

# THE PARENTAL KIDNAPPING PREVENTION ACT OF 1980—AN END TO CHILD SNATCHING

## INTRODUCTION

Against a background of almost universal state adoption of uniform child custody legislation<sup>1</sup> and pending Supreme Court review of whether the constitutional requirement of full faith and credit extends to custody decrees,<sup>2</sup> the Parental Kidnapping Prevention Act of 1980 has finally become federal law.<sup>3</sup> As originally proposed in 1978,<sup>4</sup> the Act encountered considerable opposition from those who felt that child snatching is a domestic relations problem and should be left to the states.<sup>5</sup> Even those who supported a federal remedy for child snatching objected to the Act's imposition of criminal sanctions against a child-snatching parent.<sup>6</sup> In its final form, the Act provides a potent remedy for child stealing. Yet, it recognizes that while the role of the federal government and criminal authorities is essential to a resolution of the problem, such a role must necessarily be limited. Thus, the Act properly encourages state civil authorities to fulfill their responsibilities in helping to eliminate parental kidnapping. This note will examine the Parental Kidnapping Prevention Act in detail and evaluate its effectiveness as a solution to the child snatching problem.

1. The Uniform Child Custody Jurisdiction Act [hereinafter cited as UCCJA], has been adopted by forty-seven states. Those which have not adopted the UCCJA are the District of Columbia, Massachusetts, Mississippi, Texas, Puerto Rico, and the Virgin Islands. The UCCJA is set out in full in *Parental Kidnapping, 1979: Hearings Before the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources*, 96th Cong., 1st Sess. 180-206 (1979) [hereinafter cited as *1979 Child Snatching Hearings*].
2. See *Webb v. Webb*, 245 Ga. 650, 266 S.E.2d 463 (1980), *cert. granted*, 49 U.S.L.W. 3245 (Oct. 6, 1980) (No. 79-6853). The past decisions of the Supreme Court have not made it clear what the constitutional obligation may be with regard to a sister state's custody decree. See, e.g., *Kovacs v. Brewer*, 356 U.S. 604 (1958); *May v. Anderson*, 354 U.S. 528 (1953); *New York ex rel. Halvey v. Halvey*, 330 U.S. 610 (1947).
3. Pub. L. No. 96-611, 94 Stat. 3569. The Act was passed in the final hours of the 96th Congress as a rider to the Pneumococcal Vaccine Medicare Coverage Act, H.R. 8406, 96th Cong., 2d Sess. (1980), and was signed into law by President Carter on December 29, 1980. It had originally been part of the Domestic Violence Services and Prevention Act, H.R. 2977/S. 1843, 96th Cong., 1st Sess. (1979), which was, in effect, killed by Republican opposition.
4. The Act was introduced before the United States Senate by Senator Malcolm Wallop as an amendment to the Criminal Code Reform Act of 1978. See S. 1437, 95th Cong., 1st Sess. (Jan. 30, 1978), 124 CONG. REC. S498-503 (daily ed. Jan. 25, 1978).
5. *Legislation to Revise and Recodify Federal Criminal Laws: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. 2818 (1977-1978) (prepared statement of John M. McCabe, Director of National Conference of Commissioners on Uniform State Laws).
6. See, e.g., Coombs, *The "Snatched" Child is Halfway Home in Congress*, 11 FAM. L.Q. 407, 415-17 (1978) [hereinafter cited as Coombs].

## THE PROBLEM

Child custody decrees traditionally have not been accorded the constitutional protection of the full faith and credit clause.<sup>7</sup> It was thought to be in the child's best interests to allow a state to redetermine the issue of custody, since circumstances might change, warranting a modification of the original decree.<sup>8</sup> Thus, the courts of one state have been free to disregard, modify or qualify the custody determinations of another state court. With the recent increase in the number of divorces, the result has been custodial chaos. Parents, dissatisfied with the custody decree of one state, have resorted to snatching their children and readjudicating the issue of custody in another state.<sup>9</sup> Sometimes the victimized parent conducts a "reverse snatch." A bitter tug of war may ensue in which children are pulled back and forth as parents rush from state to state to get custody.<sup>10</sup> In some instances, children have been whisked away by hired professionals who conduct snatches as a service for clients.<sup>11</sup> More often, they are simply not returned after a visit with the non-custodial parent.<sup>12</sup> They are forced into a new environment, a new school, and a new home.<sup>13</sup> They may be told that the other parent no longer loves them or cares about them, or, worse, they may be told that the other parent is dead.<sup>14</sup> The serious psychological and emotional effects of the ordeal have led many experts to regard child snatching as a form of child abuse.<sup>15</sup>

