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CHILD SNATCHING: REMEDIES IN THE FEDERAL COURTS

During the past few decades the divorce rate in the United States has risen significantly.¹ Today divorce and separation occur nearly as frequently as marriage.² Because of the increase in failed marriages the number of children affected by divorce has escalated.³ While some parents resolve custody arrangements amicably, the custody decision frequently embroils the family in lengthy and bitter court battles.⁴ The turmoil surrounding a custody dispute can prompt either parent to resort to self-help by abducting his or her child.⁵ Child snatching occurs when a parent deliberately retains or conceals a child from the other parent.⁶ The traditional civil remedies and criminal penalties for child snatching neither assisted the custodial parent in recovering his or her child nor acted as a deterrent to parental kidnapping.⁷ Recently, however,

1. See STATISTICAL ABSTRACT OF THE UNITED STATES, 1982-83 U.S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS 41 (103rd ed. 1981) [hereinafter cited as STATISTICAL ABSTRACT OF THE UNITED STATES]. In 1960, 74% of the population 18 years old and older were married while 2.45% were divorced. *Id.* In 1981, 65.1% of adults were married and 6.65% were divorced, more than two and one-half times the number divorced in 1960. *Id.*

2. See P. HOFF, J. SCHULMAN, A. WOLENIK, J. O'DANIEL, INTERSTATE CHILD CUSTODY DISPUTES AND PARENTAL KIDNAPPING: POLICY, PRACTICE AND LAW 1-1 (1982) [hereinafter cited as P. HOFF & J. SCHULMAN] (American adults divorce almost as often as they marry); STATISTICAL ABSTRACT OF THE UNITED STATES, *supra* note 1, at 41. In 1950, fewer than one out of four marriages ended in divorce. *Id.* In 1979, nearly half of all marriages ended in divorce. *Id.*

3. Hoff, *Child Snatching—The Destructive Game of Hide and Seek*, 1 CHILD LEGAL RTS. J. 4, 5 (1980) [hereinafter cited as *Child Snatching*] (quoting *Divorce, Child Custody and Child Support*, U.S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS (1978)). The number of children whose parents were divorced tripled in two decades, rising from 361,000 in 1956 to 1,117,000 in 1976. *Id.*

4. See, e.g., *Lloyd v. Loeffler*, 539 F. Supp. 998, 1005 (E.D. Wis.) (custody hearings spanned one year time period), *aff'd*, 694 F.2d 489 (7th Cir. 1982); *Bennett v. Bennett*, 682 F.2d 1039, 1041 (D.C. Cir. 1982) (litigation on custody issues continued for two years); M. WHEELER, NO FAULT DIVORCE 72 (1974) (more than one-third of divorces that involve children are followed by further litigation on custody issue).

5. See *Parental Kidnapping Prevention Act: Joint Hearings on S. 105 Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources*, 96th Cong., 2nd Sess. (January 30, 1980) [hereinafter cited as *1980 Hearings*] (statement of Tom Alexander, Jr. on behalf of Men's Equality Now of the U.S.A. and Male Parents for Equal Rights, and statement of Donald Clevenger on behalf of Fathers United for Equal Rights and U.S. Divorce Reform) (noting that male as well as female custodial parents suffer trauma of losing children through child snatching).

6. See *Child Snatching*, *supra* note 3, at 5 (child snatching occurs when child is illegally denied access to one parent by unilateral actions of other parent).

7. See S. KATZ, CHILD SNATCHING: THE LEGAL RESPONSE TO THE ABDUCTION OF CHILDREN 14 (1981) [hereinafter cited as S. KATZ] (child snatching may occur either before or after court grants custody decree). In the predecree context, a parent who fears he will lose permanent custody of a child might flee with the child to another state to evade the original jurisdiction of the court.

federal courts have opened new avenues to parents by permitting common-law tort actions for child snatching.⁸ Moreover, federal courts have awarded significant damages to parents deprived of the legal custody of their children.⁹

During the last decade, child snatching incidents reached epidemic proportions.¹⁰ Until 1980 the legal system did not deter parental kidnapping.¹¹ Several factors contributed to the legal environment that allowed child snatching to flourish.¹² First, the Supreme Court has not interpreted the full faith and credit clause¹³ of the United States Constitution to require states to recognize custody orders entered by other state courts.¹⁴ In *New York ex rel. Halvey*

See *Child Snatching*, *supra* note 3, at 5. In the post decree situation, the parent who loses the custody battle might abduct the child to relitigate the guardianship issue in a new forum. See S. KATZ, *supra*, at 11. According to recent estimates, between 25,000 and 100,000 children are victims of child snatchings each year. See 1980 Hearings, *supra* note 5, at 6 (statement of Sen. M. Wallop, sponsor of S. 105); Wallop, *Children of Divorce and Separation*, 15 TRIAL LAW. 34, 35 (1979) (citing statistics on child snatching).

8. See *infra* text accompanying notes 116-44 (discussing common-law tort actions for child snatching in federal courts).

9. See, e.g., *Lloyd v. Loeffler*, 539 F. Supp. 998 (E.D. Wis.) (father awarded more than \$125,000 for loss of companionship of daughter resulting from abduction by mother), *aff'd*, 694 F.2d 489 (7th Cir. 1982); *Kajtazi v. Kajtazi*, 488 F. Supp. 15, 22 (E.D.N.Y. 1978) (mother awarded \$100,000 in punitive damages for emotional distress stemming from abduction of son).

10. See 1980 Hearings, *supra* note 5, at 6 (statement of Sen. M. Wallop) (estimating that between 25,000 and 100,000 child snatchings occur each year).

11. See Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795, 814 (1964) (lack of uniformity among state jurisdictional standards encourages child snatching); Foster & Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L.J. 1011, 1012-15 (1977) (discussing conflicting jurisdictional rules of states, lack of application of full faith and credit clause to custody decrees, and lack of finality in custody orders as contributing to problem of child snatching).

12. See Lansing & Sherman, *The Legal Response to Child Snatching*, 7 J. JUV. LAW 16, 16-17 (1983) (legal system has encouraged child snatching); see also *infra* notes 13-47 and accompanying text (explaining three major factors for increase in child snatching).

13. See U.S. CONST. art. IV, § 1. Article IV of the United States Constitution provides that each state shall accord full faith and credit to the public acts, records, and judicial proceedings of other states. *Id.* The full faith and credit clause is one of the underlying concepts of federalism. See *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935). Through the full faith and credit clause the framers of the Constitution sought to promote national unity and to preclude litigants from forum shopping. *Id.*; *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). The full faith and credit clause prevents dissatisfied claimants from pursuing a continuous pattern of vexatious litigation after one state has reached a decision on the merits of a case. *Kovacs v. Brewer*, 356 U.S. 604, 611 (1958) (Frankfurter, J., dissenting). Additionally, the full faith and credit clause promotes continuity in the law by requiring interstate recognition of judicial decrees. See generally Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949) (discussing purposes of full faith and credit clause).

14. See Note, *The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act: Dual Response to Interstate Child Custody Problems*, 39 WASH. & LEE L. REV. 149, 150-51 (1982) [hereinafter cited as *Dual Response to Child Custody Problems*]. The United States Supreme Court's reluctance to apply full faith and credit to child custody decrees has fostered increased custody litigation, encouraged child stealing, and subjected families to emotional and psychological stress. See *id.* at 150-51. The United States Supreme Court has declined to extend full faith and credit to child custody decrees on four occasions. *Id.* at 150 n.4 (citing Supreme Court's reasoning in denying full faith and credit); see *Ford v. Ford*, 371 U.S. 187,

v. *Halvey*,¹⁵ the Supreme Court held that custody decrees are not final but remain subject to modification by the courts.¹⁶ The *Halvey* Court reasoned that a state court may modify a custody order if the welfare of the child or a change in circumstances warrants a modification of the custody decree.¹⁷ Consequently, the *Halvey* Court ruled that custody orders do not have *res judicata* effect either in the issuing state or in any other state.¹⁸ The Court reasoned that if state law entitles one state to modify a custody decree then other states with proper jurisdiction over a child also may alter the custody order.¹⁹

As a result of the Supreme Court's failure to apply the full faith and credit clause to custody decrees, any state court had the authority to make an initial grant of custody or modify an existing custody order so long as the parties met the requirements for personal jurisdiction.²⁰ Traditionally, states exercised jurisdiction in custody cases based on either the child's legal domicile, the child's presence in the state, or personal jurisdiction over both parents.²¹

194 (1962) (full faith and credit clause does not bar state courts from relitigating child custody decrees when changed circumstances may affect child's best interests); *Kovacs v. Brewer*, 356 U.S. 604, 607-08 (1958) (custody decrees are not final and may be relitigated); *May v. Anderson*, 345 U.S. 528, 533-34 (1953) (state not bound by due process clause to honor custody decree from sister state lacking *in personam* jurisdiction over parent); *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 615 (1947) (concern for welfare of children given greater weight than demand for full faith and credit). In two recent cases the Supreme Court declined to address the issue of application of the full faith and credit clause to state child custody determinations. *See Webb v. Webb*, 451 U.S. 493, 495 (1981) (plaintiff barred from raising full faith and credit issue on appeal since neither party raised constitutional claim at state court level); *Eicke v. Eicke*, 399 So. 2d 1231, 1236 (Louisiana court not required to recognize Texas custody decree issued to father when children resided in Louisiana and Louisiana court had rendered decree awarding custody to mother), *reh'g denied*, 406 So. 2d 607 (1981), *cert. granted*, 456 U.S. 970 (1982), *cert. dismissed as improvidently granted*, 103 S. Ct. 776 (1983).

15. 330 U.S. 610 (1947).

16. *See id.* at 613-15 (custody decrees not entitled to *res judicata* effect).

17. *See id.* at 612-13. *See generally* UNIF. MARRIAGE AND DIVORCE ACT § 409, 9A U.L.A. 211-12 (1979) (court may modify custody decree if change in child's circumstances warrants modification).

18. *See* 330 U.S. at 613.

19. *See id.* at 614.

20. *See id.* at 615.

21. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (1971) (jurisdiction may be based on child's domicile within state, child's physical presence in state, or state of origin of custody decree). Historically, a state court asserted jurisdiction in a child custody case only if the child was domiciled within the state or if the state was the child's permanent home. *See Goodrich, Custody of Children in Divorce Suits*, 7 CORNELL L.Q. 1, 2 (1921) (child's permanent place of residence determines jurisdiction). Domicile is defined as the principal place of establishment in which a person presently intends to remain. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 4.1, at 144 (1968). A child's domicile traditionally depended on the domicile of the father since the court viewed the father as the child's natural guardian. *See Goodrich, supra*, at 4. Jurisdiction in early custody cases, therefore, often depended on the father's place of residence. *Id.* Courts over the years expanded the basis for jurisdiction in custody cases. *See, e.g., Sharpe v. Sharpe*, 77 Ill. App. 2d 295, ___, 222 N.E.2d 340, 342 (1966) (mother's removal of child from state did not preclude court of original jurisdiction from hearing father's subsequent petition to modify custody decree); *Jackson v. Jackson*, 241 S.C. 1, 3, 126 S.E.2d 855,

Since a child could be domiciled in one state but physically present in another, two state courts could exercise jurisdiction simultaneously.²² Conflicting custody orders frequently resulted.²³ The Court's failure to extend full faith and credit to custody decrees provided dissatisfied parents with an incentive to seize their children and flee to another state.²⁴ The success of absconding parents in obtaining new custody orders reinforced the incentives for child snatching.²⁵

The second factor that contributed to the child snatching epidemic involved the states' use of the *parens patriae* power to intervene in a child custody dispute.²⁶ Under the doctrine of *parens patriae*²⁷ the state has a direct interest

862 (1962) (court has jurisdiction to award custody even though parent removed child from state prior to divorce action). Until recently, courts permitted parents to sue for custody in almost any state despite a lack of significant contacts between the child and the particular state. See UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 112 (1979) (Commissioners' Prefatory Note) (discussing need for more restrictive jurisdictional standards among states in child custody cases).

22. Compare *Stout v. Pate*, 261 P.2d 788, 791 (Cal. App.) (1953) (California court granted custody of children to mother), *cert. denied*, 347 U.S. 968 (1954) with *Stout v. Pate*, 209 Ga. 786, ___, 75 S.E.2d 748, 749 (1953) (Georgia state court awarded custody of children to father), *cert. denied*, 347 U.S. 968 (1954); see also *Moniz v. Moniz*, 298 P.2d 710, 713 (Cal App.) (California court not bound by custody decree of another state but may use its *parens patriae* power to determine best interests of children), *aff'd*, 299 P.2d 329 (Cal App.) (1956); *Sharpe v. Sharpe*, 77 Ill. App. 2d 295, ___, 222 N.E.2d 340, 342 (1966) (Illinois court modified custody decree to give custody to paternal grandparents although Texas court had granted exclusive custody to mother).

23. See *supra* note 22 (citing conflicting custody award cases).

24. See *May v. Anderson*, 345 U.S. 528, 542 (1953) (Jackson, J., dissenting) (jurisdictional rules encourage dissatisfied parents to seize children and flee to alternate jurisdictions to obtain new custody decrees); *Nehra v. Uhlar*, 43 N.Y.2d 242, 248, 372 N.E.2d 4, 6-7, 402 N.Y.S.2d 168, 171 (1977) (New York court asserted jurisdiction over custody suit since abducted children resided in New York despite concurrent custody hearing in New Jersey).

25. UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 113-14 (1979) (Commissioners' Prefatory Note).

26. See Note, *Developments in the Law—The Constitution and the Family*, 93 HARV. L. REV. 1156, 1198 (1980) [hereinafter cited as *Developments in the Law*]. The state's power to intervene in the family arises from two distinct sources: the police power and the *parens patriae* power. *Id.* The police power derives from the state's inherent power to promote the public welfare and prevent harm to its citizens. *Id.*; see, e.g., *Hall v. Geiger-Jones Co.*, 242 U.S. 539, 548 (1917) (dictum) (police power is appropriate extension of government power); *Jacobson v. Massachusetts*, 197 U.S. 11, 24-25 (1905) (upholding compulsory vaccination law as valid exercise of police power). The *parens patriae* power, however, is a limited paternalistic power of the state designed to protect members of society, such as children and the mentally incompetent, who cannot act in their own best interest. See *Addington v. Texas*, 441 U.S. 418, 426 (1979) (state has legitimate interest under *parens patriae* power to provide care for emotionally disturbed citizens); *O'Connor v. Donaldson*, 422 U.S. 563, 583-84 (1975) (Burger, C.J., concurring) (states are vested with duty to protect disabled citizens unable to act for themselves); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257 (1972) (exercise of *parens patriae* power includes state's authority to protect infants and mentally disturbed individuals); *Mormon Church v. United States*, 136 U.S. 1, 56-58 (1890) (state may exercise *parens patriae* power to protect persons, especially children, who cannot protect themselves). See generally Note, *Developments in the Law—Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190, 1207-19 (1974) (defining state's authority under *parens patriae* doctrine to act on behalf of mentally ill persons).

27. See *Helton v. Crawley*, 241 Iowa 296, 312, 41 N.W.2d 60, 70 (1950) (state has duty to oversee welfare of children within its borders). Three basic principles define and limit a state's

in the outcome of a custody battle brought within its jurisdiction.²⁸ In a contested custody adjudication the state court asserted its *parens patriae* power on behalf of a child to determine the merits of the child's custodial alternatives.²⁹ In order to protect a child's interests, state courts often were

parens patriae power over children. *Developments in the Law, supra* note 26, at 1201. First, the underlying concept of the *parens patriae* power presumes that children lack the maturity and mental capacity to act on their own behalf. See *Carey v. Population Servs. Int'l*, 431 U.S. 678, 705 (1977) (Powell, J., concurring in part and concurring in the judgment) (minor may lack sufficient maturity to make decision on use of birth control); *Planned Parenthood v. Danforth*, 428 U.S. 52, 102, 104-05 (1976) (Stevens, J., dissenting in relevant part) (minor is not competent to reach decision to seek abortion); see also Wald, *Children's Rights: A Framework for Analysis*, 12 U. C. D. L. REV. 255, 255-56 (1979) (children are presumed to lack social, legal and mental capacity of adults). The Supreme Court has acknowledged, however, that children who are mature and competent because of intellect or life experiences possess the same fundamental rights as adults. See *Bellotti v. Baird*, 99 S. Ct. 3035, 3043, 3050 (1979) (minor has right to seek abortion); *Planned Parenthood v. Danforth*, 428 U.S. 52, 74-75 (1976) (same); *Wisconsin v. Yoder*, 406 U.S. 205, 242 (1972) (Douglas, J., dissenting in part) (child has right to choose religion).

Under the second criterion of the *parens patriae* doctrine, the state in most circumstances must show that the parents are unfit or unwilling to care adequately for their children before the state may intervene. See *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816, 862-63 (1977) (Stewart, J., concurring in the judgment) (state cannot intrude on private realm of family without showing unfitness of parents); *Stanley v. Illinois*, 405 U.S. 645, 649-58 (1972) (state presumed that father of illegitimate child was unfit parent). In custody adjudication, however, the state does not have to show the existence of parental neglect before the state may make a custody determination. See R. MNOOKIN, *CHILD, FAMILY & STATE* 476 (1978). State intervention into custody disputes does not infringe on the family's right to privacy because the court has a duty to make the custody decision. *Id.*

The third criterion of the *parens patriae* doctrine limits the state's exercise of the *parens patriae* power solely to further the best interests of the child. *Developments in the Law, supra* note 26, at 1202. The best interests of the child standard provides that a court, before determining custody, must consider all factors relevant to a child's life. UNIF. MARRIAGE AND DIVORCE ACT § 402, 9A U.L.A. 197-98 (1979). Under the best interests standard relevant factors include consideration of the wishes of the child and the child's parents as to custody arrangements, and the interrelationship of the child and his parents. *Id.* § 402(1), (2) & (3). Furthermore, a court must evaluate the child's social and educational adjustment, and the mental and physical health of both parents and the child. *Id.* § 402(4), (5). In 1975, 31 states had statutes that specifically provided for application of some form of the best interests of the child standard in custody determinations. See Mnookin, *Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PROB., Summer 1975, at 226, 236 n.45 [hereinafter cited as *Child Custody Adjudication*] (citing state statutes using best interests standard in custody adjudication). Twelve other states provided no statutory best interests standard but relied on their courts to develop judicial best interests standards. *Id.* at 237 nn.46-47. At least one court has upheld the constitutionality of the best interests standard in custody cases. See *Crahan v. N.R.*, 581 S.W.2d 272, 275 (Tex. Civ. App. 1979) (use of best interests standard does not violate due process or equal protection clauses).

28. See *supra* note 27 and accompanying text (describing state's interest under *parens patriae* power in intervening in custody cases).

29. See H. CLARK, *supra* note 14, § 11.5. In custody disputes the court often has no tangible basis for determining which parent will be a better guardian. See J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 51-52 (1973) (effects of child rearing practices are difficult to predict). A few commentators have noted that the best interests standard should not be dispositive in child custody cases. See, e.g., R. MNOOKIN, *supra* note 28, at 264 (courts should emphasize stability of relationships and continuity of child's environment in granting custody orders); Okpaku, *Psychology: Impediment or Aid in Child Custody Cases?*, 29 RUTGERS

willing to consider a parent's custody petition even if the parent had resorted to abduction to bring the child before the court.³⁰ Physical possession of a child usually enabled a parent to choose the forum and attain the advantage of a home state petitioner.³¹ Prior to the enactment of the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968, an illegal child snatching did not preclude a court from hearing a custody petition.³² Thus, the state's ability to assert its *parens patriae* power in child custody cases encouraged parents to obtain possession of the child through any means possible.³³

The third factor that added to the child snatching problem stemmed from the inconsequential criminal penalties for parental kidnapping.³⁴ Historically, federal³⁵ and state statutes³⁶ exempted parents from prosecution for abducting their own children.³⁷ Prior to the kidnapping of Charles Lindbergh's son in 1932, no federal penalty for kidnapping existed.³⁸ After the Lindbergh Kidnapping, Congress enacted the federal kidnapping law, the Lindbergh Act.³⁹ The framers of the Lindbergh Act intended to impose federal criminal sanc-

L. REV. 1117, 1153 (1976) (courts should evaluate psychological needs of child in reaching custody decision); J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *supra*, at 42-43 (court should consider child's need for maintaining continuity in relationship with parent and child's need for speedy action in determining custody issue). Nonetheless, most state statutes recognize that the best interests of the child standard is dispositive in determining custody award. See *Child Custody Adjudication*, *supra* note 28, at 236-37 & nn.45-47 (listing state standards in child custody adjudication and concluding that statutes demonstrate overwhelming acceptance of best interests standard).

