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NOTES

Domestic Relations—Criminal Sanctions Against “Child-Snatching” in North Carolina

The American family, traditionally sanctioned as a bastion of societal stability,¹ is in the throes of fissure.² The struggle between divorced spouses over the custody of their children has emerged as one of the “most pernicious and tragic”³ aspects of the familial rupture. The battle for custody, characterized as transcending “the brutality and irregularity of guerilla warfare,”⁴ commonly crosses state lines,⁵ often culminating in multiple interstate “child-snatchings.”⁶ The child,

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¹. The United States Supreme Court, frequently emphasizing the importance of domestic cohesion, has awarded constitutional protection to the family unit. Griswold v. Connecticut, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring) (under the ninth amendment); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942) (under the equal protection clause of the fourteenth amendment); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (under the due process clause of the fourteenth amendment). See also Stanley v. Illinois, 405 U.S. 645 (1972); May v. Anderson, 345 U.S. 528 (1953); Prince v. Massachusetts, 321 U.S. 158 (1944).

². The divorce rate in the United States has consistently and drastically increased in recent years, exceeding one million for the first time in 1975. In that year, an estimated 1,026,000 divorces were granted, double the number granted in 1966. By contrast the marriage rate declined in 1975 by 4.8%, representing the lowest rate since 1967. An estimated 2,126,000 marriages were performed in 1975 in the United States. U.S. DEP’T OF HEALTH, EDUCATION & WELFARE, 24 MONTHLY VITAL STATISTICS REPORT No. 13, at 12-13 (1976).


⁵. Rapidly increasing divorce rates, see note 2 supra, coupled with unprecedented individual and familial geographic mobility have made the interstate custody dispute, once considered a rarity, commonplace. Article, Children in Transit: Child Custody and Conflict of Laws, 6 U.C.D. L. REV. 160, 161 (1973).

⁶. “Child-snatching” refers to the practice by which divorced or separated parents obtain exclusive custody of their children, during or after custody disputes, by kidnapping them or by having them kidnapped. Within the context of this note the term is used specifically with reference to transporting children to another state for this purpose. See notes 29-34 and accompanying text infra for discussion of the impetus to child-snatch.

Although it is impossible to record the annual number of child-snatchings with complete accuracy, one account estimates it to be as high as 25,000 and reports of one professional agent who boasts of having effectuated 1,000 such snatchings. NEWSWEEK, Oct.
many times no more than a pawn in the parental controversy,\textsuperscript{7} can be permanently scarred by the lack of security and stability that results.\textsuperscript{8} Presumably in an attempt to deter parental child-stealing and thereby insure greater protection of the child's welfare, the North Carolina Legislature in 1969 enacted General Statutes section 14-320.1, which provides criminal sanctions for "snatching" children from this state.\textsuperscript{9}

Section 14-320.1 specifically states that anyone who transports, or causes to be transported, a child under the age of sixteen outside the boundaries of North Carolina with the intent to violate a custody order issued by this state shall be guilty of a felony. Such crime is punishable by a fine, the amount of which rests with the discretion of the court, by imprisonment for not more than three years, or both. The statute also stipulates that keeping a child outside of North Carolina in violation of a custody order for an excess of seventy-two hours is prima facie evidence of an intent to violate that order.\textsuperscript{10} There is no official commentary construing the statute,\textsuperscript{11} nor is there any available judicial in-

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\textsuperscript{8} See note 37 and accompanying text infra.


\textsuperscript{10} N.C. \textbf{Gen. Stat.} § 14-320.1 (1969) reads:

\begin{quote}
Transporting child outside the State with intent to violate custody order.
\end{quote}

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\textsuperscript{11} The sole official reference to N.C. \textbf{Gen. Stat.} § 14-320.1 (1969) is found...
Despite the lack of a definitive statement of legislative history and intent, the purposes of section 14-320.1 are readily discernible from an analysis of the present status of custody litigation in the United States.