The Uniform Child Custody Jurisdiction Act (UCCJA) held promise as a solution to the problem. The UCCJA reflected a new emphasis on a child's need for stability and security in his environment.<sup>16</sup> It re-

7. U.S. CONST. art. IV, § 1. See R. WEINTRAUB, COMMENTARY ON THE CONFLICTS OF LAW 259 (1980); H. CLARK, LAW OF DOMESTIC RELATIONS 326 (1968).

8. See, e.g., *Kovacs v. Brewer*, 356 U.S. 604, 612 (1958).

9. Also, parents who fear an unfavorable custody decree from one state snatch their children prior to adjudication and flee to a more favorable forum. It is estimated that anywhere from 25,000 to 100,000 snatchings occur each year. See *Parental Kidnapping Prevention Act of 1980: Joint Hearing on S. 105 Before the Subcomm. on Criminal Justice of the Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Comm. on Labor and Human Resources*, 96th Cong., 2d Sess. 5 (1980) (statement of Sen. Wallop [hereinafter cited as *1980 Child Snatching Hearings*]).

10. Westgate, *Child-Snatching: The Game Nobody Wins*, reprinted in *1979 Child Snatching Hearings*, *supra* note 1, at 244.

11. Pick, *Ernie Rizzo is "It" in Grown-up Games of Hide-and-Seek*, STUDENT LAW, Oct. 1980, at 54-55.

12. *1980 Child Snatching Hearings*, *supra* note 9, at 116 (panel on effects of child stealing).

13. *Id.*

14. See, e.g., *1979 Child Snatching Hearings*, *supra* note 1, at 139.

15. See *1980 Child Snatching Hearings*, *supra* note 9, at 103 (panel on effects of child stealing). Dr. Jeannette Minkoff, a practicing family therapist, explains:

Children of divorces have already suffered anxieties over the changes in the family system and the way it functions. [They] develop coping mechanisms and attempt to find pleasure and security in such things as a familiar environment, a special toy, peers, a teacher, a friend and so on. When a child is snatched from his familiar environment . . . [he] is stripped of everything he has had to identify with, including the other parent.

*Id.*

16. UCCJA, Commissioner's Prefatory Note, in *1979 Child Snatching Hearings*, *supra* note 1, at 182-85.

quires states that adopt it to recognize and enforce the custody decree rendered by the child's "home state," as a matter of comity.<sup>17</sup> Unfortunately, the UCCJA has not been as effective as anticipated. Local courts are often reluctant to decline jurisdiction when the UCCJA would require them to do so.<sup>18</sup> In some instances, courts have ignored the UCCJA's "clean hands" provision,<sup>19</sup> under which a parent may be denied access to the court where he has acted wrongfully in detaining a child or has snatched him from another state.<sup>20</sup> In other instances, courts have interpreted the "home state" and "significant connection" provisions of the UCCJA as coequal, alternative bases for jurisdiction.<sup>21</sup> Such an interpretation improperly expands jurisdiction by increasing the possibility that more than one state would be able to hear the case.<sup>22</sup> More importantly, however, the UCCJA does not address the entire problem. Where a snatching parent does not attempt to obtain a more favorable custody decree but conceals the child within another state, the UCCJA is of little help. In such situations children are forced to live a fugitive-like existence. They may be instructed to change their names and may be enrolled in school with false records.<sup>23</sup> Often, they are told that they cannot play with friends for fear that they may divulge their past and be detected.<sup>24</sup> Local law enforcement offi-