30. See Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 995 (1977) (conflicting state jurisdictional rules afford dissatisfied parents opportunity to relitigate custody in another forum); UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111-13 (1979) (Commissioners' Prefatory Note) (legal system encourages child snatching).

31. See *supra* notes 24-25 and accompanying text (describing jurisdictional advantages for parent in physical possession of child in custody dispute).

32. See, e.g., *In re Walker*, 228 Cal. App. 2d 217, ____, 39 Cal. Rptr. 243, 246 (1964) (although mother brought child into California in defiance of Texas decree, California court could assert jurisdiction since welfare of child required court intervention); *Helton v. Crawley*, 241 Iowa 296, ____, 41 N.W.2d 60, 70 (1950) (child is within court's jurisdiction whenever child is physically present before court). See generally H. CLARK, *supra* note 14, §§ 17.1, 17.2 (describing basis for jurisdiction in custody adjudication).

33. See *supra* notes 26-30 and accompanying text (scope of *parens patriae* power in child custody cases).

34. See S. KATZ, *supra* note 7, at 89 (remedies available in courts for child snatching are inadequate). Traditionally, both federal and state law exempted parents from prosecution for abducting their own children. See The Federal Kidnapping Act, 18 U.S.C. § 1201(a) (Supp. V 1981) (excluding parents from criminal liability); Katz, *Legal Remedies for Child Snatching*, 15 FAM. L.Q. 103, 105 (1981) (state criminal penalties are insufficient).

35. See The Federal Kidnapping Act, 18 U.S.C. § 1201 (Supp. V 1981) (parents are exempt from criminal penalties for kidnapping own child).

36. See *infra* notes 43-47 and accompanying text (explaining lack of adequate state criminal sanctions that in past fostered child snatching).

37. See *infra* notes 38-47 and accompanying text (describing inconsequential criminal penalties for child snatching).

38. See 75 CONG. REC. 13,296 (1932) (stating purposes underlying enactment of federal criminal sanction for kidnapping).

39. See Act of June 22, 1932, ch. 271, 47 Stat. 326 (enacting Lindbergh Law).

tions on abductions made by third parties for the purpose of ransom or reward but expressly excluded parents from liability under the federal statute.⁴⁰ The rationale for the parental exemption clause of the Lindbergh Act derived from the idea that even though a parent may have abducted a child, parents lack the requisite intent for the crime of kidnapping.⁴¹ The parental exemption under federal law for the crime of kidnapping remains in force today.⁴²

Criminal legislation within the individual states also offered little deterrence to child abductors in custody disputes.⁴³ Some state laws expressly excluded parents from prosecution for kidnapping their own children.⁴⁴ Many early statutes, however, made no provision for the crime of kidnapping by a parent.⁴⁵ In those states in which kidnapping statutes did not specifically include penalties for parental abductions, courts often granted immunity to parental offenders.⁴⁶ Courts frequently explained or condoned a child snatching by describing the abduction as a natural result of the parent's desire to be with the child.⁴⁷

In response to the epidemic of child snatchings in the 1970's, the majority of states have created criminal penalties for parental kidnapping.⁴⁸ In some states, legislatures merely added a child snatching provision to the existing kidnapping law.⁴⁹ Other states enacted criminal penalties for the act of custodial interference.⁵⁰ Additionally, in order to establish a uniform system of jurisdic-

40. *See id.* (applying criminal sanctions only for abductions made for ransom or reward). Congress later amended the Lindbergh Law to include criminal penalties for abductions made for any purpose, but continued to exempt parents from prosecution for abducting their own children. Act of May 18, 1934, ch. 301, 48 Stat. 781.

41. *See* 75 CONG. REC. 13,296 (1932) (parents lack requisite criminal intent for kidnapping).

42. *See* 18 U.S.C. § 1201(a) (Supp. V 1981).

43. *See* S. KATZ, *supra* note 7, at 90 (states enacted kidnapping statutes to prevent abduction of children by third parties).

44. *See, e.g.,* D.C. CODE ANN. § 22-2101 (1981) (kidnapping statute exempts parents from prosecution for child snatching); W. VA. CODE § 61-2-14 (1971) (same).

45. *See, e.g.,* OKLA. STAT. ANN. tit. 21, § 891 (West 1910) (language of statute does not include penalty for parental kidnapping).

46. *See* Burns v. Commonwealth, 129 Pa. 138, 142, 18 A. 756, 757 (1889) (court granted immunity to abducting parent, noting that statute's function was not to punish parent for asserting claim to possession of children).

47. *See* State v. Elliot, 171 La. 306, ___, 131 So. 28, 30 (1930) (father is not guilty of kidnapping for abduction of child since father merely desired to be reunited with child); People v. Nelson, 322 Mich. 262, ___, 33 N.W.2d 786, 788-89 (1948) (criminal intent to kidnap not shown in abduction of child by father and father's agent); State v. Switzer, 80 Ohio St. 12, 14, 157 N.E.2d 466, 467-68 (1956) (although mother had temporary custody of child, father's abduction of child did not constitute child stealing because father lacked requisite criminal intent).

48. *See* P. HOFF & J. SCHULMAN, *supra* note 2, at app. IV (listing current state statutory criminal penalties for custodial interference or kidnapping).

49. *See, e.g.,* LA. REV. STAT. ANN. § 14.45 (West 1966) (kidnapping by parent is felony); MD. ANN. CODE art. 27, § 2A (1978) (child abduction is misdemeanor); OHIO REV. CODE ANN. § 2905.04 (Baldwin 1974) (child stealing by parent is felony if child is removed from state); TENN. CODE ANN. § 39-2603 (1982) (concealment of child from lawful custodian is misdemeanor); VA. CODE § 18.2-47 (1982) (abduction of child in violation of custody order is misdemeanor and court may also fine abducting parent for contempt).

50. *See, e.g.,* ARK. STAT. ANN. § 41-2411 (1975) (interference with custody is felony if child is taken out of state); CAL. PENAL CODE § 278.5 (West 1977 & Supp. 1983) (any violation

tion among states, both federal and state governments have enacted legislation designed to deter child snatching and to facilitate interstate custody agreements.⁵¹ In light of the recent legislation, moreover, a state's authority to hear a custody case based solely on its *parens patriae* power is limited.⁵²

In an effort to curb the growing rate of child abductions, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the UCCJA.⁵³ The Commissioners created the UCCJA in 1968 to ensure that only one state exercises jurisdiction over a single child custody dispute.⁵⁴ Currently forty-eight states and the District of Columbia have adopted substantial portions of the UCCJA.⁵⁵

The UCCJA promotes consistency in child custody cases and prevents

of custody decree is misdemeanor); FLA. STAT. ANN. § 787.04 (West 1976) (removing child from state in violation of court order or during pending custody proceeding is felony); N.C. GEN. STAT. § 14-320.1 (1981) (transporting child out of state in violation of custody order is felony); TEX. PENAL CODE ANN. § 25.03 (Vernon 1979) (interference with custody is felony if child removed from state). *But see* ALA. CODE § 13A-6-45 (1982) (relatives are exempt from prosecution for custodial interference); D.C. CODE ANN. § 22-2101 (1981) (although kidnapping is felony parents are exempt from prosecution); KY. REV. STAT. ANN. § 509.070 (Bobbs-Merrill Supp. 1982) (relatives are exempt from felony prosecution for custodial interference); W. VA. CODE § 61-2-14 (1977) (parents are exempt from penalty for kidnapping or concealing child).

Currently, 14 states define custodial interference as a felony and 7 states classify custodial interference exclusively as a misdemeanor. *See* Note, *The Search for a Solution to Child Snatching*, 11 HOFSTRA L. REV. 1073, 1107 n.243 (1983) [hereinafter cited as *Solutions to Child Snatching*] (listing current state statutory penalties for custodial interference and child snatching). Twenty-eight states have enacted both felony and misdemeanor laws for child snatching. *Id.* Some states distinguish between felony and misdemeanor penalties for child snatching if the child is transported across state lines. *Id.* No matter how state legislatures choose to define the offense of child snatching, the penalty is seldom as severe when a court convicts a parent rather than a third party. *Id.*; *see supra* note 47 (describing cases in which courts declined to find offending parents guilty of child snatching). For example, the typical criminal sanction applied in parental kidnapping cases is a small fine or imprisonment for less than one year. *See* S. KATZ, *supra* note 7, at 94 (no recent conviction for child snatching has resulted in severe penalty).

51. *See* UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 116 (1979) (requiring interstate recognition for custody decrees); Parental Kidnapping Prevention Act, Pub. L. No. 96-611, 94 Stat. 3566, 3568 (codified at 28 U.S.C. § 1738A (Supp. V 1981)) (extending full faith and credit to custody decrees); 42 U.S.C. § 663 (Supp. V 1981) (authorizing use of Federal Parent Locator Service in child snatching cases); 18 U.S.C. § 1073 (Supp. V 1981) (extending application of Fugitive Felon Act to child abductions).

52. *See infra* text accompanying notes 57-69 (discussing limitations of states' jurisdiction in custody cases since enactment of UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA)).

53. UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 116 (1979); *see* Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207, 1207 n.1 (1969) (National Conference of Commissioners approved UCCJA at annual meeting in July 1968).