As a general rule, both in North Carolina and in most other American jurisdictions, parents possess a primary natural and legal right to their children and each parent is equally entitled to their custody. This right may be terminated upon judicial determination that the best interests of the child require placement with one parent or, in some instances, a third party. Jurisdiction in such cases is presently exercised on three grounds: (1) domicile of the child within the state; (2) in personam jurisdiction over all of the custody claimants; or (3) in a cursory opinion by former Attorney General Robert Morgan. 40 N.C. ATT'Y GEN. BIENNIAL REP. 711 (1969).

A thorough search by the author of North Carolina appellate decisions failed to produce any mention of this statute. Judicial interpretations of similar statutes, listed in note 9 supra, are extremely scant.

A further, independent attempt by the author to procure official construction of this statute proved unsuccessful. Former Senator Sankey W. Robinson, who introduced the statute as S. 48, 1969 N.C. Gen. Assem., 1st Sess. could not be reached for comment. An informal survey of counsel in the Attorney General's Office in Raleigh, local lawyers and prominent legal scholars in North Carolina family law yielded no further information.

Custody has been defined as the relationship that exists between parents and children in a normal, ongoing family. It encompasses the right of the custodian to supervise, care for and educate the child. H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 573 (1968). The right of a parent to the custody of his child is incident to the parent's legal obligation, based on biological tie, to nurture and care for the child. The parent's right is deemed superior to all others and, although not absolute, may be interfered with or denied only for substantial reasons. See May v. Anderson, 345 U.S. 528, 533 (1953) (custody rights are "far more precious . . . than property rights"); James v. Pretlow, 242 N.C. 102, 104, 86 S.E.2d 759, 761 (1955); Thomas, Child Abuse & Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives, 50 N.C.L. REV. 293, 340 (1972).

In re Lewis, 88 N.C. 31, 34 (1883).
physical presence of the child in the state. The majority of states, specifically provide that any one of these bases is sufficient for jurisdictional purposes. Consequently, concurrent jurisdiction in two or more states is not unusual.

The extraterritorial effect of a state's custody decree is questionable. The United States Supreme Court, although addressing the issue of interstate custody disputes on four occasions, has failed to determine conclusively whether a state must give full faith and credit to a sister state's custody decree. In the landmark case of Halvey v. Hal-

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21. Justification for this jurisdictional base derives from the doctrine of parens patriae. Once the child is present in a state, that state acquires a vital interest which "has its origin in the protection that is due to the incompetent or helpless" within its borders. Finlay v. Finlay, 240 N.Y. 429, 431, 148 N.E. 624, 625 (1925).


23. N.C. GEN. STAT. § 50-13.5(c)(2) (1976) provides that jurisdiction to enter custody orders attaches "when the minor child resides, has his domicile or is physically present" in North Carolina or when the court has personal jurisdiction of the claimants. N.C. GEN. STAT. § 48A-2 (1976) defines minor as "any person who has not reached the age of eighteen years." See generally 3 R. Lee, NORTH CAROLINA FAMILY LAW § 222 (Supp. 1976).

24. Justice Traynor, who first proposed alternate jurisdictional bases in Sampsell v. Superior Court, 32 Cal. 2d 763, 197 P.2d 739 (1948), recognized the potential for concurrent jurisdiction: "[I]f the child is living in one state but domiciled in another, the courts of both states may have jurisdiction over the question of its custody." Id. at 779, 197 P.2d at 750. He counseled confidence in other states' decisions and use of the doctrine of forum non conveniens to "avoid interminable and vexatious litigation" which could, and in fact did, result. Id. at 778-80, 197 P.2d at 750. The concept of concurrent jurisdiction has been severely criticized. See, e.g., Hudak, supra note 3, at 534 (characterized as the "Pandora's box of legally unbounded 'discretion' to judges"). See generally Ehrenzweig, The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings, 64 Mich. L. Rev. 1 (1965) [hereinafter cited as The Interstate Child]; Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795 (1964).