17. "Home state is defined as the state in which the child lived with a parent or guardian for at least six consecutive months just prior to the time involved. UCCJA § 2(5), in *1979 Child Snatching Hearings*, *supra* note 1, at 189. Section (3) of the UCCJA also provides that a state may exercise jurisdiction, when it is in the child's best interests because (i) the child and at least one of the contestants, have a significant connection with the state (the act does not specifically define "significant connections"), and (ii) there is available in the state substantial evidence concerning the child's present or future care, protection, training, and personal relationships. The comment to § 3 suggests, however, that the home state is the primary basis for jurisdiction. It states, "In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction." Such an interpretation is in keeping with the UCCJA's policy to avoid concurrent jurisdiction. See *1979 Child Snatching Hearings*, *supra* note 1, at 188.
18. See Bodenheimer *Inter-state Custody: Initial Jurisdiction and Continuing Jurisdiction under the UCCJA*, 14 *Fam. L.Q.* 203 (1981); Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 *CAL. L. REV.* 978 (1977) [hereinafter cited as Bodenheimer]; Note, *Prevention of Child Stealing: The Need for a National Policy*, 11 *LOY. L.A.L. REV.* 829 (1978). Lawrence H. Stotter, a practitioner of family law, explains that some judges are "extremely provincial and local in their views and are concerned only for the particular problem involved with the parties before them. [E]ssentially, [they] are captain of their own ship and totally indifferent to the problems of other states. . . ." *1979 Child Snatching Hearings*, *supra* note 1, at 35.
19. UCCJA §§ 8(a) & 8(b) in *id.* at 194.
20. See, e.g., *Williams v. Zorach*, 35 *Or. App.* 129, 581 P.2d 91 (1978); *In re Marriage of Settle*, 276 *Or.* 759, 556 P.2d 962 (1976); *Nelson v. District Court*, 527 P.2d 811 (Colo. 1974).
21. See, e.g., *Wheeler v. District Court*, 526 P.2d 658 (Colo. 1974); *Nelson v. District Court*, 527 P.2d 811 (Colo. 1974).
22. See note 17 *supra*.
23. *1980 Child Snatching Hearings*, *supra* note 9, at 106 (panel on effects of child stealing). Dr. Minkoff related the story of a seven year old child who had been the victim of a parental kidnapping. "[He] told me he could not remember his new name or the falsified name of the school that he was instructed to say he last attended. He explained he did a lot of erasing on his papers as he continued to write his own name."
24. *Id.* at 106.

cials are often unwilling to help. Parents are told, "We can't take a report, it's a civil matter."<sup>25</sup> Even when local officials do become involved, their efforts are often unsuccessful because they do not have the authority to reach across state lines.<sup>26</sup> Moreover, since the Federal Kidnapping Act, otherwise known as the Lindbergh Law, contains an express exception for parents,<sup>27</sup> the Federal Bureau of Investigation (FBI) ordinarily will not enter the case.<sup>28</sup> Thus, many parents have resorted to hiring private investigators at exorbitant fees or have done much of the investigation themselves in an effort to locate their concealed children.<sup>29</sup> Some parents have formed citizen's rights groups in an attempt to help other victimized parents and to urge government officials to take action.<sup>30</sup> One such organization is Child Find. In 1981 it published a pamphlet entitled "Who Cares About Missing Child." The purpose of the publication is to communicate to missing children that their other parent is indeed concerned about them, and it urges children to try to contact the parent.<sup>31</sup>

The need for a comprehensive, federal remedy—a remedy capable of reaching across state boundaries and giving rise to a uniform body of law—could not have been more apparent.<sup>32</sup> While the UCCJA was a serious effort to deal with the problem of child snatching, it has proven unequal to the task. The Parental Kidnapping Prevention Act is a belated, but most welcome, piece of legislation.

### THE SOLUTION

The Parental Kidnapping Prevention Act provides a carefully constructed plan of attack on the problem of child snatching.<sup>33</sup> Section

25. *1979 Child Snatching Hearings, supra* note 1, at 74.

26. *1980 Child Snatching Hearings, supra* note 9, at 59 (statement of Lawrence T. Kurlander, District Attorney, Monroe County, N.Y.).