54. *See* UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 113 (1979) (Commissioners' Prefatory Note) (purpose of UCCJA is to reduce jurisdictional conflict); *Dual Response to Child Custody Problems*, *supra* note 14, at 155-56 (analyzing purposes and tracing development of UCCJA).

55. *See Solutions to Child Snatching*, *supra* note 50, at 1073-74 n.6 (listing state codifications of UCCJA). Only Massachusetts and Texas have not statutorily adopted the UCCJA. *See id.* Massachusetts, however, has adopted the basic tenets of the UCCJA by judicial decree. *See* *Murphy v. Murphy*, 404 N.E.2d 69, 72-74 (Mass. 1980) (adopting underlying principles of UCCJA).

jurisdictional competition between states by limiting a state court's discretion to exercise jurisdiction in a custody suit.⁵⁶ Under the UCCJA, a state must meet one of four limited criteria before a court can exercise jurisdiction.⁵⁷ A state court can assert jurisdiction if the state is the child's home state,⁵⁸ or if the child and at least one parent have significant contacts with the state.⁵⁹ Under the significant contacts test, a court also must have available relevant information concerning the child's family and upbringing.⁶⁰ In addition, a state court may exercise jurisdiction if the child is abandoned or exposed to harm,⁶¹ or if no other state is willing or able to assert jurisdiction.⁶² Mere presence of the child within the state, however, does not satisfy the jurisdictional requirements of the UCCJA.⁶³ Furthermore, the absence of the child from the forum does not preclude jurisdiction if the parents can meet the home state or significant contacts tests.⁶⁴

The UCCJA also seeks to deter child abduction and prevent relitigation of a custody suit in a new forum by limiting the situations in which a state may modify another state's existing custody order.⁶⁵ Once a state court has issued a custody decree, the UCCJA precludes all states operating under the UCCJA from rehearing the case.⁶⁶ Under the doctrine of comity,⁶⁷ all state

56. See UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 114 (1979) (Commissioners' Prefatory Note) (UCCJA restricts courts' eligibility to hear custody cases).

57. See *id.* § 3, 9 U.L.A. 116, 122 (jurisdictional requirements for custody cases under UCCJA).

58. *Id.* § 3(a)1, 9 U.L.A. 116, 122; see *id.* § 2(5), 9 U.L.A. 116, 119 (defining home state as state in which child has resided for six consecutive months prior to custody hearing).

59. *Id.* § 3(a)(2)(i), 9 U.L.A. 116, 122.

60. See *id.* § 3(a)(2)(ii), 9 U.L.A. 116 (court needs sufficient access to relevant information on child's family and upbringing to make informed decision on child's custody alternatives).

61. See *id.* § 3(a)(3), 9 U.L.A. 116, 122 (state may assert jurisdiction on an emergency basis if child is within the state and has been threatened, abandoned, abused, or mistreated).

62. See *id.* § 3(a)(4), 9 U.L.A. 116, 122 (UCCJA allows state to hear custody case when no other forum is available).

63. See *id.* § 3(b), 9 U.L.A. 116, 122-23 (mere presence of child in state is not adequate basis for UCCJA jurisdiction).

64. See *id.* § 3(c), 9 U.L.A. 116, 123 (child's physical appearance before court not prerequisite for jurisdiction).

65. See *id.* § 14, 9 U.L.A. 116, 153 (stating prerequisites for modification of custody petitions under UCCJA).

66. See *id.* § 14, 9 U.L.A. 116, 153. The UCCJA prohibits a state from modifying a custody decree unless the state court that rendered the original decree did not meet the UCCJA's jurisdictional requirements. *Id.* at § 14(a)(1), 9 U.L.A. 116, 153-54.

67. See *Dual Response to Child Custody Problems*, *supra* note 14, at 154 n.33. The doctrine of comity involves discretionary rather than mandatory recognition of judicial decrees between states. See, e.g., *Fawkes v. Fawkes*, 360 So. 2d 719, 720 (Ala. Civ. App.) (forum state declined to recognize custody decree of sister state on basis of comity), *cert. denied*, 360 So. 2d 721 (Ala. 1978); *Lindsey v. Lindsey*, 200 So. 2d 643, 643-44 (Fla. Dist. Ct. App. 1967) (forum state extended comity recognition to custody order of another state); *Metz v. Morley*, 29 A.D.2d 462, 464-65, 289 N.Y.S.2d 364, 367 (1968) (in absence of full faith and credit requirement, forum state granted recognition of custody decree on grounds of comity). Until the UCCJA mandated the interstate recognition of custody decrees, comity provided an overly flexible and inconsistent policy allowing liberal modification of custody decrees. See S. KATZ, *supra* note 7, at 69-70. The UCCJA conforms to the Supreme Court's position on extending comity to custody decrees.

courts are requested to recognize original custody decrees.⁶⁸ Moreover, under the UCCJA's clean hands doctrine, a state may deny jurisdiction to a petitioner who has abducted his child in order to litigate the custody issue in a new forum.⁶⁹

Although the UCCJA attempts to remedy the defects in the judicial system's determination of child custody cases, the effectiveness of the UCCJA depends on its adoption in all fifty states.⁷⁰ The two states that have chosen not to enact the UCCJA continue to provide a haven for child snatchers.⁷¹ Furthermore, not all parents who abduct their children seek to relitigate the custody order in a new jurisdiction.⁷² Some abducting parents are content to abscond with the child across state lines and permanently conceal their whereabouts.⁷³ In extreme cases, the UCCJA offers no solution.⁷⁴

Due to the escalating number of child snatchings during the 1970's, Congress recognized the need for a uniform federal system in the adjudication of child custody cases.⁷⁵ In 1980, Congress addressed the problem of interstate child abduction by passing the Parental Kidnapping Prevention Act (PKPA).⁷⁶ The PKPA requires all states to enforce and not modify custody and visita-

See *May v. Anderson*, 345 U.S. 528, 535 (1953) (Frankfurter, J., concurring) (despite Court's unwillingness to require full faith and credit, states remain free to extend comity to custody decrees of other states). Under the Supreme Court's interpretation, a state may recognize a custody decree of another state even if the state issuing the original decree did not have personal jurisdiction over one of the parties, so long as the due process requirements of notice and opportunity to be heard are met. *Id.* Under the comity doctrine in *May v. Anderson*, a state court is not required to recognize another state's custody decree but may do so as an exercise of discretion. *Id.*

68. See UNIF. CHILD CUSTODY JURISDICTION ACT § 13, 9 U.L.A. 116, 151 (1979) (requesting recognition of out of state custody decrees); *Dual Response to Child Custody Problems*, *supra* note 14, at 156-57 n.61 (UCCJA requires interstate recognition of custody decrees that meet jurisdictional requirements of UCCJA without demanding full faith and credit for all custody decrees).

69. See UNIF. CHILD CUSTODY JURISDICTION ACT § 8, 9 U.L.A. 116, 142 (1979). The clean hands doctrine prevents courts of equity from hearing cases in which the plaintiff's improper conduct is the source of his claim. See D. DOBBS, *HANDBOOK OF THE LAW ON REMEDIES* § 2.4 (1973). A court may disregard the clean hands doctrine, however, if the court believes that the abducting parent acted in the best interests of the child. See UNIF. CHILD CUSTODY JURISDICTION ACT § 8(b), 9 U.L.A. 116, 142 (1979) (refusal of jurisdiction is mandatory in case of illegal abduction unless harm to child outweighs parental misconduct); UNIF. MARRIAGE AND DIVORCE ACT § 402, 9A U.L.A. 197-98 (1979) (defining best interests of child standard).

70. See UNIF. CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 114 (1979) (Commissioners' Prefatory Note) (success of UCCJA depends upon enactment of UCCJA in all jurisdictions).

71. See *Child Snatching*, *supra* note 3, at 7 (abducting parents may flee to states or territories which have not enacted UCCJA and successfully relitigate custody petition).

72. See *People v. Hyatt*, 18 Cal. App. 3d 621, 622, 96 Cal. Rptr. 156, 158 (1971) (abducting parent was willing to remain fugitive to retain possession of children).

73. See *Solutions to Child Snatching*, *supra* note 50, at 1112 (some abducting parents are content to remain in hiding).

74. See *id.*; S. KATZ, *supra* note 7, at 93 (UCCJA cannot be effective if abducting parent is content to conceal identity of self and child).

75. See *infra* note 77 and accompanying text (citing legislative purposes of Parental Kidnapping Prevention Act (PKPA)).

76. Parental Kidnapping Prevention Act, Pub. L. No. 96-611, 94 Stat. 3566, 3568 (codified at 28 U.S.C. § 1738A (Supp. V 1981) (jurisdictional requirements for custody adjudication); 42 U.S.C. § 663 (Supp. V 1981) (Parent Locator Service); 18 U.S.C. § 1073 (Supp. V 1981) (Fugitive Felon Act)).

tion decrees of other states.⁷⁷ The PKPA defines the prerequisites for custody jurisdiction by using standards similar to the guidelines of the UCCJA.⁷⁸ For full faith and credit to apply, the state issuing the custody order must have been the child's home state for at least six months.⁷⁹ If no state meets the home state definition, a state may assert jurisdiction when the child and at least one parent are present in the state and can prove significant connection with the forum state.⁸⁰ The petitioning parent also must present substantial evidence describing the quality of the child's care and family life.⁸¹ The PKPA also requires states to recognize custody orders issued when another state exercises its emergency jurisdiction over a child.⁸² Moreover, states must respect custody decrees issued by a state when no other state is willing or able to assert jurisdiction.⁸³ Additionally, the PKPA provides for a court's continuing jurisdiction over a custody case so long as the state fulfills one of the above jurisdictional criteria.⁸⁴

The PKPA also authorizes the use of the Federal Parent Locator Service to assist specified authorities⁸⁵ in locating parents who have abducted their children.⁸⁶ The Parent Locator Service relies on the information supplied by the Social Security Administration, the Department of Defense, the Internal Revenue Service, and other federal agencies to find parents who fail to make child support payments.⁸⁷ The PKPA authorizes the additional use of the Parent Locator Service to aid in locating the kidnapping parent and abducted child.⁸⁸

77. See 28 U.S.C. § 1738(A)(a). By demanding full faith and credit for all custody orders, the sponsors of the Parental Kidnapping Prevention Act intended to promote procedural stability for children of divorced families, discourage forum shopping, and reduce jurisdictional competition between states. See Parental Kidnapping Prevention Act, Pub. L. No. 96-611, 94 Stat. 3566, 3568 (1980) (underlying policies of full faith and credit clause are consistent with legislative purposes of PKPA); *supra* note 13 and accompanying text (discussing purposes of full faith and credit clause).