25. Three theories support a state's refusal to recognize a sister state's decree: (1) the issuing state's failure to acquire proper jurisdiction; (2) a change in circumstances sufficient to warrant modification of the prior decree, see notes 30 & 32 infra; and (3) the inapplicability of the full faith and credit doctrine, see note 27 infra.


27. U.S. CONST. art. IV, § 1, in conjunction with the enabling statute, 28 U.S.C. §§ 1738, 1739 (1970), provides that the records of judicial proceedings of one state shall have the same force and effect in every state. See generally Corwin, The "Full Faith and Credit" Clause, 81 U. Pa. L. Rev. 371 (1933); Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945).

A vigorous split of opinion exists on the bench, between states and among prominent legal scholars as to the proper application of the full faith and credit clause to custody decrees. Justice Frankfurter, the most vocal advocate against use of the doctrine
the Court did hold, however, that even if the doctrine of full faith and credit is applicable to custody decrees, such an award would have “no constitutional claim to a more conclusive or final effect in the State of the forum, than it has in the State where rendered.”29 Thus, if the

in this area, argued that “the child's welfare in a custody case has such a claim upon the State that its responsibility is obviously not to be foreclosed by a prior adjudication reflecting another State's discharge of its responsibility at another time.” May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). The national policy of using full faith and credit to curb litigious strife is viewed as subordinate to insuring a proper custody determination. See Kovacs v. Brewer, 356 U.S. 604, 613-14 (1958) (Frankfurter, J., dissenting); Halvey v. Halvey, 330 U.S. 610, 619-21 (1947) (Rutledge, J., concurring); Comment, Ford v. Ford: Full Faith and Credit to Child Custody Decrees, 73 YALE L.J. 134, 140-41 (1963) (against application; state experimentation in areas of social policy is essential to the effective functioning of the federal system) [hereinafter cited as Full Faith and Credit]. Proponents counter that child welfare, although an admirable goal, does not sufficiently warrant an exception to the full faith and credit clause. Ratner, supra note 24, at 798. Justice Jackson, a forceful critic of Frankfurter's interpretation, concluded that failure to apply the doctrine would “reduce the law of custody to a rule of seize-and-run.” May v. Anderson, 345 U.S. 528, 542 (1953) (Jackson, J., dissenting). One commentator has asserted that children “need the benefits of full faith and credit more than ordinary litigants to assure the stability of custody arrangements and the continuity of family attachments” so essential to their well-being. Bodenheimer, U.C.C.J.A., supra note 6, at 1212. See note 37 and accompanying text infra for discussion of the importance of stability in the child's development. At least one commentator believes that if forced to decide the issue the Supreme Court would embrace Justice Frankfurter's position. Currie, Full Faith and Credit, Chiefly to Judgments: A Role for Congress, 1964 SUP. CT. REV. 89, 115. But see Kovacs v. Brewer, 356 U.S. 604, 609-16 (1958) (Frankfurter, J., dissenting) (majority failed to adopt Frankfurter's total rejection of full faith and credit as applied to custody decrees); RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 79, Comment c (1971).


29. Id. at 614. In Halvey the Court held that a Florida custody award rendered pursuant to an ex parte divorce decree was modifiable in New York since Florida retained the ability to so modify it. The Court reaffirmed Halvey in two subsequent cases, relying on the holding to avoid reaching the constitutional question of the applicability of full faith and credit to custody decrees. See Ford v. Ford, 371 U.S. 187 (1962) (South Carolina not bound by a Virginia order dismissing a habeas corpus custody petition since Virginia itself did not award res judicata effect to such orders); Kovacs v. Brewer, 356 U.S. 604 (1958) (North Carolina could properly refuse to recognize a New York modification of a North Carolina decree, and thereby modify New York's decree, if there was a finding of changed circumstances). See also Wurfel, Choice of Law Rules in North Carolina, 48 N.C.L. REV. 243, 301 (1970) (discussion of Kovacs v. Brewer); Full Faith and Credit, supra note 27.
custody order is modifiable in the issuing state, as it commonly is,\textsuperscript{30} it is likewise modifiable in the forum state, provided that an adequate jurisdictional base has been established. Since physical presence of the child in the state is the simplest way to gain access to a more sympathetic forum,\textsuperscript{31} physical custody of the child becomes a primary goal in the attempt to acquire a more favorable custody decree.