27. 18 U.S.C. § 1201(a) (1976).

28. *Id.* at 26 (testimony of Lee Calwell, Executive Assistant Director, FBI).

29. *See 1979 Child Snatching Hearings, supra* note 1, at 160. One woman claimed to have spent at least \$150,000 in investigation costs and to have lost another \$150,000 in income during her three-year search for her children.

30. *E.g.*, Children's Rights, Inc. (Arnold I. Miller, President); Stop Parental Kidnapping (Harold Miltsch, Director); and Fathers United for Equal Rights and United States Divorce Reform (Donald E. Clevenger). The latter group and others like it were actually formed in response to the inequities of child custody law which often gives preference to the mother in custody determinations. However, some fathers' rights groups actually advocate child snatching as the only certain means by which a father can obtain custody of his children.

31. *Directory; Organizations that Provide Advice and Assistance to Parents in Cases of Child Abduction and Restraint.* Compiled by P. Hoff, Director of Child Custody Project, American Bar Association.

32. An additional problem with the UCCJA is that some of the states which have enacted it have added certain variations which may contribute even further to the lack of uniformity. *See, e.g.*, ALASKA STAT. § 25.30.020(a) (1977); MD. ANN. CODE art. 16, § 188(a) (1957); MICH. COMP. LAWS ANN. § 600.656(a) (1981). There is also the concern that those remaining states which fail to enact the UCCJA may become haven states for child-snatching parents. *1980 Child Snatching Hearings, supra* note 9, at 144.

33. Congressional power to enact the Parental Kidnapping Prevention Act is based on the full faith and credit clause, U.S. CONST. art. IV, § 1, and the commerce clause, U.S. CONST. art. I, § 8, cl. 3.

eight of the Act places the UCCJA's requirement of respect for a sister state's custody decree or a constitutional level. It requires states to give full faith and credit to custody determinations of other states which have been rendered in accordance with the Act's jurisdictional provisions. It is expected that this section will reduce the actual number of snatchings by removing the incentive to snatch in hopes of modifying a custody decree in another state.<sup>34</sup> The Act also contains several other effective weapons. Should a snatching occur, section nine of the Act authorizes the Parent Locator Service of the Department of Health and Human Services (HHS)<sup>35</sup> to locate parents when they disappear with children in disregard of a custody determination or a state or federal law. As a final effort, section ten of the Act sets forth the congressional intent that the Federal Unlawful Flight Act (UFA)<sup>36</sup> is applicable to cases of parental kidnapping. This section is intended to make it clear that the FBI is authorized under the UFA to locate and return alleged child snatchers where an underlying state felony statute has been violated.

### THE PARENTAL KIDNAPPING PREVENTION ACT—IN DETAIL

#### Section Eight—Full Faith and Credit

Section eight of the Parents Kidnapping Prevention Act amends title 28 of the United States Code by adding section 1738A. The section adopts the jurisdictional standards of the UCCJA, providing that a state which has been the child's home state for the past six months may properly exercise jurisdiction in a child custody case.<sup>37</sup> Once the home state renders a custody determination, which includes both temporary and visitation orders, section 1738A requires that this determination be given full faith and credit by all other state courts.<sup>38</sup> The determination may not be modified by another state unless the home state loses its status as such or declines to exercise jurisdiction.<sup>39</sup> Where a snatching occurs prior to the entering of a decree, the parent left behind can go into court and obtain one, since under the Act, the home state retains

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34. *1980 Child Snatching Hearings, supra* note 9, at 135. Section eight is also expected to act as a deterrent. The snatching parent will be required to go back to the state whose court order he has disobeyed when he wishes to ask for visitation or any other favorable treatment. *Id.*
  35. HHS was formerly the Department of Health, Education, and Welfare.
  36. 18 U.S.C. § 1073 (1976). The Federal Unlawful Flight Act (UFA) provides that whoever moves or travels in interstate or foreign commerce either (1) to avoid prosecution . . . for a crime, or an attempt to commit a crime, punishable by death or which is a felony . . . , or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony . . . , is charged or (3) to avoid service of or contempt proceedings for alleged disobedience of lawful process . . . , shall be fined not more than \$5,000 or imprisoned not more than five years, or both.
  37. UCCJA § 3, in *1979 Child Snatching Hearings, supra* note 1, at 188.
  38. Section eight will encourage those states that have not yet done so, to adopt the UCCJA and its jurisdictional standards upon which the Parental Kidnapping Prevention Act is based, since only then will their custody decrees be entitled to full faith and credit.
  39. 28 U.S.C.A. § 1738A(f) (West Supp. 1980).