78. See 28 U.S.C. 1738(A)(c) (defining jurisdictional requirements for custody adjudication under PKPA); UNIF. CHILD CUSTODY JURISDICTION ACT § 3, 9 U.L.A. 116, 122-23 (1979) (promulgating jurisdictional guidelines for custody cases); *supra* text accompanying notes 57-64 (discussing jurisdictional rules of UCCJA).

79. See 28 U.S.C. § 1738A(c)(2)(A) (Congress adopted UCCJA's definition of home state in 1980 draft of PKPA); *supra* note 58 (definition of home state under UCCJA).

80. See 28 U.S.C. § 1738A(c)(2)(B).

81. See *id.* § 1738A(c)(2)(B)(ii).

82. *Id.* § 1738A(c)(2)(C).

83. *Id.* § 1738A(c)(2)(D).

84. *Id.* § 1738A(d).

85. See 42 U.S.C. § 663 (explaining use of federal Parent Locator Service); *Dual Response to Child Custody Problems*, *supra* note 14, at 157-58 n.69. The PKPA authorizes state Attorneys General, United States Attorneys, state and federal law enforcement agencies, or the court of jurisdiction to receive information provided by the Parent Locator Service. 42 U.S.C. § 663. Parents seeking data on the whereabouts of an abducted child must contact one of the authorized parties listed above. *Id.*

86. See 42 U.S.C. § 663.

87. See *id.*; *Dual Response to Child Custody Problems*, *supra* note 14, at 157-58 n.69 (describing functions of Parent Locator Service).

88. See 42 U.S.C. § 663. The Federal government has established guidelines for the use of the Parent Locator Service in child snatching cases. See 46 Fed. Reg. 54,554 (1981) (codified at 45 C.F.R. §§ 302.35, 303.15, -.69, -.70 (1982)).

Finally, the PKPA extends the application of the Fugitive Felon Act to parental kidnapping cases in states in which child snatching is a felony.⁸⁹ The Fugitive Felon Act authorizes the Federal Bureau of Investigation (FBI), a division of the Justice Department, to assist state authorities in the location and apprehension of a fleeing parent and child.⁹⁰ Before the FBI will intervene, however, the child's home state must prove its willingness to extradite and prosecute the abducting parent under the appropriate state laws.⁹¹ Once the fugitive parent is apprehended, federal intervention will cease and prosecution will be resumed by state authorities.⁹² The actual deterrent effect of the Fugitive Felon Act is questionable in light of the Justice Department's reluctance to assist with the investigation of child snatching cases.⁹³ Because of its limited resources, the Justice Department has been unwilling to intervene in cases where the child's life was not in danger.⁹⁴ In 1982, however, the Justice Department agreed to drop its requirement that a child must be exposed to harm before the FBI can become involved.⁹⁵

Some commentators have criticized the effectiveness of the PKPA since Congress declined to include a provision making child snatching a federal crime.⁹⁶ The PKPA, as originally introduced in the Senate in 1978, defined the detention of a minor child by a parent as a federal misdemeanor.⁹⁷ The Senate rejected the original PKPA bill because of concerns that the imposition of a federal criminal penalty would circumscribe the authority of the in-

89. 18 U.S.C. § 1073.

90. See *id.* (authorizing intervention of Justice Department in child snatching cases).

91. See *Solutions to Child Snatching*, *supra* note 50, at 1106 (Fugitive Felon Act is not substitute for state's extradition laws).

92. See *id.* at 1106 (state must prosecute abducting parent as felon under applicable state statute).

93. See *October 1981 Congressional Hearings Regarding Failure of Justice Department to Implement the Parental Kidnapping Prevention Act*, 127 CONG. REC. 11,811 (daily ed. Oct. 21, 1981) [hereinafter cited as *October 1981 Hearings*] (statement of Sen. M. Wallop) (Justice Department reluctantly applies Fugitive Felon Act to child snatching cases). Of the 743 child snatching complaints received by the Justice Department from January 1, 1980 to December 30, 1980, the Justice Department authorized F.B.I. involvement in only 48, and arrested only 22 fugitive parents. See The Department of Justice, *Report on Implementation of Parental Kidnapping Prevention Act of 1980*, 10 FAM. LAW REP. (BNA) 1099-1100 (December 12, 1983) [hereinafter cited as *Department of Justice Report*].

94. See *October 1981 Hearings*, *supra* note 93, at 11,812 (noting Justice Department's reluctance to intervene in child snatching cases). The Justice Department traditionally has viewed child snatching as a domestic relations problem rather than as a criminal matter. *Id.*

95. See *id.* at 11,815-16 (letter to Sen. A. Cranston from Edward C. Schmults, Deputy Attorney General, redefining Justice Department guidelines for intervention in child snatching cases). As a result of the Justice Department's policy change, parental kidnapping felonies are currently handled on the same basis as other fugitive felon cases. See *Department of Justice Report*, *supra* note 93, at 1100. The Justice Department reports that of the 230 requests received in the first nine months of 1983, the FBI intervened in 182 child snatching cases, and arrested 85 fugitive parents. *Id.*

96. See *Solutions to Child Snatching*, *supra* note 50, at 1111 (strong uniform federal law criminalizing child snatching is needed to effectively deter parental kidnapping).

97. See S. 1437, 95th Cong., 2d Sess., 124 CONG. REC. 499-500 (1978) (imposing federal criminal penalties for concealment of child from custodial parent).

dividual states to handle child snatching cases.⁹⁸ The Senate also rejected a 1979 PKPA bill which imposed federal misdemeanor penalties upon a parent, relative, or agent of the parent who abducted a child in violation of a custody decree and transported the child across state lines.⁹⁹ The final version of the PKPA eliminated the criminalization proposal and substituted a compromise provision extending the Fugitive Felon Act to child snatching cases.¹⁰⁰ The elimination of a criminal penalty for child snatching from the PKPA reflects the Senate's concern that a federal sanction might unduly interfere with state power.¹⁰¹ Thus, the burden falls on the individual states to enact stricter criminal penalties for child snatching.¹⁰²

Although a criminal penalty can neither guarantee a parent the recovery of his child nor provide compensation for emotional and monetary losses, a more stringent criminal sanction may provide an effective deterrent to future child snatchers.¹⁰³ If the likelihood of a prison sentence for child snatchers is increased, abducting parents might choose to settle custody disputes by appropriate legal means rather than risk a jail term.¹⁰⁴ Moreover, if the child snatcher received a jail sentence, he or she might be forced to return or reveal the whereabouts of the abducted child.¹⁰⁵ The current criminal court system, however, provides little recourse to the custodial parent seeking the return of an abducted child.¹⁰⁶

In the past, custodial parents seeking an effective civil remedy for child snatching also found limited remedies in the courts.¹⁰⁷ Traditionally, state courts

98. See *October 1981 Hearings*, *supra* note 93, at 11,814 (statement of Sen. A. Cranston) (Congressional conferees were reluctant to establish federal offense for child snatching without first attempting to determine whether Justice Department intervention through Fugitive Felon Act would effectively assist states in prosecution of child snatchers).

99. S. 105, 96th Cong., 1st Sess., 125 CONG. REC. 739, 741 (1979).

100. See 126 CONG. REC. 15,944-45 (daily ed. Dec. 9, 1980) (statement of Sen. D. DeConcini) (suggesting addition of Fugitive Felon Act to PKPA as compromise proposal).

101. See Coombs, *Interstate Child Custody: Jurisdiction, Recognition, & Enforcement*, 66 MINN. L. REV. 711, 765-66 (1982) (compromise provision inserted in PKPA to avoid circumscribing authority of states).

102. See, e.g., GA. CODE ANN. § 26-1312 (Supp. 1982). Georgia has created felony sanctions for parents who remove their children from the state of Georgia in violation of a custody order. See *id.* Moreover, Georgia applies the same felony sanctions against parents who abduct their children from other states and bring the abducted children into Georgia. See *id.*

103. See *Solutions to Child Snatching*, *supra* note 50, at 1111 (imposing stricter statutory penalties against abducting parents may deter child snatching). But see S. KATZ, *supra* note 7, at 89 (criminal sanctions may punish abducting parent but cannot ensure return of child to custodial parent).

104. See *Solutions to Child Snatching*, *supra* note 50, at 1111 (recommending that states amend child snatching statutes to impose stricter penalties).

105. See *id.* at 1111 (noting benefits of stricter criminal penalties in deterring child snatching).

106. See, e.g., *People v. Hyatt*, 18 Cal. App. 3d 618, 626-27, 96 Cal. Rptr. 156, 158 (1971) (jury found abducting father guilty of child snatching but granted sentence of probation); *State v. McCormick*, 273 N.W.2d 624, 625-26 (Minn. 1978) (imposition of felony charge for child snatching declared unconstitutional).

107. Lansing & Sherman, *The Legal Response to Child Snatching*, 7 J. JUV. LAW. 16, 18-19 (1983). Traditional civil remedies for custodial parents included citations for contempt of court

discouraged civil actions for child abduction.¹⁰⁸ Courts defined the abduction of a child as an infringement on property rights and granted recovery only if a parent could prove damages for loss of the child's services.¹⁰⁹ State courts generally denied recovery for mental anguish based solely on the loss of a child's companionship.¹¹⁰

Until recently, federal courts denied jurisdiction to parents seeking civil recovery against child abductors.¹¹¹ Federal courts reasoned that tort actions for child snatching fell within the domestic relations exception to diversity jurisdiction and therefore were barred from federal jurisdiction.¹¹² The domestic relations exception is a judicially created limitation which precludes federal courts from hearing disputes involving family matters.¹¹³ Relying on the

and writs of habeas corpus. *Id.* Both writs of habeas corpus and contempt of court citations were ineffective outside of the jurisdiction of the state court that issued the custody decree. *Id.* at 19.