Given the great ease with which courts reopen custody questions and modify decrees,\textsuperscript{32} the general judicial proclivity to favor local petitioners,\textsuperscript{33} and the ability of a child-snatcher to negotiate state boundaries with speed and mobility, easily establishing jurisdiction in favorable states, parental kidnapping is presently not merely permitted, but is actually encouraged.\textsuperscript{34} By agreeing to relitigate custody decisions,

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\item[30.] Virtually every state provides that custody decrees may be modified upon a showing of change in circumstances, the rationale being that developing children have changing needs that must be satisfied by the parent best able to do so, an ability that may change even over a relatively short period of time. See, e.g., Spence v. Durham, 283 N.C. 671, 683-84, 198 S.E.2d 537, 545 (1973), cert. denied, 415 U.S. 918 (1974); Stanback v. Stanback, 266 N.C. 72, 75, 145 S.E.2d 332, 334 (1965); N.C. GEN. STAT. § 50-13.7(a) (1976).
\item[31.] See note 21 and accompanying text supra. The most sympathetic state is usually the one in which the snatching parent resides or is domiciled.
\item[32.] The primary justification for modification is a finding of a change in circumstances, "easily made when a court is so inclined." Morill v. Morill, 83 Conn. 479, 492, 77 A. 1, 6 (1910). See, e.g., Cook v. Cook, 135 F.2d 945 (D.C. Cir. 1943); Wilsonoff v. Wilsonoff, 514 P.2d 1264 (Alas. 1973); Helton v. Crawley, 241 Iowa 296, 41 N.W.2d 60 (1950). See also A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS § 87, at 289-90 (1972); 3 R. LEE, supra note 23, § 228, at 46; Wurfel, Recognition of Foreign Judgments, 50 N.C.L. REV. 21, 64 (1971) (evidence of such change usually available); Ehrenzweig, Interstate Recognition of Custody Decrees, 51 MICH. L. REV. 345, 352 (1953) (change in circumstances merely a manner of speech supporting a preconceived result). North Carolina decisions, however, consistently require a substantial change in circumstances affecting the welfare of the child. See, e.g., Blackley v. Blackley, 285 N.C. 358, 362, 204 S.E.2d 678, 681 (1974); King v. Allen, 25 N.C. App. 90, 92, 212 S.E.2d 396, 397, cert. denied, 287 N.C. 259, 214 S.E.2d 431 (1975); Harrington v. Harrington, 16 N.C. App. 628, 630, 192 S.E.2d 638, 639 (1972); Rothman v. Rothman, 6 N.C. App. 401, 406, 170 S.E.2d 140, 144 (1969) (mere removal of the child out of the forum state is insufficient change).
\item[33.] The problem of "hometown chauvinism" is a judicial reality. One commentator explains:

A judge may often be disinclined to change his own custody decree or that of a colleague on the bench of his own state, but when the decree of another state is involved, there are no external controls to counteract the sense of power and competition that sometimes prevails. The second judge may believe that he can do better for the child—or perhaps better for the local petitioner. . . . Bodenheimer, U.C.C.J.A., supra note 6, at 1210-11. But see Foster, A Review of Beyond the Best Interests of the Child, 12 WILLIAMette L.J. 545, 552 n.28 (1976) (seriousness with which judges take parens patriae responsibility, often agonizing more about reaching right results in contested custody cases than any other type of decision).
\item[34.] See May v. Anderson, 345 U.S. 528, 539 (1953) (Jackson, J., dissenting); Comment, Legalized Kidnapping of Children by Their Parents, 80 DICK. L. REV. 305, 305 (1976) [hereinafter cited as Legalized Kidnapping].
\end{itemize}
courts in effect reward child-snatchers with the prospect of a more advantageous custody award. Yet, if the court refuses to reopen the question, it risks perpetuating an order incongruent with the best interests of the child. Thus, in the midst of the "confused and chaotic" judicial free-for-all of American custody litigation, the rule of "seize-and-run" prevails, and the specter of child-snatching is raised.