jurisdiction for six months after the child's departure.<sup>40</sup>

The existence of a prior state court decree in each case is the keystone of section 1738A. The determination of a child's proper custodian involves questions of substantive family law and is best left to the state courts, since they have developed expertise in this area. Federal courts simply do not have the resources or the experience to handle domestic matters. The Act recognizes this and wisely limits the role of the federal courts to deciding questions of jurisdiction and full faith and credit.<sup>41</sup>

*Modifications.* Section 1738A has undergone some modification since it was originally proposed. Its provisions have been tightened up, and for the most part, the loopholes have been eliminated. As originally proposed section 1738A contained two exceptions to its full faith and credit mandate.<sup>42</sup> The first, which was strongly urged by Professor Bodenheimer of UCLA,<sup>43</sup> was an exception for decrees that are primarily entered as a disciplinary measure against a contestant. These so-called punitive decrees are often entered in favor of the non-custodial parent, where the parent having custody fails to honor visitation rights or has relocated to a place so far distant as to make visitation practically impossible.<sup>44</sup> Bodenheimer argued that punitive decrees are counter-productive and ought not to be respected, since they disrupt children's lives and cause friction among the parties.<sup>45</sup> The second exception exempted states from giving full faith and credit to a custody decree which violated a strong public policy of that state.

Both exceptions were eliminated, since it was feared they might have a tendency to emasculate the rule. It was felt they would present an inducement to relitigate a case and would offer courts an easy means of circumventing the full faith and credit requirement.<sup>46</sup> Additionally, if the federal courts were required to determine whether a custody decree was punitive or whether the public policy of a state had been violated, they would become involved in the same sort of matters upon which substantive custody determinations depend. These types of federal inquiries would necessarily contradict the Act's very purpose in requiring a prior state custody decree—the prevention of federal substantive determinations.<sup>47</sup>

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40. 28 U.S.C.A. § 1738A(c)(2)(A) (West Supp. 1980). However, the parent left behind will not necessarily be given custody since the snatching parent's departure may have been in response to intolerable conditions in the home. See Bodenheimer, *supra* note 18, at 990. The court may also render a temporary decree.

41. See 1980 *Child Snatching Hearings*, *supra* note 9, at 146.

42. See 124 CONG. REC. S499-501 (daily ed. Jan. 25, 1978).

43. 1979 *Child Snatching Hearings*, *supra* note 1, at 52-53 (statement of Brigitte M. Bodenheimer).

44. 1980 *Child Snatching Hearings*, *supra* note 9, at 146.

45. See 1979 *Child Snatching Hearings*, *supra* note 1, at 60-61.

46. See 1980 *Child Snatching Hearings*, *supra* note 9, at 134.

47. *Id.* In light of these arguments, Professor Bodenheimer withdrew her request for a punitive modification exception to Section 1738A. Nevertheless, she did so with a strong recommen-

Another potential area of abuse which has been remedied is the section regarding jurisdiction based upon significant connection.<sup>48</sup> This section would have allowed a state to assume jurisdiction when the child and at least one of the contestants had a significant connection with the state and assumption of jurisdiction appeared to be in the child's best interests.<sup>49</sup> The UCCJA contains a similar provision and, as noted above, it has been interpreted by some courts to provide a coequal, alternative basis of jurisdiction to the home state, thereby increasing the likelihood of concurrent jurisdiction.<sup>50</sup> In order to make it clear that such an interpretation is incorrect, section 1738A was amended to provide for "significant connection" jurisdiction only when it appears that no other state would have jurisdiction and assumption of jurisdiction is in the child's best interests.<sup>51</sup>