108. *See, e.g.,* Wilborn v. Superior Court, 51 Cal. 2d 828, 829, 337 P.2d 65, 66 (1959) (in absence of custody order, parent's abduction of child is not subject to penalty). *See generally* S. KATZ, *supra* note 7, at 98 (courts rarely grant civil liability in child abduction cases).

109. *See, e.g.,* Howell v. Howell, 162 N.C. 283, 284, 78 S.E. 222, 224 (1913) (court awarded damages to father for expenses incurred in recovering abducted child and injury stemming from loss of child's services when mother abducted daughter); Clark v. Bayer, 32 Ohio St. 299, 312-13 (1877) (grandfather allowed to recover damages for loss of grandchildren's services); Rice v. Nickerson, 91 Mass. 478, 480-81 (1864) (father recovered damages for expenses incurred in recovering child as property).

110. *See supra* note 109 (citing cases in which courts awarded damages to custodial parents for loss of abducted child's services). *But see* Pickle v. Page, 252 N.Y. 474, 479, 169 N.E. 650, 653 (1930). In *Pickle v. Page*, the court granted damages to a father for mental anguish after the mother abducted the couple's children. *Id.* The court recognized a cause of action based on the father's emotional distress and did not require that the father prove injury stemming from the loss of the children's services. *Id.*

111. *See* Sosna v. Iowa, 419 U.S. 393, 404 (1975) (state court is proper forum for domestic relations questions); H. CLARK, *supra* note 21, at 572 (law of domestic relations traditionally has been exclusive province of states).

112. *See* 13 C. WRIGHT, A. MILLER, E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3609 (1975) (defining domestic relations exception to diversity jurisdiction).

113. *See* U.S. CONST. art. III, section 2, clause 1. The United States Constitution grants Congress the authority to vest jurisdiction in the federal courts in controversies between citizens of different states or between a citizen of a state and an alien. *Id.* In the Judiciary Act of 1789 Congress authorized the federal courts to assert jurisdiction in cases based on diversity of citizenship. *See* Act of Sept. 24, 1789, ch. 20 § 11, 1 Stat. 73, 78-79 (*codified as amended* at 28 U.S.C. § 1332 (1976)). The domestic relations exception to diversity jurisdiction provides that diversity jurisdiction does not allow federal courts the authority to grant divorces, determine alimony, or adjudicate child custody cases. *See, e.g.,* Sutter v. Pitts, 639 F.2d 842, 843 (1st Cir. 1981) (in absence of contrary action by Supreme Court or Congress, domestic relations exception bars federal court from resolving custody disputes); Cole v. Cole, 633 F.2d 1083, 1087 (4th Cir. 1980) (Congress has not given federal courts authority over domestic relations cases); Wilkins v. Rogers, 581 F.2d 399, 403 (4th Cir. 1978) (subject of domestic relations governed by laws of individual states not by federal law). The domestic relations exception first appeared in two early Supreme Court cases. *See In re Burrus*, 136 U.S. 586, 596-97 (1890) (power of federal courts to grant writs of habeas corpus does not apply to child custody cases); Barber v. Barber, 62 U.S. (21 How.) 582, 597 (1858) (disclaiming federal jurisdiction in cases determining divorce or alimony issues). The domestic relations exception continues to limit diversity jurisdiction despite criticism from at least one Circuit Court judge. *See* Solomon v. Solomon, 516 F.2d 1018, 1027 (3d Cir. 1975) (Gibbons, J., dissenting) (disputing valid basis for domestic relations exception).

domestic relations exception, federal courts have deferred to state courts in cases involving marriage, divorce, alimony, or custody issues.¹¹⁴ In a significant departure from the domestic relations exception, however, several federal circuits recently have recognized tort actions for child snatching.¹¹⁵ For example, in *Wasserman v. Wasserman*,¹¹⁶ the Fourth Circuit held that a federal court may exercise diversity jurisdiction in a child snatching suit involving common-law torts.¹¹⁷

The *Wasserman* case involved the abduction of three children by their father after the Circuit Court of Montgomery County, Maryland, had awarded custody to the mother.¹¹⁸ The children's mother initiated a tort suit in federal court seeking damages for child enticement, intentional infliction of emotional distress, and civil conspiracy.¹¹⁹ The United States District Court for the District of Maryland dismissed the complaint for lack of subject matter jurisdiction.¹²⁰ The district court described the suit as a dispute involving child custody and thus barred from the jurisdiction of the federal courts by the domestic relations exception.¹²¹ The Fourth Circuit in *Wasserman* reversed and remanded, holding that the complaint, which alleged generally cognizable common-law torts of child enticement and intentional infliction of emotional distress,¹²² did not require the court to intervene in a marriage relationship or determine the status of the child's custody.¹²³ The *Wasserman* court reasoned that the tort of intentional infliction of emotional distress is not dependent on a family relationship and therefore not within the domestic relations exception.¹²⁴

The *Wasserman* case did not require the Fourth Circuit to rule on a custody issue since neither party sought to challenge or modify the existing custody

114. See *Davis v. Page*, 640 F.2d 599, 605 (5th Cir. 1981) (Brown, J., dissenting) (federal courts defer to state courts in domestic relations cases because state has more fundamental interest in resolving disputes concerning private lives of citizens), *vacated*, 102 S. Ct. 3504 (1982); *Bell v. Bell*, 411 F. Supp. 716, 718 (W.D. Wash. 1976) (federal courts should avoid conflict with state administration of domestic relations law). Thus, federal courts generally deny jurisdiction in domestic relations cases even if parties have satisfied diversity jurisdiction requirements. See 13 C. WRIGHT, A. MILLER, E. COOPER, *supra* note 112, § 3609 (1975).

115. See *infra* notes 116-144 and accompanying text (federal courts awarded damages for child snatching).

116. 671 F.2d 832 (4th Cir.), *cert. denied.*, 103 S. Ct. 372 (1982).

117. See 671 F.2d at 834.

118. See *id.* at 833.

119. See *id.*

120. *Id.*

121. *Id.*

122. See *id.* at 834 n.2 (listing generally cognizable torts for child snatching); see also *infra* notes 135-185 and accompanying text (describing basis for recent tort recoveries in Fifth, Seventh and District of Columbia Circuits).

123. 671 F.2d at 835. In *Wasserman v. Wasserman*, the Fourth Circuit did not rule on the merits of the plaintiff's tort claims but remanded the case to the district court for disposition. See *id.* at 834. The plaintiff named as parties to the suit her ex-husband's present wife, his parents, and the attorneys who represented the ex-husband. *Id.* at 833. The plaintiff alleged that for four months the defendants prevented the three Wasserman children from contacting or returning to the plaintiff and that the defendants concealed the children's whereabouts from the plaintiff. *Id.*

124. See *id.* at 834-35.

decree.¹²⁵ Because the *Wasserman* suit did not demand the resolution of a domestic relations issue, the Fourth Circuit asserted that the federal district court could not avoid hearing the tort action in *Wasserman* merely because the case involved intrafamily issues.¹²⁶ In an earlier case, *Cole v. Cole*,¹²⁷ the Fourth Circuit held that not all family disputes fall directly into the domestic relations exception.¹²⁸ In *Cole* the Fourth Circuit upheld the right of a former husband to maintain an action against his ex-wife in a federal district court for malicious prosecution.¹²⁹ The *Cole* court ruled that the plaintiff's suit was not barred by the domestic relations exception because the federal court was not required to adjust or redefine the family status.¹³⁰ Reaffirming its analysis in *Cole*, the Fourth Circuit held in *Wasserman* that a federal district court must examine the nature of the claims asserted in each case to determine if any true domestic relations issues exist.¹³¹ Accordingly, the Fourth Circuit ruled that *Cole* compelled the federal district court to hear the *Wasserman* suit.¹³² The significance of the *Wasserman* opinion is the Fourth Circuit's determination that the domestic relations exception does not automatically bar a parent's tort claims for child abduction.¹³³

The District of Columbia Circuit followed the *Wasserman* decision in *Bennett v. Bennett*,¹³⁴ addressing *sua sponte* the jurisdictional issue presented in the case.¹³⁵ In *Bennett*, a divorced father sought monetary damages and injunctive relief against his former wife for the abduction of their child.¹³⁶ Noting full support for the reasoning in the *Wasserman* case, the *Bennett* court held that although the federal district court had jurisdiction to hear a tort action for damages in a child stealing case, the federal courts lacked jurisdiction to provide injunctive relief.¹³⁷ The District of Columbia Circuit reasoned that

125. See *id.* at 835.

126. See *id.* at 834.

127. 633 F.2d 1083 (4th Cir. 1980).

128. *Id.* at 1088.

129. *Id.* at 1089. In *Cole v. Cole*, the plaintiff brought suit against his ex-wife for arson, conspiracy, abuse of process, conversion, and malicious prosecution. *Id.* at 1085-87. The district court dismissed the claims because the case fell within the domestic relations exception to diversity jurisdiction. *Id.* at 1084. The Fourth Circuit reversed, holding that the *Cole* case did not present any true domestic relations issues. *Id.* at 1088-89.

130. See *id.* at 1088-89.

131. See 671 F.2d at 834-35.

132. *Id.* at 834. The United States District Court of the Western District of Virginia reaffirmed the *Wasserman* holding in *Acord v. Parsons*. 551 F. Supp. 115 (W.D. Va. 1982). The federal district court held in *Acord* that the domestic relations exception to diversity jurisdiction does not bar a father's tort claim alleging child enticement, intentional infliction of emotional distress, and civil conspiracy even though the action arose from a child custody dispute. *Id.* at 118.

133. 671 F.2d at 834.

134. 682 F.2d 1039 (D.C. Cir. 1982).

