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Child Custody Jurisdiction in Ohio - Implementing the Uniform Child Custody Jurisdiction Act

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CHILD CUSTODY JURISDICTION IN OHIO—IMPLEMENTING THE UNIFORM CHILD CUSTODY JURISDICTION ACT

“A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his (her) own lasting detriment and the detriment of society.”

CHILD CUSTODY LAWS in America have enabled child snatching and other methods of self help to be effective means of obtaining possession, and even legal custody of children. The highly publicized Mellon child snatching case exemplifies self help methods used by both a custodial and noncustodial parent to gain physical custody of their children. After a 1974 divorce decree which awarded custody to the father, wealthy industrialist Seward Prosser Mellon, the wife, Karen Leigh Boyd, took the children out of Pennsylvania to New York. There she obtained a legal custody decree in her favor. Within a year, the father, through his agents, had the children snatched while they were walking to school and had them returned to him in Pennsylvania. Because of the legal custody decrees and existing laws, the New York prosecutor had no grounds upon which to prosecute Mellon.

Another poignant example of the problems surrounding self help custody remedies involved the snatching of two children from their front yard by their mother. Under a Colorado custody decree, the children's father was granted custody. Using self help, the mother took the children from their Colorado home to Virginia. The father then took his Colorado custody decree to Virginia to obtain physical custody of his children. However, the father was told by the court, “we’re in Virginia now.” Consequently, the Colorado decree was disregarded and the mother granted custody.

In an effort to end self help alternatives and to create consistency in state custody laws, the National Conference of Commissioners on Uniform

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**UNIFORM CHILD CUSTODY JURISDICTION ACT, Prefatory Note. See NATIONAL CONFERENCE OF COMMISSIONERS ON STATE LAWS HANDBOOK 194 (1968). The Uniform Act as enacted by the Ohio Legislature will be referred to as OHIO REV. CODE ANN. §§ 3109.21-.27 (Page Supp. 1977).**

\[2\] Child Snatching, NEWSWEEK, October 18, 1976, at 24. “Child snatching” is defined as “divorced or separated parents who kidnap their own children during or after custody fights.”

\[3\] See N.Y. Times, March 21, 1976, at 1, col. 7.

\[4\] See NEWSWEEK, October 18, 1976, at 24-25.

State Laws in 1968 adopted the Uniform Child Custody Jurisdiction Act (U.C.C.J.A.). The Ohio legislature has recently joined a growing number of states by enacting the Uniform Child Custody Jurisdiction Act.

In light of public concern over child snatching, the uncertainty of the recognition and enforcement of custody decrees by sister states, and recommendations of legal scholars, the Commissioners drafted the U.C.C.J.A. The stated purposes of the Act include establishing greater stability in the home environment by enacting laws which deter child snatching and forum shopping, reducing conflicts and competition between state courts over jurisdiction, and promoting enforcement of child custody decrees. The Act has adopted standards to be used by the courts to avoid jurisdictional conflicts and to determine when a court should exercise jurisdiction. The

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6 Uniform Child Custody Jurisdiction Act.


9 Uniform Child Custody Jurisdiction Act, Prefatory Note. See Moving to Stop Child Snatching, Time, February 27, 1978, at 85, which estimates 25,000 to 100,000 child snatching cases per year.


11 Uniform Child Custody Jurisdiction Act, § 1 Purposes of Act:

1. To avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in shifting of children from state to state with harmful effects on their well-being;
2. To promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
3. To assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available, and that courts of this state decline the
Commissioners commented that “each section of the Act should be read and applied with these purposes in mind.”

Reflecting upon the drafters’ purposes, this comment will discuss the judicial and legislative ambiguity in Ohio which necessitated legislative change. It will also compare Ohio’s child custody litigation prior to the enactment of the U.C.C.J.A. with the results that are likely to be obtained in today’s child custody litigation. In addition, it will examine the statutory procedures which now govern child custody litigation and areas of concern which remain to be challenged.

ENFORCEMENT AND RECOGNITION OF CUSTODY DECREES

One of the compelling reasons for interstate custody disputes and child snatching has been the ease of finding an out-of-state court that would either refuse to give effect to the original decree or would freely modify it. Parents have successfully engaged in forum shopping to obtain custody decrees which are not always in the best interests of the child. The U.C.C.J.A. has statutory provisions which provide guidelines to be used in such cases to prevent abuses. This section will first discuss the problems related to enforcement and recognition of interstate custody decrees and then analyze the U.C.C.J.A. sections which expressly deal with these issues.

When a parent or party with interest in the child has illegally obtained physical custody, the most widely used remedy by the custodial parent or

exercise of jurisdiction when the child and his family have a closer connection with another state;
(4) To discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
(5) To deter abductions and other unilateral removals of children undertaken to obtain custody awards;
(6) To avoid relitigation of custody decisions of other states in this state insofar as feasible;
(7) To facilitate the enforcement of custody decrees of other states;
(8) To promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
(9) To make uniform the law of those states which enact it.

12 Uniform Child Custody Jurisdiction Act, § 1 Comment.
13 The “best interests of the child” has been the standard used to determine the appropriate party to receive custody. Ohio Rev. Code Ann. § 3109.04 (Page Supp. 1977). See note 113 infra; McVay v. McVay, 44 Ohio App. 2d 370, 338 N.E.2d 772 (1975), which holds that in determining the best interests of the child both parents are equal and preference should not be given to the mother as used to be applied under the Tender Years Doctrine. See also Annot., 4 A.L.R.3d 1396 (1965), which makes children’s wishes a factor; Ohio Civ. R. 75(D) which provides that a child over twelve years can decide which parent he/she prefers; Annot., 92 A.L.R.2d 695 (1963), mentioning “split” or “divided” custody of children. Today custody, in the proper circumstances, may be split equally between parents.
one claiming a right, is the writ of habeas corpus. Even under the U.C.C.J.A.
this is still the proper action to test the right of custody. In Ohio "[w]hoever
is unlawfully restrained of his liberty, or entitled to the custody of another,
of which custody such person is unlawfully deprived, may prosecute a writ
of habeas corpus, to inquire into the cause of such imprisonment, restraint,
or deprivation." Habeas corpus is the proper procedure to be used by parents
to test the illegal restraint or right to immediate custody of children who
are under the jurisdiction of an in-state or out-of-state court.