### Section 9—Parent Locator Service

Where a snatching parent does not attempt to obtain a more favorable custody decree, but simply conceals the child within another state, section nine of the Act authorizes the use of the Parent Locator Service (PLS) to locate the missing child. The PLS is part of a state-federal program which, until now, has been used solely to locate parents who have disappeared in order to avoid child support obligations.<sup>52</sup> Section nine adds section 463 to the Social Security Act<sup>53</sup> to expand the program's function to locate missing parents and children who have disappeared in disregard of a custody determination or a state or federal law. The section authorizes states to enter into an agreement with the Secretary of Health and Human Services under which information will be exchanged as to the whereabouts of an absent parent or child.<sup>54</sup>

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dation that the bill more explicitly provide for the enforcement of visitation orders. Such an amendment was deemed unnecessary, however, since section 1738A already requires states to enforce other states visitation orders. *1980 Child Snatching Hearings, supra* note 9, at 269 (questions of Sen. Mathias and responses of Russell M. Coombs).

48. 28 U.S.C.A. § 1738A(c)(2)(B) (West Supp. 1980).

49. *See* note 42 *supra*.

50. *See* text accompanying note 21 *supra*.

51. 28 U.S.C.A. § 1738A(c)(2)(B) (1980). As a further precaution against concurrent jurisdiction, section 1738A(g) prohibits a state from exercising jurisdiction during the pendency of a proceeding in another state court, where such other court is exercising jurisdiction consistently with the provisions of the Act.

52. *1980 Child Snatching Hearings, supra* note 9, at 30. (testimony of Louis B. Hayes, Deputy Director, Office of Child Support Enforcement, Dep't of Health, Education and Welfare. However, in 1977 California passed legislation which expanded the role of its PLS to provide assistance in child snatching cases. It is the only state to have done so on its own. *See* CAL. WELF. & INST. CODE § 11478.5 (1977).

53. 42 U.S.C. § 301 *et seq.* (1976).

54. Section 9 also amends section 454 of the Social Security Act, *id.*, by adding paragraph 17 which authorizes the PLS to charge a fee for the use of its services. This provision no doubt was included in response to HHS's concern over the added cost of its increased responsibilities. *See 1980 Child Snatching Hearings, supra* note 9, at 31. HHS also expressed concern that further extending the use of its confidential records would violate governmental policy to protect the privacy of individuals. *Id.* Section 463(c) was subsequently added to section 9. It imposes the same conditions regarding disclosure of information in child snatching cases

As originally written, this provision allowed access to the PLS only for the purposes of making or enforcing a custody determination entitled to section 1738A recognition.<sup>55</sup> However, in its final form, reference to section 1738A has been omitted.<sup>56</sup> This omission could result in abuse of the PLS, since it is possible that a parent could use this Service to enforce a custody determination which has not been rendered in accordance with section 1738A jurisdictional standards and is therefore not entitled to full faith and credit. The PLS could likewise be used to enforce a state or federal law based on violation of a custody decree that is not entitled to full faith and credit. Such abuse of the PLS could have a tendency to undermine the Act's full faith and credit provision. Nonetheless, such danger should be minimized by the fact that nearly all of the states have now adopted the UCCJA and its jurisdictional standards, upon which section 1738A is based. Also, any decree not rendered in accordance with these standards need not be given full faith and credit by other states.

#### Section 10—Unlawful Flight Act

As previously proposed, section ten amended the United States Code to make parental kidnapping a federal crime.<sup>57</sup> It provided for a fine, imprisonment, or both for the willful restraint or concealment of a child without good cause, in violation of a custody determination entitled to section 1738A recognition.<sup>58</sup> Return of the child unharmed within thirty days would have been a complete defense to such a prosecution, however.<sup>59</sup> The section further authorized the FBI to commence an investigation after sixty days, providing local law enforcement officials had been contacted and a request for assistance to the PLS had been made.<sup>60</sup>

This provision encountered considerable opposition from those who felt that criminal sanctions were inappropriate in a domestic situa-

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as it does in support cases. Only information as to the most recent address and place of employment will be provided.

