenses incurred in attempts to regain custody.\footnote{539 F. Supp. at 1004; see supra text accompanying note 290.}

In Lloyd v. Loeffler,\footnote{539 F. Supp. at 1004} a case involving the abduction of a child by her mother, the federal district court decided that, although Wisconsin had not as yet recognized the tort of unlawful interference with custody of a parent entitled to such custody, the Wisconsin Supreme Court would recognize the existence of this tort, and awarded the father damages for the child snatching.\footnote{539 F. Supp. at 1004. The district court made a similar conclusion in denying a summary judgment motion in this same case. See Lloyd v. Loeffler, 518 F. Supp. 720, 725 (E.D. Wis. 1981).} The court based this decision on three separate factors: First, the court decided that Wisconsin would follow the principles outlined in the Restatement (Second) which recognize as a tort all actions that cause a minor child to leave or not return home.\footnote{539 F. Supp. at 998 (E.D. Wis.), aff'd, 694 F.2d 489 (7th Cir. 1982).} Second, interference with a parent’s cus-
tody was a violation of a Wisconsin criminal statute. Third, the district court concluded that Wisconsin would follow the precedents of other jurisdictions that had already recognized the tort. The court awarded the custodial father $70,038.45 as compensatory damages and $25,000, to be increased by $2,000 per month for each month the mother continued to hold the child, as a punitive damage award.

Courts may be providing an additional deterrent to child snatching by permitting the custodial parent to recover monetary damages from the noncustodial snatching parent. If the noncustodial parent knows that courts will impose compensatory and punitive damage awards, that parent may hesitate before snatching the child. The threat of monetary sanctions may provide an incentive for the noncustodial parent seeking custody of the child to petition the decree-issuing court for a modification of the custody determination. Rather than resorting to illegal measures, the noncustodial parent may try to gain custody of the child through the proper legal channels in the court that can best decide the issue—the child's home state.

VI. CONCLUSION

Both the UCCJA and the PKPA provide some measure of de-
terrence to child snatching. By providing a mechanism for a court to decline jurisdiction in instances of child snatching, both statutes make it difficult for the snatching parent to relitigate the custody of the child in another forum.\textsuperscript{300} However, the operation of the provisions of both statutes is dependent upon the noncustodial parent’s attempt to relitigate custody in another forum.

The recognition by the courts that the noncustodial snatching parent is liable for damages to the custodial parent may also provide a deterrence to child snatching.\textsuperscript{301} The custodial parent can recover not only the actual expenses incurred in attempts to locate the child and regain custody, but also exemplary damages that serve as a punishment for the snatching parent. With the knowledge that the custodial parent can recover large monetary sums, the noncustodial parent might reconsider his actions before snatching the child and seek to obtain custody through the proper legal channels.

Perhaps the only possible hope for the elimination of child snatching lies in the enactment of stronger criminal laws by both the federal and the state legislatures. The threat of possible fines, imprisonment, or both, may stop the noncustodial parent from taking the child in violation of a valid custody decree.\textsuperscript{302} Parents must be made aware that the states and the federal government will not tolerate parental kidnaping. Only through the cooperation of all of the states and the federal government can aid be given to the real victim of this horrendous and emotionally disturbing crime—the snatched child.

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\textsuperscript{300.} See supra text accompanying notes 71-105, 201-35.
\textsuperscript{301.} See supra text accompanying notes 277-99.
\textsuperscript{302.} See supra text accompanying notes 236-67.