The juvenile courts in Ohio have been granted by statute exclusive
original jurisdiction "to hear and determine any application for writ of
habeas corpus involving the custody of children." Another conflicting
statute confers authority to grant a writ of habeas corpus on "the supreme
court, court of appeals, court of common pleas, probate court or by a judge
of any such court." The issue of whether writs of habeas corpus must be
filed and heard under the exclusive original jurisdiction of the juvenile court
or whether one has the opportunity to forum shop has recently been deter-
mined by the Ohio Supreme Court.

In In re Black, a petition for writ of habeas corpus was filed in an
Ohio court of appeals by the mother, an Idaho resident, pursuant to an
Idaho custody decree granting her permanent custody. The father had taken
the children from Idaho to Ohio where they were then residing. The Ohio
Supreme Court was asked to determine the issue of jurisdiction of the court
of appeals to hear a writ of habeas corpus in light of the exclusive original
jurisdiction statutorily granted to the juvenile court. The supreme court
held that the court of appeals had been granted jurisdiction over writs of
habeas corpus by the Ohio Constitution. In conflicts between constitutional
and statutory grants of jurisdiction, constitutional grants prevail. Thus, the
court held that the juvenile court's jurisdiction was exclusive and original
only between those courts with statutory grants of jurisdiction, i.e., courts
of common pleas or probate courts, and not over other courts with con-
stitutional grants of authority.

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31 Ohio Const. art. IV, § 3(B)(1). The court of appeals shall have original jurisdiction in
the following types of actions: quo warranto, mandamus, habeas corpus, prohibition and pro-
cedendo.
32 36 Ohio St. 2d at 126, 304 N.E.2d at 395.
33 Id.
The Ohio Supreme Court was recently called upon again to determine a conflict of jurisdiction between the court of appeals and the juvenile court in *Hughes v. Scaffide.* A petition for writ of habeas corpus was filed in the court of appeals asserting that a minor daughter was being unlawfully restrained of her liberty. The court of appeals denied the writ under the doctrine of forum non conveniens stating that the juvenile court was the appropriate forum to petition for a writ of habeas corpus in cases involving child custody. The Ohio Supreme Court held that the court of appeals could not deny the writ of habeas corpus under the doctrine of forum non conveniens, and that the constitutionally granted original jurisdiction must be exercised by the court of appeals.

The use of habeas corpus to award temporary or permanent custody or to modify custody decrees has been disputed, and the courts remain split on its applicability. The United States Supreme Court in *May v. Anderson,* applying Ohio law, held that a writ of habeas corpus could be used to determine one's immediate right to physical custody. However, it could not be used to either modify a prior award of custody, even under a showing of changed circumstances, or to settle future custody disputes. This view was also expressed in *Bloom v. Wilde,* whereby the Ohio court held that upon the filing of a writ of habeas corpus, the court would not interfere with an out-of-state decree.

A minority of Ohio courts have held that once a court obtains jurisdiction under a writ of habeas corpus, it can determine future child custody. One example is the early Ohio case, *Weiss v. Fite,* in which the court of appeals followed authorities of other states and held that an Ohio court can determine future custody in a habeas corpus action rather than be limited to the enforcement of the original custody decree where the welfare and the best interests of the children thus demand.

The writ of habeas corpus is still a viable alternative when one asserting custody is seeking to gain physical control over children who are being illegally restrained. The U.C.C.J.A. provides the courts with guidelines to be

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24 53 Ohio St. 2d 85, 372 N.E.2d 598 (1978).
25 Id. at 86, 372 N.E.2d at 600.
26 See note 21 supra.
27 53 Ohio St. 2d at 90, 372 N.E.2d at 602.
30 Weiss v. Fite, 19 Ohio App. 309 (1924). But see note 138 infra which followed Weiss in applying the best interest standard in determining whether to return a child who is a ward of a foreign jurisdiction. See also Halvey v. Halvey, 330 U.S. 610 (1947).
31 19 Ohio App. at 317.
used in determining one's right to custody, but in order to invoke the court's jurisdiction, the writ of habeas corpus is still appropriate.

Another aspect of the enforcement question concerns the issue of full faith and credit. Article IV section 1 of the United States Constitution states that full faith and credit should be given by the state to judicial proceedings of a sister state. As a general rule, state courts have not accorded full faith and credit to custody decrees rendered by sister states. The lack of finality of a custody order, in light of the fact that changed circumstances may provide grounds for modifications, has been argued as a ground not to apply the constitutional requirements of full faith and credit to child custody decrees. Thus, forum shopping and child snatching have accomplished parents' goals in finding a sympathetic court to award custody in their favor.

The United States Supreme Court has had several opportunities to determine the issue of whether custody decrees should be accorded full faith and credit. In a highly criticized opinion, May v. Anderson, the Supreme Court held that the Ohio court was not bound by the Full Faith and Credit Clause to give effect to a Wisconsin custody decree obtained by the father in an ex parte hearing. Since the Wisconsin court did not obtain personal jurisdiction over the mother, the Ohio courts were free to make their own custody determination. The court declined to indicate how they would have answered the full faith and credit issue if the Wisconsin court had obtained personal jurisdiction over the mother.

In a strong dissent, Justice Jackson criticized the majority holding and the court's interpretation which "seem[ed] to reduce the law of custody to a rule of seize-and-run." Justice Jackson refused to hold, as the majority did, that a state where a parent and child are domiciled "cannot constitu-

32 U.S. Const. art. IV, § 1, states: "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." The statute passed under this authority is found at 28 U.S.C. § 1738 (1970).
34 345 U.S. 528 (1953). In this case the parties were married and domiciled in Wisconsin until 1947, when after marital problems the wife moved to Columbiana County, Ohio, to think about the problems. She decided not to return. The husband then filed for divorce and custody in Wisconsin. A copy of the Wisconsin summons and petition were delivered to the wife. She did not appear in Wisconsin and custody was awarded to the father. The father came to Ohio with the decree and took the children back to Wisconsin. During a visit, the mother took the children back to Ohio. The father filed a writ of habeas corpus in the Ohio probate court, which held in favor of the father as did the court of appeals and the Ohio Supreme Court,
35 Id. at 542.
tionally adjudicate controversies as to his guardianship"\textsuperscript{58} when the other parent leaves the state: "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."\textsuperscript{57}

In \textit{Ford v. Ford},\textsuperscript{88} the United States Supreme Court again refused to hold the Full Faith and Credit Clause applicable to a child custody case. Limiting its decision to the facts of the case, the Court held that the South Carolina court was not bound by the Full Faith and Credit Clause since the Virginia decree dismissing a writ of habeas corpus is not res judicata.\textsuperscript{59}

The Supreme Court had recently granted certiorari in the case of \textit{Borri v. Silverson},\textsuperscript{40} which involved the Full Faith and Credit Clause's applicability to a child custody decree. Although this would have been a timely opportunity to determine the full faith and credit issue, the Court denied the writ as improvidently granted.