55. See 124 CONG. REC. S499-501 (daily ed. Jan. 25, 1978).

56. Section 463(d) provides, "No agreement entered into under section 463 of the Social Security Act shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title) becomes effective." However, this provision does not appear to condition the use of the PLS on the existence of a section 1738A decree.

57. The Act amended title 18 of the United States Code by adding section 1203. 1979 *Child Snatching Hearings*, *supra* note 1, at 13-16.

58. When first proposed in 1978, this provision made it a federal crime to restrain or conceal a child in violation of a 1) custody determination entitled to enforcement under section 1738A; 2) a valid written agreement between the child's parents or guardians; and 3) the relationship of parent and child or guardian and ward. 124 CONG. REC. S499 (daily ed. Jan. 25, 1978). The provision was revised to eliminate the latter two violations as the basis of a federal kidnapping violation since it was feared that this might involve federal authorities in the determination of substantive custody issues without the benefit of a prior civil ruling in the case. *Reform of the Federal Criminal Laws: Hearings Before the Comm. on the Judiciary*, Pt. XIV, 96th Cong., 1st Sess. 10628-31 (1979) (letter from Patricia M. Wald, Assistant Attorney General, U.S. Dept. of Justice, to Rep. Peter W. Rodino (Sept. 20, 1978)).

59. See 1979 *Child Snatching Hearings*, *supra* note 1, at 16-17.

60. *Id.* at 15-16.



tion.<sup>61</sup> Concern was expressed about the possibility of violent confrontations and the undesirable effects of having a parent arrested in the presence of his child.<sup>62</sup> Yet, the strongest opposition came from the Department of Justice and the FBI. Officials from these agencies seriously questioned the propriety of involving federal criminal resources in a matter which is essentially a family relations problem.<sup>63</sup> They also claimed that they are trained to handle dangerous criminal matters and, therefore, do not have the experience to handle domestic disputes.<sup>64</sup>

A compromise was struck. The criminal sanctions were deleted, and a provision setting forth the congressional intent that the federal Unlawful Flight Act (UFA)<sup>65</sup> is applicable to parental kidnapping cases was substituted.<sup>66</sup> The UFA makes it a federal crime to travel interstate with the intent to avoid prosecution for a felony. In practice, however, the federal government does not bring prosecutions under the statute but returns the alleged felon to the states for prosecution of the underlying offense.<sup>67</sup> The UFA has always been available for use in child-snatching cases, but prior to the enactment of section ten, the FBI had insisted that the child be in danger before it would become involved.<sup>68</sup> Because of the congressional intent now manifested in section ten, the FBI will be required to drop this exception.<sup>69</sup>

The bill's proponents lost little in the compromise. Any advantage gained from the involvement of the federal government at the prosecutorial stage would be questionable, since the state courts are capable of handling this aspect of the problem. However, the proponents did retain the valuable resources of the FBI at the investigative stage. In the unusual case where civil remedies are ineffective and the efforts of local authorities are unsuccessful, the FBI's broad investigative tools will provide a last resort for a victimized parent.<sup>70</sup> In addition, the new

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61. See, e.g., *1979 Child Snatching Hearings*, *supra* note 1, at 53-55 (statement of Brigitte M. Bodenheimer); Coombs, *supra* note 6. *But see 1980 Child Snatching Hearings*, *supra* note 9, at 154 (prepared statement of Russell M. Coombs).

62. Coombs, *supra* note 6, at 416.

63. See *1980 Child Snatching Hearings*, *supra* note 9, at 21 (panel of law enforcement officials).

64. Lawrence Lippe of the Department of Justice claimed, "The provision in S.105 which establishes an absolute defense to prosecution if the abducted parent returns the child unharmed requires agents to have the wisdom of Solomon." *1980 Child Snatching Hearings*, *supra* note 9, at 28 (statement of Lawrence Lippe, Dep't of Justice).

65. 18 U.S.C. § 1073 (1976).

66. Pub. L. No. 96-611, 94 Stat. 3569.

67. *1980 Child Snatching Hearings*, *supra* note 9, at 42 (testimony of Lee Colwell, Executive Assistant Director, FBI).