Child-snatching not only defames the integrity of the judiciary and the finality and efficacy of its decrees, but it is also severely detrimental to the development of the snatched child. Overwhelming sociological and psychological data conclusively establish that stability in a child's environment is imperative to successful emotional development and character formation. The severe shortcomings in interstate custody law that permit unchecked litigation and relitigation deny innumerable children the security and stability of permanent homes. Child-snatching thus raises issues that merit official concern.

35. Hudak, supra note 3, at 533; see Hixson v. Hixson, 199 Or. 559, 263 P.2d 597 (1953) (husband filed between sixty and seventy separate documents in regard to custody); Allen v. Allen, 200 Or. 678, 268 P.2d 358 (1952) (two children of tender years subject to seven separate custodial contentions between parents in nine years in courts of Oklahoma, California and Oregon); Munroe v. Munroe, 47 Wash. 2d 391, 287 P.2d 482 (1955) (parents filed between twenty and thirty custodial contempt actions against each other in three years); Bodenheimer, Multiplicity of Custody Proceedings, supra note 7, at 719-20.


37. [O]ne of the critical aspects of a child's development is the need for stability in order to develop a sense of identity. When a child is kept suspended, never quite knowing what will happen to him next, he must likewise suspend the shaping of his personality.

... [S]tability of the environment is far more crucial than its precise nature and content. The one thing with which children have most difficulty coping is unpredictable variation, and this is especially critical between the ages of two and adolescence.


38. The most recent analysis of marriage and divorce statistics estimates that 1,021,000 children under eighteen were involved in divorce litigation in 1972, and therefore vulnerable to custody relitigation. This figure represents a substantial increase from the 330,000 children involved in 1952. U.S. DEP’T OF HEALTH, EDUCATION & WELFARE, 3 VITAL STATISTICS OF THE UNITED STATES 1972, Marriage and Divorce, at 2-9 (1976). See also Bodenheimer, The Rights of Children and the Crisis in Custody Litigation: Modification of Custody In and Out of State, 46 COLO. L. REV. 495, 495 & n.3 (1975).
Previous attempts, both judicial and legislative, to remedy the problem of interstate child-snatching have proven sorely inadequate. Judicial efforts, primarily through imposition of the "clean hands" doctrine and application of the principle of *forum non conveniens*, have failed to provide sufficient relief. The threat of pecuniary loss arising from (1) civil liability in a suit instituted by the child himself for false imprisonment and assault, (2) civil liability in a suit by the custodial parent for mental distress, or (3) judicial reduction of the alimony or child support due the snatching parent, has not effectively deterred child-snatching. Traditional legislative remedies, most commonly in the form of statutory provisions for the imposition of civil contempt charges or injunctive decrees against snatching parents, have likewise proved inadequate.

39. In theory, this doctrine requires that the violator of a sister state's decree be denied access to the forum on the ground that he does not come with "clean hands." See generally A. EHRENZWEIG, supra note 32, §§ 88-89. Use of the doctrine has been hampered because of (1) the failure of courts to apply it when detrimental to the child, see, e.g., *In re Guardianship of Rodgers*, 100 Ariz. 269, 276, 413 P.2d 744, 749 (1966) (to hold otherwise would inequitably punish innocent children for the wrongs of their parents); Smith v. Smith, 43 Del. 268, 274, 45 A.2d 879, 881 (Super. Ct. 1946); and (2) the inapplicability of the doctrine when a child is legally in the forum state during an authorized visit with the non-custodial parent. Washington and Wisconsin, however, have offered exemplary leadership in effective application of the clean hands rule. See *Ex parte Mullins*, 26 Wash. 2d 419, 174 P.2d 790 (1946); Zillmer v. Zillmer, 8 Wis. 2d 657, 100 N.W.2d 564, rev'd on rehearing on other grounds, 8 Wis. 2d 657, 101 N.W. 2d 703 (1960). North Carolina has shown an inclination toward recognition and enforcement of foreign decrees in cases of parental defiance. See, e.g., *Sadler v. Sadler*, 234 N.C. 49, 65 S.E.2d 345 (1951); *Allman v. Register*, 233 N.C. 531, 64 S.E.2d 861 (1951); *Hardee v. Mitchell*, 230 N.C. 40, 51 S.E.2d 884 (1949); *Hopkins v. Hopkins*, 8 N.C. App. 162, 174 S.E.2d 103 (1970). *But see In re Craig*, 266 N.C. 92, 145 S.E.2d 376 (1965); *Dees v. McKenna*, 261 N.C. 373, 134 S.E.2d 644 (1964).