The Ohio Supreme Court in keeping with the United States Supreme Court has held that Ohio does not have to accord full faith and credit to an out-of-state custody decree if the decree was made when the parent who originally was granted custody was properly domiciled in Ohio with the children.\textsuperscript{41} The court's most "controlling consideration is the welfare of the child"\textsuperscript{42} and the Ohio court is "free to determine whether it is for the welfare and best interest of the children to give full faith and credit"\textsuperscript{43} to the out-of-state order. In a more recent case, the Ohio Supreme Court held that if another jurisdiction has awarded child custody pursuant to a valid in personam order and there are no changes in circumstances affecting the

\begin{footnotesize}
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\item \textsuperscript{58} Id. at 539.
\item \textsuperscript{57} Id.
\item \textsuperscript{88} 371 U.S. 187 (1962). Here, the Virginia court dismissed a petition for writ of habeas corpus after the parents made an agreement concerning the custody of the children. In later action by the mother for custody in South Carolina, the court held that it must give full faith and credit to the Virginia decree and agreement made pursuant to it.
\item \textsuperscript{59} Id. at 194.
\item \textsuperscript{40} 429 U.S. 1078 (1977).
\item \textsuperscript{41} Cunningham v. Cunningham, 166 Ohio St. 203, 141 N.E.2d 172 (1951); Purcell v. Purcell, 47 Ohio App. 2d 258, 353 N.E.2d 882 (1975). The fact patterns of these cases are similar. The parents were divorced out-of-state and the mother was granted custody. The mother moved to Ohio with the children and while domiciled in Ohio, the father in the original jurisdiction sought and obtained modification granting him custody. The Ohio courts were faced with the issue of whether they were required to give full faith and credit to the out-of-state decrees as modified. \textit{See Restatement (Second) of Conflict of Laws} § 79 (1971).
\item \textsuperscript{42} 166 Ohio St. at 205, 141 N.E.2d at 173.
\item \textsuperscript{43} 47 Ohio App. 2d at 259, 253 N.E.2d at 883.
\end{itemize}
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child's best interests, the Ohio court will award full faith and credit to the out-of-state decree.\textsuperscript{44}

The U.C.C.J.A. offers remedies to the full faith and credit conflict. The Act provides that a state court proceeding which is in compliance with the prerequisites to jurisdiction\textsuperscript{45} and in which notice and opportunity to be heard have been given\textsuperscript{46} will be binding on the parties.\textsuperscript{47} As to these parties, the decree is "conclusive as to all issues of law or fact decided and as to the custody determination made, unless and until that determination is modified pursuant to law."\textsuperscript{48} This section takes into consideration the issue of finality of a custody decree and determines that a decree will be considered final until modified.

The statute also mandates that a court of Ohio "shall recognize and enforce an initial or modification decree of another state if that court assumed jurisdiction under statutory provisions. . . .\textsuperscript{49}" By enacting the U.C.C.J.A., Ohio will give full faith and credit to custody decrees of sister states made in compliance with jurisdictional and due process requirements. As noted by the Commissioners, "recognition and enforcement is mandatory if the state in which the prior decree was rendered (1) has adopted this Act, (2) has statutory jurisdictional requirements substantially like this Act, or (3) would have jurisdiction under the facts of the case if this Act had been law in the state."\textsuperscript{50}

The Act also enables one to bring a certified copy of an out-of-state decree to an Ohio court to be filed. Once filed, the Act requires that the decree be given full recognition and effect until modified.\textsuperscript{51} This same section also provides a custodial parent with a valid out-of-state custody decree which is protected by Ohio laws, provided the decree is properly filed.

Legislation is pending in the United States House of Representatives which if passed would require that all states give full faith and credit to cus-


\textsuperscript{45} OHIO REV. CODE ANN. § 3109.22 (Page Supp. 1977).

\textsuperscript{46} Id. § 3109.23.

\textsuperscript{47} Id. § 3109.30(A). This section does not require personal jurisdiction.

\textsuperscript{48} Id.

\textsuperscript{49} Id. § 3109.30(B). Ohio courts are also bound by statute to give full force and effect to foreign adoption decrees. OHIO REV. CODE ANN. § 3107.15 (Page Supp. 1977).

\textsuperscript{50} UNIFORM CHILD CUSTODY JURISDICTION ACT, § 13.

tody decrees until modified by the court in the state where they were issued. The house bill was proposed by Representative Moss on April 29, 1977, and is currently pending in the House Judiciary Committee's Subcommittee on Administrative Law and Government Relations. This bill would provide a remedy to persons in states who have not adopted the U.C.C.J.A. It would also eliminate the opportunities for illegal child snatching or forum shopping to a jurisdiction which does not require that full faith and credit be given to child custody decrees of sister states.

**JURISDICTION**

The U.C.C.J.A. has created a two-pronged analysis of child custody jurisdiction. The first prong determines if a court has jurisdiction to hear the custody case; the second prong determines whether the court should exercise that jurisdiction. In making the determination on the first prong, the court applies four tests to the fact situation. If it answers affirmatively to any one of the four tests, it has jurisdiction. In drafting this first prong, the Ohio legislature has changed the operative language from that found in the U.C.C.J.A. By doing so, the first prong could be interpreted to mean that a court should apply the four tests to determine if they should exercise jurisdiction rather than if they have obtained jurisdiction. However, upon examining the Ohio act in its entirety, the specific title to the section, “Prerequisites to Jurisdiction” and the fact that the language of the tests and subsequent sections follow the Uniform Act, it appears that the change in language was not intended to change the thrust and intent of the Act.