135. *Id.* at 1041-42.

136. *Id.* at 1040. In *Bennett v. Bennett*, a divorced father brought action seeking monetary damages in the amount of \$525,000 and injunctive relief against his former wife who had abducted the parties' two children. *Id.* The children's father sought to enjoin the mother from interfering with the custody rights of her former husband. *Id.* at 1042. The lower court dismissed the action and the father filed an appeal. *Id.* at 1041.

137. *Id.* at 1042-43.

a federal court is entirely competent to hear traditional tort claims based on the unlawful harboring of a child.¹³⁸ The District of Columbia Circuit, however, refused to hear the request for injunctive relief because such a request would require the federal court to determine the parents' present and future rights to custody and visitation.¹³⁹ In the *Bennett* case, both parents had obtained valid custody decrees.¹⁴⁰ The *Bennett* court noted that in the absence of an overriding federal interest,¹⁴¹ a federal court should refrain from interfering in a custody dispute involving two conflicting state court custody orders.¹⁴² Further, the District of Columbia Circuit stressed that Congress, in enacting the PKPA, deliberately refrained from creating a role for the federal courts in determining child custody issues.¹⁴³ Thus, the *Bennett* court held that federal courts do not have the power to grant injunctive relief in child snatching cases.¹⁴⁴ The Supreme Court recently declined to rule on whether the presence of custody issues in parental kidnapping tort actions should deny federal subject matter jurisdiction to child snatching cases.¹⁴⁵

The recent trend in the federal courts to grant jurisdiction in child snatching cases has expanded the nature of tort actions for child abductions.¹⁴⁶ In exercising jurisdiction in child snatching cases, federal courts have not limited tort actions to a single theory of liability.¹⁴⁷ The United States Courts of Appeals for the Fourth, Fifth, and Seventh Circuits have recognized a number of tort theories for child stealing such as the intentional infliction of emotional distress,

138. See *id.* at 1042-44.

139. See *id.* at 1042-43.

140. *Id.* at 1041.

141. See *id.* at 1042. At least one federal district court has granted jurisdiction in a domestic relations case because of a compelling federal interest. See *Abdul-Rahman Omar Adra v. Clift*, 195 F. Supp. 857, 865 (D. Md. 1961). In *Abdul-Rahman Omar Adra*, an alien, the Lebanese ambassador to Iran, brought suit in the federal district court of Maryland to regain custody of his daughter. *Id.* at 859. The Adras' 14 year old daughter resided in Maryland with her mother and step-father, the co-defendants. *Id.* The plaintiff alleged that Moslem law entitled him to custody of his daughter when she reached nine years of age. *Id.* The plaintiff also contended that the child's mother deliberately withheld custody and moved the child from country to country, concealing the child's true name and identity. *Id.* Although the *Abdul-Rahman Omar Adra* case involved domestic relations issues, the federal district court asserted jurisdiction because of the overriding federal interest in resolving questions of international law. *Id.* at 865.

142. See 682 F.2d at 1043 n.5.

143. See *id.* at 1043.

144. See *id.* at 1044. In commenting upon the limited role of federal courts in family relations cases, the *Bennett* dissent pointed out the inconsistency of awarding monetary damages but denying injunctive relief. See *id.* at 1045 (Edwards, J., concurring in part and dissenting in part). The dissent noted the ineffectiveness of the *Bennett* court's approval of monetary damages yet denial of the means necessary to secure the return of the abducted child. *Id.*

145. See *Hirschfeld v. Clunie*, No. 81-5502 (D. Ariz. Oct. 18, 1982) (tort action for child snatching), *aff'd*, 692 F.2d 763 (9th Cir. 1982), *petition for cert. filed sub nom. Hirschfeld v. Dreyer*, 51 U.S.L.W. 3926 (Apr. 19, 1983) (No. 82-1824), *cert. denied*, 104 S. Ct. 74 (1983).

146. See *infra* text accompanying notes 149-182 (discussion of *Fenslage v. Dawkins*, *Kajtazi v. Kajtazi* and *Lloyd v. Loeffler*).

147. See P. HOFF & J. SCHULMAN, *supra* note 2, at 1413 (judicially recognized tort theories for child snatching include loss of care, custody and companionship, intentional infliction of emotional distress, civil conspiracy, unlawful imprisonment, and child enticement).

outrageous conduct, and civil conspiracy.¹⁴⁸ In many cases, federal courts of appeals have affirmed awards for compensatory damages in excess of 100,000 dollars.¹⁴⁹ Moreover, courts have permitted large punitive damage awards in child snatching suits based on common-law tort theories and on the tort of intentional interference with lawful custody of a child.¹⁵⁰

In *Kajtazi v. Kajtazi*,¹⁵¹ one of the first child snatching suits to win punitive damages in a federal court, the United States District Court for the Eastern District of New York awarded punitive damages when a father abducted his infant son from the child's mother in California in violation of a temporary custody decree.¹⁵² Shortly thereafter, during a hearing in New York on the mother's petition for a writ of habeas corpus, the father fled with the boy to Yugoslavia.¹⁵³ The mother, individually and as guardian *ad litem* for her son,¹⁵⁴ commenced an action for damages in United States District Court for the Eastern District of New York, against her former husband and members of his family who had assisted the former husband with the child snatching.¹⁵⁵ The court awarded the mother general and punitive damages in the amount of 176,430 dollars based on the tort theories of false imprisonment and intentional infliction of mental suffering.¹⁵⁶ The *Kajtazi* court reasoned that the father's conduct in abducting the child from his mother was sufficiently outrageous to justify the award of punitive damages.¹⁵⁷

The *Kajtazi* case demonstrates a federal court's willingness to hear child snatching cases and to extend tort liability to parents who abduct their children in violation of court orders.¹⁵⁸ As the *Kajtazi* case indicates, in most tort suits for parental kidnapping the validity of the custody decree is not at issue.¹⁵⁹

148. See *infra* text accompanying notes 149-187 (discussion of recent circuit courts' decisions allowing damages for child snatching).

149. See *Fenslage v. Dawkins*, 629 F.2d 1107, 1109 (5th Cir. 1980) (federal court awarded mother \$65,000 in compensatory damages for abduction of child and assessed additional \$65,000 against abducting father's co-conspirators); *Kajtazi v. Kajtazi*, 488 F. Supp. 15, 21-22 (E.D.N.Y. 1978) (federal district court awarded custodial mother \$14,950 for loss of child's services, \$5,000 in legal fees, and \$60,980 for false imprisonment of abducted child).

150. See *infra* text accompanying notes 163-187 (analysis of tort claims for child snatching based on § 700 of RESTATEMENT (SECOND) OF TORTS).

151. 488 F. Supp. 15 (E.D.N.Y. 1978).

152. *Id.* at 17. In *Kajtazi v. Kajtazi*, the father abducted his child and fled from California to New York where the father's large extended family resided. *Id.*

153. *Id.* During the habeas corpus hearing in *Kajtazi v. Kajtazi*, the defendant's father and brother falsely denied knowledge of the abducted child's whereabouts. *Id.*

154. *Id.* at 17. As the *Kajtazi* court noted, the Superior Court of Orange County, California previously had awarded the plaintiff custody of her son. *Id.*

155. See *id.* at 18. The *Kajtazi* court dismissed a tort claim for prima facie tort as being duplicative of other tort theories. *Id.* at 21. The *Kajtazi* court also denied a cause of action based on civil conspiracy since the substantive tort of civil conspiracy does not exist in New York. *Id.*

156. See *id.* at 19-20; see also *supra* note 149 (listing compensatory damages in *Kajtazi v. Kajtazi*).

157. See *id.* at 20-21. The *Kajtazi* court awarded the plaintiff \$100,000 in punitive damages for the intentional infliction of emotional suffering. *Id.* at 20.

158. See *id.* at 18-20.

159. See *id.* at 17 (validity of plaintiff's custody decree in *Kajtazi* not contested); see also *Wasserman v. Wasserman*, 671 F.2d 832, 835 (4th Cir. 1982) (both parties conceded existence of one valid custody decree), *cert. denied*, 103 S. Ct. 372 (1982).

Tort actions for child snatching, therefore, will not require federal courts to determine domestic relations issues such as the custodial rights of the parents.¹⁶⁰ Because the typical tort suit will not involve domestic relations issues, federal courts are no less competent than state courts to hear tort actions for parental kidnapping.¹⁶¹ Thus, the federal court system can provide a willing and knowledgeable forum for aggrieved parents who choose to initiate a child snatching suit.¹⁶²

In addition to allowing common-law torts for child snatching, a few federal courts have recognized that child abduction constitutes the actionable tort of unlawful interference with legal custody of a child.¹⁶³ The *Restatement (Second) of Torts (Restatement)* defines as a tort the actions of one who denies custody to a parent legally entitled to the guardianship of a child.¹⁶⁴ Section 700 of the *Restatement* provides that a custodial parent may recover damages for mental distress from persons who wrongfully deprive the parent of custody of a child.¹⁶⁵ For example, in *Fenslage v. Dawkins*,¹⁶⁶ the Fifth Circuit affirmed a 130,000 dollar award of compensatory and exemplary damages based on the torts of intentional infliction of mental anguish,¹⁶⁷ civil conspiracy, and wrongful interference with custody of a child.¹⁶⁸ The Fifth Circuit held that the district court properly awarded damages to the legal custodian based on the principles set forth in section 700 of the *Restatement*.¹⁶⁹

The Seventh Circuit in *Lloyd v. Loeffler*¹⁷⁰ also expressly cited section 700 of the *Restatement* as one of the grounds for affirming an award of damages for abducting and concealing a child.¹⁷¹ In *Lloyd*, a father gained

160. See 671 F.2d 832, 835 (4th Cir. 1982) (tort action for child snatching does not require court to determine custodial rights of parents).

161. See *Cole v. Cole*, 633 F.2d 1083, 1088-89 (4th Cir. 1980) (federal courts should not ignore duty to hear tort cases involving domestic relations problems).