68. The FBI claimed that this position was in compliance with the Congressional intent behind the parental exception in the Lindbergh Law, 18 U.S.C. § 1201(a) (1976), that parents not be prosecuted for kidnapping their own children. See *1980 Child Snatching Hearings*, *supra* note 9, at 251. However, the Conference Report on the Amendment of § 10 refers to such an interpretation of congressional intent as "erroneous." CONF. REP. NO. 96-1401, 96th Cong., 2d Sess. 42 (1980).

69. CONF. REP. NO. 96-1401, *supra* note 63, at 42.

70. One criticism of the new provision is that the FBI's resources could be used to enforce a state or federal law based on the violation of a custody decree, which is not entitled to full faith

provision minimizes the involvement of the criminal authorities at the federal level while, in effect, passing much of that responsibility to authorities at the state level. By making the FBI's resources available only when a state has made child snatching a felony, section ten encourages state officials to treat child snatching as a serious offense.<sup>71</sup>

### APPLICATION OF THE ACT

The components of the Parental Kidnapping Prevention Act have been skillfully woven together to create a comprehensive remedy for child snatching. In a typical situation it will work in the following manner. A couple is divorced in state A. The husband feels that he will not be treated fairly by the courts of that state with regard to custody of the children. He absconds with the children to state B. Under the Act the mother, left behind in state A, can go into court and obtain a temporary custody decree since the home state will retain jurisdiction for six months. State B must then decline jurisdiction and respect the custody decree rendered by state A as a matter of full faith and credit.<sup>72</sup> However, if instead of attempting to obtain a custody decree, the father decides to conceal the children within state B, the mother could then apply to the PLS for assistance in locating them.<sup>73</sup> She might also bring criminal charges against the father. If state A treats child snatching as a felony, the investigative services of the FBI could be enlisted. The father will then be returned to state A for prosecution.

### CONCLUSION

The Parental Kidnapping Prevention Act promises to be an effective weapon against child snatching. Its full faith and credit requirement should aid substantially in creating a uniform body of federal law and in reducing conflict among state courts. The PLS provision provides a very practical solution to the problem of locating concealed

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and credit since the FBI's authority is not predicated on the violation of a section 1738A decree. Similar criticism is made of the PLS section.

71. Thirty-nine states have felony child abduction and restraint statutes; 32 have misdemeanor statutes; 21 have felony and misdemeanor statutes. Only five states do not criminalize this conduct at all. P. HOFF, *A SURVEY OF STATE AND FEDERAL CHILD ABDUCTION AND RESTRAINT LAWS* (1981).
72. Section 1738A does not specifically require state B to notify and return the children to state A. While in practice courts may find it more effective to follow such a procedure, there is little to lose and much to gain by including it within the federal statute. The details could be worked out by the individual states. Otherwise, a parent rebuffed by the court in state B could easily whisk the child out of the court's jurisdiction and conceal him within another state.
73. The establishment of the PLS as a locating service has also been helpful in negotiating an international treaty regarding child snatching. (The Convention on the Civil Aspects of International Child Abduction is a treaty which is now in its final form but must be ratified by the U.S. Senate. *Summarized* at 6 FLR 2417. See Bodenheimer, *The Hague Draft Convention on International Child Abduction*, 14 FAM. L.Q. 99 (1980)). When a child stealing takes on international dimensions, the situation becomes even more complex, as one might expect. The PLS will enable the United States to reciprocate with other nations in returning snatched children. See *1979 Child Snatching Hearings*, *supra* note 1, at 48.

children. It will also help relieve the heavy financial burden that, until now, victimized parents have had to bear alone. Finally, the unlawful flight provision will provide a last resort for the victimized parent when all other remedies have failed. While the notion of subjecting a child-snatching parent to criminal sanctions, especially a felony conviction, may seem harsh, one must remember the harsh and often permanent effects that child snatching inflicts upon children. A parent who steals his children, rather than participating in a full hearing on the issue of custody, is often acting out of anger or guilt rather than love. The Parental Kidnapping Prevention Act will help to minimize the fears and anguish suffered by snatched children and their parents and will serve to eliminate the serious problems created by parental kidnapping.

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