Once jurisdiction has been conferred through these tests, the court must then look to the second prong to determine if it should exercise that jurisdiction. Reasons for refusing to exercise jurisdiction include pendency of

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53 **UNIFORM CHILD CUSTODY JURISDICTION ACT, § 3(a).**

54 *Id.* § 3(a)(1)-(4).

55 **OHIO REV. CODE ANN. § 3109.22(A) (Page Supp. 1977).** The section is entitled “Jurisdiction to determine custody of a child” and states that, “No court of this state having jurisdiction to determine the custody of a child shall exercise that jurisdiction unless one of the following applies....” However, the U.C.C.J.A. § 3(a) states that, “A court of this state which is competent to decide custody matters has jurisdiction to make a child custody determination by initial or modification decree if....”

It appears that both provisions refer to a court which has jurisdiction to hear child custody cases. The U.C.C.J.A. requires the application of the four tests to determine whether a court which has jurisdiction over custody matters will have jurisdiction in the specific custody proceedings. On the other hand, the Ohio statutory language seems to use the application of the tests to determine if the jurisdiction should be exercised.

58 **OHIO REV. CODE ANN. § 3109.22(A) (Page Supp. 1977).**
proceedings in another state, forum non conveniens, or improperly obtained custody. Denying jurisdiction in these cases serves the purpose and spirit of the Act by preventing forum shopping, eliminating conflicts between state courts, and insuring that a custody determination will be made by the court that can best meet the interests of the child.

The focal point in the jurisdictional section of Ohio's U.C.C.J.A. is the section entitled "Prerequisites to Jurisdiction" which provides Ohio courts with the four tests to be used to ascertain if the court has jurisdiction. In Ohio, the court of common pleas has original jurisdiction over matters of divorce. Once the court of common pleas has obtained jurisdiction over a divorce proceeding, it has an incidental power to award custody of minor children. The Ohio Supreme Court has held that the court of common pleas has a duty to determine the care, custody and control of minor children of the marriage in an action for divorce and failure to do so will result in reversible error. It is generally held that if the court does not grant the divorce, it no longer has jurisdiction to make a decree of custody. A growing number of courts have held that if the court does not grant a divorce, but the parties are living separately and apart, the court retains its jurisdiction to determine child custody. When the jurisdiction of the common pleas court terminates, the court should certify the issue of custody to the juvenile court.

In order for a court of competent jurisdiction to obtain custody jurisdiction, it must be able to answer affirmatively to one of the four statutory tests. The first test to be applied by the Ohio court is whether Ohio is the

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87 Id. § 3109.24.
88 Id. § 3109.25.
89 Id. § 3109.26.
90 Id. § 3109.27.
91 Id. § 3109.28.
93 Black v. Black, 110 Ohio St. 392, 144 N.E. 268 (1924); Hoffman v. Hoffman, 15 Ohio St. 427 (1864).
97 OHIO REV. CODE ANN. § 3105.21(B) (Page Supp. 1977) states: "Upon failure of proof of the courses in the complaint, the court may make an order for disposition, care, and maintenance of any dependent child of the marriage as is in the child's best interest and in accordance with § 3109.04." See OHIO CIV. R. 75(F); Annot., 7 A.L.R.3d 1096 (1966).
98 OHIO REV. CODE ANN. § 2151.23(A), (C), (D) (Page Supp. 1977).
99 Id. § 3109.22(A).
“home state” of the child at the time of commencement of the proceeding. To apply this test, the court must determine whether the child has been living in the state for six months. If the child has been absent from the state because he has been removed by one claiming custody, the issue then becomes whether Ohio was the child’s home state prior to commencement of the proceeding and whether a parent still lives in Ohio. This situation is most commonly found in cases of child snatching where the child has been removed from Ohio by the noncustodial parent in an effort by that parent to gain custody elsewhere. If a child is less than six months old, the court has jurisdiction if Ohio was the place of the child’s birth. It should be noted that physical presence of the child in the jurisdiction is not a prerequisite to determine home state. On the other hand, physical presence alone is generally not sufficient for a court to obtain and exercise jurisdiction.

This statutory provision should be read in conjunction with Ohio Revised Code section 3109.26 which expressly refers to cases of child snatching. The section states that although a child is in Ohio, the court may decline to exercise jurisdiction when the petitioner has wrongfully taken the child from the custodial parent or has acted in violation of a valid custody decree.

The “home state” test under the U.C.C.J.A. has been applied in several jurisdictions. The Oregon Supreme Court was faced with the issue in *Settle v. Settle* where both husband and wife originally resided in Indiana. The wife took the children to Oregon, then returned to Indiana to file for divorce and an award of temporary custody. After obtaining a temporary custody decree, but prior to a divorce decree which granted custody to the husband, the wife moved back to Oregon where she remained with the children. The Oregon court held that because the children were living with a parent in Oregon for more than six months prior to commencement of the action, it was the home state of the children and had jurisdiction to modify the custody
Similarly, the court of special appeals in Maryland in *Howard v. Gish* held that since a child had been living in Maryland for over eleven months with the custodial parent, Maryland was the home state of the child and therefore had jurisdiction to modify a custody decree which had been originally granted in another jurisdiction.

The second jurisdictional test, the maximum contacts type test, is used to determine whether it is in the best interest of the child for the court to assume jurisdiction because the child and at least one of the parents have significant connection with the state. This test provides the court with more flexibility than the home state test. The court is asked to ascertain if the state has access to substantial evidence “concerning the child’s present, or future care, protection, training, and personal relationships.” This section was enacted to cover situations where a child does not have a “home state.” As an alternative to the home state test, if the court after examining all evidence finds that maximum contacts with the child may exist in a state which may not be the child’s home state, that state may exercise jurisdiction. The commissioner’s comments stress that this section of the Act must be interpreted in the spirit of the legislation with the best interests of the child as the prominent concern in determining jurisdiction. The court in *Settle v. Settle* also applied this test and determined that the children no longer had significant contact with the state which issued the custody decree and that it had “optimum access to relevant evidence about the child and the family;” thus it had obtained jurisdiction to modify the custody decree.