162. See, e.g., *Kajtazi v. Kajtazi*, 488 F. Supp. 15, 21-22 (E.D. N.Y. 1978) (Eastern District Court of New York provided appropriate forum for tort action for child snatching and awarded more than \$170,000 in damages); *Lloyd v. Loeffler*, 539 F. Supp. 998, 1005 (E.D. Wis.) (federal district court of Wisconsin awarded custodial father \$70,000 in compensatory damages in child snatching suit including amounts for private detectives and attorneys' fees), *aff'd*, 694 F.2d 489, 491 (7th Cir. 1982).

163. See *infra* text accompanying notes 164-187 (discussion of tort for child snatching based on § 700 of RESTATEMENT (SECOND) OF TORTS).

164. See RESTATEMENT (SECOND) OF TORTS § 700 (1977) (defining tort of unlawful interference with custody of child).

165. See *id.* § 700 comment g (parents may recover for emotional distress suffered from child's abduction).

166. 629 F.2d 1107 (5th Cir. 1980). In *Fenslage*, a Texas court awarded custody of two children to the mother. *Id.* at 1108. The mother subsequently moved to Arizona but agreed to allow the children to spend summer vacation with their father in Texas. *Id.* Instead of returning the children after a visit, the father fled with the children to Canada. *Id.*

167. *Id.* at 1109.

168. *Id.* at 1109-10.

169. See *id.* at 1109-10 (affirming *Fenslage* court's decision to award damages for child abduction); RESTATEMENT (SECOND) OF TORTS § 700 (1977) (establishing tort of unlawful interference with custody of child).

170. 539 F. Supp. 998 (E.D. Wis.), *aff'd*, 694 F.2d 489 (7th Cir. 1982).

171. See 694 F.2d at 496.

custody of his daughter after a year-long custody battle in Maryland.¹⁷² At the end of a court-ordered visitation period the mother refused to return the child.¹⁷³ The father instituted a suit against the child's mother, step-father, and maternal grandparents for conspiring to commit the tort of unlawful interference with the custody of a parent.¹⁷⁴ The Seventh Circuit upheld the district court's conclusion that the defendants had violated a duty to the plaintiff-father based on the language of section 700 of the *Restatement*, the existence of a state criminal statute penalizing custodial interference, and the trend in other jurisdictions of allowing tort suits for child abduction.¹⁷⁵ The *Lloyd* court held the grandparents liable as joint tortfeasors for assisting the mother in concealing the whereabouts of the abducted child.¹⁷⁶

In *Lloyd*, the Seventh Circuit affirmed the awards of 70,000 dollars in compensatory damages and 25,000 dollars in punitive damages.¹⁷⁷ The federal district court in *Lloyd* had stipulated that the punitive damage award would increase at the rate of 2,000 dollars per month until the mother returned the abducted child.¹⁷⁸ In dictum to the *Lloyd* case, however, the Seventh Circuit questioned the authority of a federal district court to award escalating cumulative damages.¹⁷⁹ The Seventh Circuit reasoned that by imposing cumulative damages against the mother, the district court was in essence determining which parent should have legal custody.¹⁸⁰ The Seventh Circuit analogized applying cumulative damages in a child snatching case to awarding injunctive relief, which the *Bennett* decision prohibited.¹⁸¹ The Seventh Circuit, however, affirmed the entire damages decree in *Lloyd* because the Loefflers did not challenge the cumulative damages award.¹⁸² Although some courts have recognized that section 700 provides valid grounds for a child snatching suit, plaintiffs rarely have employed section 700 of the *Restatement* as a basis for liability in child snatching cases.¹⁸³

Section 700 of the *Restatement* provides a wide basis of tort liability for parents deprived of legal custody of a child.¹⁸⁴ Liability under section 700

172. *Id.* at 490.

173. *Id.*

174. *Id.*

175. *See id.* at 496.

176. *See id.* at 497.

177. *See id.* at 494.

178. *See* 539 F. Supp. at 1005.

179. *See* 694 F.2d at 494 (questioning validity of *Lloyd* court's subject matter jurisdiction to impose escalating damages).

180. *Id.*

181. *Id.*; *see also* *Bennett v. Bennett*, 682 F.2d 1039, 1042-43 (D.C. Cir. 1982) (District of Columbia Circuit Court affirmed denial of injunctive relief requesting return of abducted children to custodial father).

182. *See* 694 F.2d at 494.

183. *See* Note, *Abduction of Child by Non-Custodial Parent: Damages for Parent's Mental Distress*, 46 Mo. L. REV. 829, 838 (1981) [hereinafter cited as *Damages*] (§ 700 of RESTATEMENT (SECOND) OF TORTS infrequently used as grounds for recovery in child snatching cases).

184. *See* RESTATEMENT (SECOND) OF TORTS § 700 comment g (1977) (custodial parents are allowed to recover any reasonable expenses incurred from illegal abduction of child, including damages for mental anguish).

can include damages for loss of the child's services, costs of locating the child, recovery of the child's medical expenses resulting from the abduction, and damages for mental distress to the parent.¹⁸⁵ The Courts of Appeals' analyses in *Fenslage* and *Lloyd*, combined with the large monetary awards for actual and punitive damages, may promote the section 700 remedy as a valid cause of action in child snatching cases.¹⁸⁶ In addition, federal courts have used section 700 of the *Restatement* to assess damages not only against abducting parents but also against individuals who assist in concealing or detaining an abducted child.¹⁸⁷

By initiating a civil court action, the custodial parent's primary goal is to recover his or her child.¹⁸⁸ As the *Lloyd* and *Kajtazi* cases demonstrate, tort actions cannot guarantee the return of an unlawfully detained child¹⁸⁹ but can grant the custodial parent a means of recovering actual costs incurred in the search for a missing child.¹⁹⁰ Recoverable costs can include attorney fees, travel costs, detective fees, telephone calls, advertising, and interest on loans obtained to finance the search.¹⁹¹ By imposing additional monetary burdens on the abducting parent, courts may force the child snatching parent to return or reveal the location of the abducted child.¹⁹² Many courts also have awarded compensatory damages for mental anguish in child snatching cases.¹⁹³ In addition, courts frequently award punitive damages in cases of

185. *See id.*

186. *See Damages, supra* note 183, at 838 (advocating use of § 700 of RESTATEMENT (SECOND) OF TORTS as cause of action in child abduction tort suits).

187. *See, e.g., Kajtazi v. Kajtazi*, 488 F. Supp. 15, 18 (E.D.N.Y. 1978) (damages assessed against abducting father, father's brother, and step-father for child abduction); *Lloyd v. Loeffler*, 539 F. Supp. 998, 1005 (E.D. Wis.) (maternal grandparents of abducted child held liable as joint tortfeasors with child's mother for aiding in concealment of child), *aff'd*, 694 F.2d 489 (7th Cir. 1982). In a recent case, the United States District Court for the District of Colorado assessed \$1.7 million actual damages and \$4.2 million punitive damages against the company that produces the Phil Donahue Show. *See News Notes*, 9 FAM. L. REP. (BNA) 2452 (May 24, 1983). The law suit charged Phil Donahue and Multi-media Program Productions, Inc. (*Multi-Media*) with conspiracy, negligence, outrageous conduct, and interfering with the parent-child relationship. *Id.* The Phil Donahue Show had broadcasted an interview with the plaintiff's former husband who had kidnapped and concealed the couple's child. *Id.* The suit charged that the defendants knew the child had been kidnapped and willfully assisted the fugitive father in concealing the child. *Id.* The court, citing § 700 of the RESTATEMENT (SECOND) OF TORTS, held *Multi-Media* liable for inducing a minor to leave or not to return home and wrongful interference with custody of a child. *Id.* Although the suit named Donahue as a co-conspirator, charges against Donahue and other members of Donahue's staff subsequently were dropped. *Id.*

188. *See S. KATZ, supra* note 7, at 101 (goal of tort remedy is return of abducted child).

189. *See Lloyd v. Loeffler*, 539 F. Supp. 998, 1005 (E.D. Wis.) (court assessed punitive damages against abducting mother but court could not command return of child), *aff'd*, 694 F.2d 489 (7th Cir. 1982); *see also Bennett v. Bennett*, 682 F.2d 1039, 1042-43 (D.C. Cir. 1982) (court denied injunctive relief to custodial father requesting return of abducted child).

190. *See* 694 F.2d at 490 (custodial father awarded costs incurred in search for abducted child).

191. *See P. HOFF & J. SCHULMAN, supra* note 2, at 14-4 (most expenses incurred in search for missing child are recoverable).

192. *See id.* at 14-5.

193. *See supra* text accompanying notes 146-162 (discussing damages for emotional distress in child abductions).

long term concealment of a child.¹⁹⁴ By imposing punitive damages, courts have recognized the severe emotional distress suffered by the custodial parent when the abducting parent refuses to disclose a child's whereabouts.¹⁹⁵ Moreover, when a court applies an escalating amount as part of a punitive damage award, the court creates a monetary incentive to child snatchers to reveal the abducted child's location.¹⁹⁶ Punitive damages have the ancillary benefit of acting as a deterrent to future child snatchers.¹⁹⁷ The threat of monetary sanctions may encourage a potential child snatcher to seek custody through the proper legal channels rather than to engage in illegal self-help.¹⁹⁸

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194. See *Lloyd v. Loeffler*, 539 F. Supp. 998, 1005 (E.D. Wis.) (punitive damages awarded to father when mother refused to return or reveal location of abducted daughter), *aff'd*, 694 F.2d 489 (7th Cir. 1982).

195. See 694 F.2d at 491.

196. See *id.* at 494. The *Lloyd* court confirmed the judgment ordering the mother and step-father to pay \$2,000 per month until they returned the Lloyd child. *Id.* But see *supra* text accompanying notes 179-182 (discussing *Lloyd* court's reluctance to affirm cumulative damages award).

197. See *Solutions to Child Snatching*, *supra* note 50, at 1116 (if courts continue to impose large punitive damage awards, noncustodial parents may refrain from child snatching).

198. See *supra* notes 56-69 and accompanying text (discussing appropriate legal means to institute or modify custody decrees).