The third jurisdictional test grants jurisdiction to a court if a child is physically present in the state and has been abandoned, threatened, mistreated, or abused, and because of the emergency situation the court must protect the child. This section requires physical presence in the state and
abandonment or emergency situations and gives the court "parens patriae jurisdiction." 88

The final test grants jurisdiction to the Ohio court if no other state court can meet one of the first three tests, or if another state has declined to exercise jurisdiction on the ground that Ohio is the more appropriate forum. 89

After applying the first prong of the test and determining that the court has jurisdiction, the burden remains on the court to determine whether that jurisdiction should be exercised. This second prong presents issues which should cause the court to reexamine the purposes of the Act and make its determination accordingly.

Issues relating to whether a court should exercise jurisdiction generally center around two broad areas. The first situation involves a parent who has brought the child from out of state and asks the in-state court for an initial decree. The court must determine that it is the best forum to hear the case before exercising jurisdiction. The second situation arises when a parent, generally the noncustodial parent, takes the child out of the state and seeks to have the decree modified in his/her favor by the out-of-state court. Several sections of the U.C.C.J.A. serve as guidelines for the court when determining whether to exercise jurisdiction over the custody dispute.

A court in Ohio shall not exercise its jurisdiction if there is another custody proceeding pending in an out-of-state court with jurisdiction at the time the custody petition is filed with the Ohio court. 88 It may exercise jurisdiction of the out-of-state court stayed the proceeding because Ohio is a more appropriate forum. 89

The statute places the burden on the Ohio court to make all possible efforts to determine if there are proceedings pending out of state. 90 The court must examine the pleadings and other records to ascertain if there are other proceedings pending, and if it appears that such proceedings may exist, the court shall make an inquiry with the out-of-state court. 91

Communication and cooperation between state courts are essential. Once an Ohio court determines that an out-of-state proceeding has been pending

88 Uniform Child Custody Jurisdiction Act, § 3 Comment.
88 Id. § 3109.24(A).
89 Id.
90 Id. § 3109.24(B).
91 Id.
prior to the Ohio petition, it shall stay the proceeding. The court is then required to communicate with the out-of-state court to determine which is the appropriate forum to award custody. If the Ohio court awards custody prior to becoming aware of the out-of-state proceedings, it shall report this immediately to the out-of-state court. The Ohio Court also has the responsibility of informing an out-of-state court of its custody proceedings when it learns that the other court is planning to exercise its jurisdiction. This section was drafted to prevent conflict and competition between state courts and it is therefore incumbent upon the Ohio court to take an active role in order to insure thorough communication with out-of-state courts.

When two courts have proceedings pending to determine the custody of the same child, the statute provides guidelines to be used to determine the inconvenient and the more appropriate forum. The Ohio court has discretion to refuse to exercise its jurisdiction if it determines that another court is a more appropriate forum and Ohio is thus an inconvenient forum to determine custody. "A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child."

The statute provides the court with factors to be applied to determine if it is an inconvenient forum and if it is in the best interests of the child to have another court award custody. These factors are nonexclusive. They include:

1. If another state is or recently was the child's home state;
2. If another state has a closer connection with the child and his family or with the child and one or more of the contestants;
3. If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
4. If the parties have agreed on another forum that is no less appropriate.

In applying these factors, a court may communicate with the out-of-state court.
court to obtain pertinent information necessary to be used in the court's
determination of whether it is an inconvenient forum.\textsuperscript{98}

If the Ohio court determines that it is an inconvenient forum and that
an out-of-state forum is the appropriate forum, it may either dismiss the
proceedings or stay them conditioned on prompt commencement of an action
in the other forum.\textsuperscript{99} The court may also require that the petitioner pay the
clerk of court costs of the proceedings, necessary travel expenses and the at-
torney's fees of the other party, or expenses of their witnesses.\textsuperscript{100} Upon deter-
mination that Ohio is an inconvenient forum and dismissal is required, the
Ohio court should communicate this information to the more appropriate
forum.\textsuperscript{101}

Since the adoption of the U.C.C.J.A. in various states, courts have had
opportunities to apply these provisions to determine whether they should
exercise custody. The Maryland Court of Special Appeals in \textit{Howard v. Gish}\textsuperscript{102}
held that although it was the home state of the child at the beginning
of the custody proceedings, it could refuse to exercise jurisdiction if it was
found to be an inconvenient forum. To aid its determination of appropriate
forum, the court sought information from the divorce and custody granting
state.\textsuperscript{103}

The Supreme Court of Washington recently applied the doctrine
of forum non conveniens when it was asked to modify an out-of-state decree.
Although the state legislature had not passed the U.C.C.J.A., the Washington
Supreme Court applied the principles of the Act in \textit{In re Marriage of Dunkley}.\textsuperscript{104} The court declined to exercise jurisdiction to modify a custody
decree because the decree was awarded in California and the California
court has continuing jurisdiction. In addition the California court decree
was entered after a long trial and that court would be a more appropriate
forum to fully ascertain if changed circumstances exist to require the court
to modify the custody award.\textsuperscript{105}

If an out-of-state court determines that it is an inconvenient forum and
that Ohio is the more appropriate forum to determine custody, the out-of-
state court finding shall be filed in the custody registry of the appropriate

\textsuperscript{98} Id. § 3109.25(D).
\textsuperscript{99} Id. § 3109.25(E).
\textsuperscript{100} Id. § 3109.25(G).
\textsuperscript{101} Id. § 3109.25(H).
\textsuperscript{103} Id.
\textsuperscript{104} \textit{Wash. 2d}, 575 P.2d 1071 (1978).
\textsuperscript{105} Id.
Ohio court. Once jurisdiction is obtained by the Ohio court, this should be communicated to the out-of-state court.\textsuperscript{106}

A court may also decline to exercise jurisdiction when it finds that the petitioner for an initial decree has wrongfully brought the child to Ohio from out of state.\textsuperscript{107} This section may be extremely helpful in cases of parental child snatching prior to an initial custody decree or when proceedings are pending out of state. This type of situation is most common where parents have separated and have not filed for divorce. Neither party has a custody decree and their prior agreements are usually not legally binding. Child snatching and other self help methods during this period leave the parent who has possession of the child in a strong bargaining position and the other parent with few legal remedies, especially where the parent with the child has concealed his/her whereabouts.

The court may exercise jurisdiction if it is in the best interest of the child, but generally should not exercise jurisdiction to modify a custody decree when the noncustodial parent has taken the child from the custodial parent in contradiction of the custody decree.\textsuperscript{108} In appropriate cases, when a court dismisses a petition, "it may charge petitioner with necessary travel and other expenses, including attorney's fees incurred by the other parties or their witnesses."\textsuperscript{109}

The application and interpretation of several sections together as done by the above courts serve as an excellent example for the Ohio courts' application of the U.C.C.J.A. The determination of when to exercise jurisdiction, more so than any other section of the act, demands that the court interrelate the sections and make a determination in light of the purposes of the U.C.C.J.A.

**PROCEDURAL ASPECTS OF THE U.C.C.J.A.**

The U.C.C.J.A. requires that a court granting a custody decree comply with a number of procedural safeguards. The procedural due process requirements of notice and an opportunity to be heard must be given before a court can make a valid custody decree.\textsuperscript{110} Parties requiring notice and

\textsuperscript{106} Id. § 3109.25(I).

\textsuperscript{107} Id. § 3109.25(A). See A. DEMETER, LEGAL KIDNAPPING (1977). The author sensitizes the reader to the critical issues of child snatching by describing her own experiences. Upon separating from her husband, but prior to divorce, he took two of their children for a visit and proceeded to kidnap them. One of the author's major problems was the lack of legal mechanisms available to her to regain physical custody of her children.

\textsuperscript{108} OHIO REV. CODE ANN. § 3109.26(B) (Page Supp. 1977).

\textsuperscript{109} Id. § 3109.26(C).

an opportunity to be heard include contestants, any parent whose parental rights have not been terminated, and any person or agency who has physical custody of the child. If one submits to the court's jurisdiction, notice is not required.

If any of the abovementioned parties are living out of state, notice should be given in accordance with the Ohio Rules of Civil Procedure or by one of the methods required by statute. Methods of service to out-of-state parties under the statute include either compliance with the law of the jurisdiction where service is made or in a manner which the court determines will effectively notify the party, including service by publication.

The commissioners in drafting the U.C.C.J.A. included service by personal delivery and by any form of mail which requires a receipt. The commissioners stressed that actual notice is preferred, but if not available “notice in a manner reasonably calculated to give actual notice [is] sufficient when a person who may perhaps conceal his whereabouts, cannot be reached.” It is also stressed that notice by publication alone will generally not meet the requirements and that courts should only use notice by publication in conjunction with other methods of notice.

The statute requires that notice to an out-of-state party “shall be served, mailed, delivered, or published at least twenty days before hearing in this state.” Proof of out-of-state service may be made by affidavit by the persons receiving service, by compliance with the requirements in the Ohio Rules of Civil Procedure, or if service by mail, with the procedural requirements of the state where service is made. As stated in the Act, “proof may be a receipt signed by the addressee or other evidence of deliverance to the addressee.”

112 Id. § 3109.23(E).
115 Id. § 3109.23(B)(1).
116 Id. § 3109.23(B)(2).
117 Uniform Child Custody Jurisdiction Act, § 5(1).
118 Id. § 5(3).
119 Id. § 5 Comment.
120 Id.
122 Id. § 3109.23(D).
125 Id.
Every party to the custody proceeding is required by statute to give information under oath to the court. The statute requires that the information be provided either in the first pleading or in an affidavit attached thereto. The statute states that the party "shall" give information, including the child's present address, the child's addresses for the past five years, and the names and present addresses of the persons with whom the child resided during the past five years. The party is also required to give the following information:

1. Whether the party has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the same child in this or any state;
2. Whether the party has information of any custody proceeding concerning the child pending in a court of this or any other state;
3. Whether the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

If the court is informed of other custody proceedings or other pertinent facts from the pleadings of the party, the court may require that the declarant give further details under oath. The party has a continuing duty to report to the court any information of either in- or out-of-state proceedings relevant to the custody proceeding. The purpose for these mandatory requirements is to insure that the court is provided with all information pertinent to the custody determination as early as possible. A court must be able to obtain and review this information when it seeks to determine if it has jurisdiction and whether it should exercise that jurisdiction.

An ex-
ample of a situation where a necessary party must be joined would be where the custody dispute is between parents and a relative, perhaps a grandparent, who lives out of state and claims a right to visitation. All claims should be brought to the court at once and the court has the duty to insure that all information has been elicited and that all necessary parties are brought into the litigation.\textsuperscript{138}

Once a party has been joined into the litigation, the court may order that the party make a personal appearance.\textsuperscript{137} If the party has physical custody of the child, the court may order that both the party and the child appear before it.\textsuperscript{138} If the party is out of state, the court, by complying with the out-of-state notice requirements,\textsuperscript{139} may order that a party make a personal appearance. The party’s failure to appear “may result in a decision adverse to that party.”\textsuperscript{140} If “just and proper under the circumstances,”\textsuperscript{141} the court may require that another party pay for the travel and other expenses necessary to enable the out-of-state party and the child to make an appearance before the court.\textsuperscript{142}

Once a party has been notified or has submitted to the jurisdiction of the court and has been given an opportunity to be heard in accordance with statutory provisions, the custody determination is binding on all parties. The decree “is conclusive as to all issues of law and fact decided as to the custody determination made, unless and until that determination is modified pursuant to law.”\textsuperscript{143}

The issues of continuing jurisdiction of the decree rendering court and jurisdiction to modify a decree have consistently been raised in child custody cases. Continuing jurisdiction has been statutorily defined in Ohio as follows:

In any case where a court of common pleas, or other court having jurisdiction, has made an award of custody or an order for support, or both, of minor children, the jurisdiction of such court shall not abate upon the death of the person awarded such custody but shall continue for all purposes during the minority of such children.\textsuperscript{144}

The continuing jurisdiction of a decree granting court can be invoked either

\textsuperscript{138} \textit{Id.}
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.} § 3109.23(B).
\textsuperscript{140} \textit{Id.} § 3109.23(B).
\textsuperscript{141} \textit{Id.} § 3109.29(C).
\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Id.} § 3109.30(A).
\textsuperscript{144} \textit{Ohio Rev. Code Ann.} § 3109.06 (Page 1972).
by motion of the court or by "motion filed in the original action, notice which shall be served in the manner provided for service of process under Rule 4 through Rule 4.6." Ohio requires that all procedural due process requirements be complied with when one invokes the continuing jurisdiction of the court.

The Ohio courts in applying the concept of continuing jurisdiction have generally held that if an Ohio court has awarded a child custody decree, it retains jurisdiction to modify the decree under the concept of continuing jurisdiction even if the custodial parent and the children have moved out of state. A minority of Ohio courts has held that a court’s continuing jurisdiction ends when the custodial parent and child move out of state.

The U.C.C.J.A. has incorporated the common law concept of continuing jurisdiction to modify custody decrees in the section entitled "Modification of Foreign Decree." The section provides that an Ohio court shall not obtain jurisdiction to modify an out-of-state decree as long as the out-of-state court has complied with procedural requirements of the Act. The Ohio court may obtain jurisdiction to modify if it appears that the Ohio court has jurisdiction, and (1) it appears that the decree rendering court no longer has jurisdiction under procedural prerequisites substantially similar to those of the Act, or (2) the court has declined to assume jurisdiction to modify. This section was drafted by the Commission to "achieve greater stability of custody arrangements and avoid forum shopping."

An Ohio court may then be authorized to modify an out-of-state decree under the previous section. It may also be authorized to modify if required in the best interest of the child when the noncustodial parent has improperly removed the child to Ohio and has asked to have the out-of-state decree

145 Id.
146 Ohio Civ. R. 75(I) (Page Supp. 1977). See Ohio Civ. R. 4-4.6, which include process of serving summons, methods of service, who may be served, out-of-state service, service by publication, and service requested.
147 Von Divort v. Von Divort, 165 Ohio St. 2d 141, 134 N.E.2d 715 (1956); Murck v. Murck, 47 Ohio App. 2d 292, 353 N.E.2d 917 (1976); Wallace v. Wallace, 49 Ohio App. 2d 31, 358 N.E.2d 1369 (1974). In all three cases the custodial parent and child moved out of Ohio. The noncustodial parent motioned the Ohio court to modify the custody decree. The courts held that they retained continuing jurisdiction to modify.
150 Id. § 3109.31(A).
151 Id.
152 Uniform Child Custody Jurisdiction Act, § 14 Comment.
decree modified.\textsuperscript{154} Once the Ohio court determines that it should exercise jurisdiction to modify an out-of-state decree, the statute requires that the court has the burden of considering all transcripts and records used by the custody granting court in the original proceeding.\textsuperscript{155}

A recent case decided under the U.C.C.J.A. exemplifies the issues of continuing jurisdiction and jurisdiction to modify. The California Court of Appeals in \textit{Miller v. Superior Court of Los Angeles County}\textsuperscript{156} held that it would not exercise its jurisdiction to modify an Australian custody decree when the custodial parent violated the decree and moved with the children to California without notifying anyone. It relied on the concept of continuing jurisdiction which requires that the Australian court would be the appropriate forum to modify the decree.

Prior to enactment of the U.C.C.J.A., Ohio had adopted a statute which provides guidelines for courts in determining or modifying a custody decree.\textsuperscript{157} Today this section is to be read in accordance with the provisions of Ohio's U.C.C.J.A. These prior statutory guidelines provide that a court shall not modify a prior decree unless there has been a change of circumstances of the custodial parent or child or it would be in the best interest of the child to modify the custody decree.\textsuperscript{158}

In determining whether circumstances have changed since the original award of custody, the statute expressly states that the custodial parent should not be changed unless:

1. The custodian agrees to a change in custody.
2. The child, with the consent of the custodian, has been integrated into the family of the person seeking custody.
3. The child's present environment endangers significantly his physical health or his mental, moral, or emotional development and the harm likely to be caused by a change of environment is outweighed by the advantages of such change to the child.\textsuperscript{159}

\textsuperscript{154} \textit{Id.} § 3109.26. Although this section may give Ohio courts authority to modify an out-of-state decree in a child snatching situation, this is the exception to the rule. Such authority should be exercised in emergency situations and never in a way that would be contrary to the purposes of the Act. The thrust of the section, which is to avoid modifying an out-of-state decree when the petitioner has improperly taken or restrained the child, should be kept in mind.

\textsuperscript{155} \textit{Ohio Rev. Code Ann.} §§ 3109.31(B) & 3109.36(B) (Page Supp. 1977).


\textsuperscript{159} \textit{Id.} § 3109.04(B)(1)-(4).
The best interest of the child is of paramount importance when the court is determining whether to award custody or modify a decree. The statute provides the courts with factors which it should consider in addition to all other relevant factors when determining the best interests of the child:

1. The wishes of the child’s parents regarding his custody;
2. The wishes of the child regarding his custody if he is eleven years of age or older;
3. The child’s interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child’s best interests;
4. The child’s adjustment to his home, school, and community;
5. The mental and physical health of all persons involved in the situation.

The responsibility of a court in either awarding or modifying custody extends to the very essence of the family. To insure that a court makes a determination in the best interest of the child, the court must assume its burden to investigate all relevant factors. Custody awards should be made to promote the purposes underlying the U.C.C.J.A.

The Ohio U.C.C.J.A. requires that certain records be kept by the courts. A certified copy of an out-of-state custody decree may be filed with the clerk of any Ohio court which renders custody decrees. Once an out-of-state decree has been filed in Ohio, it has the same effect as a similar decree rendered in Ohio and one who violates the decree may be required to pay for necessary expenses, including travel and witness expenses, and attorney fees incurred by the party entitled to custody.

The Act imposes several duties upon the clerk of courts. After a court renders a custody decree, the clerk “shall maintain a registry.” This registry

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160 Boyer v. Boyer, 46 Ohio St. 2d 83, 346 N.E.2d 286 (1976). In determining the best interests of the child, the Ohio Supreme Court construed the conflict between OHIO CIV. R. 75(P) which requires that before custody is granted to a relative both parents must be found to be unfit and OHIO REV. CODE ANN. § 3109.04 (Page Supp. 1977), which only discusses the best interest of the child. The court held that the statute takes precedence and the court must only find that granting custody to one other than a parent be in the best interests of the child, and not that both parents are unfit.


162 See note 11 supra.


164 Id.

165 Id. § 3109.32(B).

166 Id. § 3109.33(A)(1)-(4).
is often referred to as a child custody registry. The clerk shall enter the following into the registry:

(1) Certified copies of custody decrees of other states received for filing;
(2) Communications as to the pendency of custody proceedings in other states;
(3) Communications concerning a finding of inconvenient forum by a court of another state;
(4) Other communications or documents concerning custody proceedings in another state that may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.\(^{167}\)

Upon the request of an out-of-state court, or the request of any person with a legitimate interest or who is affected by the custody decree, the clerk of courts shall send them a certified copy of the decree.\(^{168}\)

Every Ohio court is required to preserve the pleadings and records of all custody proceedings until the child is eighteen years old.\(^{169}\) If an out-of-state court makes a request, the Ohio court shall forward certified copies of the abovementioned documents.\(^{170}\) In addition, an Ohio state court that has a custody suit pending shall request a certified copy of the record and transcripts from the out-of-state court that previously awarded custody.\(^{171}\)

In the spirit of cooperation between state courts, the Act enables an Ohio court to request that an out-of-state court conduct an ancillary hearing to adduce evidence or conduct studies for use in the Ohio custody proceeding.\(^{172}\) This provision also requires that if requested by an out-of-state court, the Ohio court is required to conduct hearings or studies for use in the out-of-state proceeding.\(^{173}\) Costs of such services may be assessed against the parties or if necessary, from the county treasury and taxed as costs of the case.\(^{174}\) These hearings insure that a state which has exercised jurisdiction over a custody proceeding will be able to obtain all pertinent records and history from a state which has minimum contacts with the parties or the child.

\(^{167}\) Id.
\(^{168}\) Id. § 3109.33(B).
\(^{169}\) Id. § 3109.36(A). Documents under this section include pleadings, orders, decrees, and any record made of the court's hearings, social studies, and other pertinent documents.
\(^{170}\) Id.
\(^{171}\) Id. § 3109.36(B).
\(^{172}\) Id. § 3109.34(A).
\(^{173}\) Id. § 3109.35(A).
\(^{174}\) Id. § 3109.34(A).
By gathering all available facts before the hearing, the court will be better able to make a final determination and avoid relitigation.

An Ohio court is also authorized to request that an out-of-state court order a necessary party, with or without the child, to the Ohio proceeding. Necessary travel and other expenses may be assessed against another party or will be "otherwise paid."\textsuperscript{175} The court may also require that a deposition or direct testimony of the out-of-state party be taken.\textsuperscript{176} Reciprocal procedures provide that the Ohio court, upon request of an out-of-state court, should enable a party to give voluntary testimony to be used by that out-of-state court.\textsuperscript{177} These sections of the Act were designed to "fill the partial vacuum which inevitably exists in cases involving ‘interstate custody’ since part of the essential information about the child and his relationships to the other persons is always in another state."\textsuperscript{178}

**CONCLUSION**

Ohio's adoption of the U.C.C.J.A. offers greater stability and consistency to child custody litigants. The Act provides the court with proceedings and tests which will enable it to limit the exercise of jurisdiction to cases where it is the most appropriate forum. Cooperation and communication between state courts will enable them to reach the goal of limiting the number of courts able to obtain jurisdiction.

Areas which may still be troublesome include the child snatching of children before a custody decree has been granted and child snatching into a jurisdiction which has not enacted the U.C.C.J.A. Remedies under the Act are limited, especially if one takes the child into a jurisdiction that doesn't recognize the U.C.C.J.A.

Under federal law,\textsuperscript{179} the crime of kidnapping cannot be charged if the person taking the child is the parent. Federal legislation is pending to amend the federal kidnapping law.\textsuperscript{180} If passed, the legislation would remove the provision which makes an exemption for kidnapping of children by their parent and make child snatching a federal crime. The legislation has been

\textsuperscript{175} Id. § 3109.34(B).

\textsuperscript{176} Id.

\textsuperscript{177} Id. § 3109.34(B).

\textsuperscript{178} UNIFORM CHILD CUSTODY JURISDICTION ACT, § 18 Comment.

\textsuperscript{179} 18 U.S.C. § 1201(a) (Supp. V 1975). This law, entitled the Lindbergh Act, includes elements and punishment for federal kidnapping. It expressly excludes the case of kidnapping of a minor child by a parent.

\textsuperscript{180} Proposed H.R. 762, 95th Congress, 1st Sess. (proposed January 4, 1977). "To amend title 18, United States Code, to provide that any parent who kidnap his minor child shall be fined not more than $1,000.00, or imprisoned for not more than one year, or both." Id.
criticized by the American Bar Association.\textsuperscript{181} One attorney has criticized the legislation because it "would make criminals out of loving parents."\textsuperscript{182} The parents may be loving and have good motives, but child snatching has a detrimental effect on the children and needs to be eliminated. If the federal legislation is defeated, it will be up to the states to provide for adequate means to prevent child snatching. In an effort to make child snatching a punishable crime, several states have already enacted statutes which make it a crime for a parent to kidnap his/her own child.\textsuperscript{183}

The U.C.C.J.A. may not alleviate all child snatching but if applied in the spirit of the drafters, it will prevent the wrongdoer from obtaining a custody decree thereby precluding the parent from profiting from his action. As more states enact the U.C.C.J.A., parents will find fewer places to run and more courts with uniform procedures, thus eliminating finding a sympathetic ear. Hopefully in the future parents will refrain from self help remedies to child custody and will seek the court's jurisdiction and guidance for orderly and fair custody determinations.

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\textsuperscript{181} \textit{Moving to Stop Child Snatching, supra} note 9, at 85.
\textsuperscript{182} \textit{Id.}
\textsuperscript{183} \textit{Ohio Rev. Code Ann.} § 2905.04 (Page 1975). The Ohio legislature has enacted a statute which makes child stealing a crime. One violating the child stealing statute is guilty of a felony in the second degree. The statute provides for an affirmative defense if "the actor reasonably believed that his conduct was necessary to preserve the child's health or welfare." \textit{Id.} § 2905.04(B). The statute also provides that if the child is taken by the natural, adopted or step parent, but one not entitled to custody, the offense is a first degree misdemeanor, but if the child is removed from the state, the offender is guilty of a fourth degree felony. \textit{Id.} § 2905.04(C). \textit{See also Cal. Civ. Code} §§ 5150-58 (West Supp. 1976). California has enacted one of the strictest child snatching statutes. This statute provides that "anyone who abducts a minor child with intent to detain or conceal such child from parent, guardian, or person having legal charge" will be fined up to $10,000.00 and imprisoned up to ten years. The statute also makes it a crime for one to conceal a child from one with visitation or partial custody rights.