40. *Forum non conveniens* refers to the discretionary refusal of a court to hear a suit that, although properly brought before it, would in the interests of justice and the convenience of the litigants be best tried elsewhere. For codification of this doctrine see N.C. GEN. STAT. § 50-13.5(c)(5), (6) (1976). Reluctance to apply this doctrine is partially attributable to the judicial view that "[i]t is a grave matter to send to the court of another state one who has properly brought his action here." 3 R. LEE, supra note 23, § 229, at 50.

41. Institution of a suit by a child against his parents is presently possible in only thirteen states that have abolished the doctrine of parental immunity. See *Legalized Kidnapping*, supra note 34, at 309 n.32 for cases abrogating parental immunity. Even if the action were generally maintainable, recovery would be uncommon due to the numerous, predominately successful, available defenses. Id. at 310-11.

42. See, e.g., *Pickle v. Page*, 252 N.Y. 474, 169 N.E. 650 (1930); *Howell v. Howard*, 162 N.C. 283, 78 S.E. 222 (1913). Infrequent use of this remedy may be partially due to the common law rule that loss of services must be proved before a parent is entitled to any damages for the abduction of his child.


44. See, e.g., N.C. GEN. STAT. § 50-13.3(a) (1976).

45. See, e.g., id § 50-13.3(b).
The potential use of general statutory kidnap provisions to punish snatching parents has been hampered by the frequency with which such sanctions are deemed inapplicable in the context of the parent-child relationship. Until recently, parents were specifically exempt from the North Carolina kidnap law, and prior to the enactment of General Statutes section 14-320.1, the kidnap of a child by his parent invoked no criminal penalties whatsoever in this state. Similar parental exemptions are found specifically in the federal law, and either specifically or by implication in the laws of several states. Criticism is justifiably levied against such exemptions. Parental kidnapping, while arguably not as reprehensible as kidnapping by a third party, is nevertheless detrimental to the welfare of the child and to society as a whole. A parent, by an adverse court decree, is divested of his "parental rights" and acquires the same status as a third party. A logical, consistent interpretation of the kidnap law would seem to require that the non-custodial snatching parent be treated as a third party through the imposition of some criminal sanctions.

In adopting section 14-320.1, the legislature rightly recognized the severity of the interstate child-snatching issue, the inadequacy of pre-


48. See notes 9 & 10 and accompanying text supra.

49. Congress specifically exempted parents from the operation of the Federal Kidnapping Act, 18 U.S.C. § 1201 (Supp. V 1975), in response to the fears of the House Judiciary Committee that if there were no exemption parents who take their children across state lines in defiance of custody decrees would be prosecuted. Legalized Kidnapping, supra note 34, at 306. The exception is, however, strictly construed. Miller v. United States, 123 F.2d 715 (8th Cir. 1941). Attempts to amend the federal statute have proven unsuccessful, presumably due to the predominant view that the police and the F.B.I. should not become entangled in domestic controversy. See generally Note, The Problems of Parental Kidnapping, 10 Wyo. L.J. 225 (1956) [hereinafter cited as Parental Kidnapping].


52. The parent is presumably not motivated by the greed and malice of the third party taker, but rather by a "natural and sometimes irresistible urge to possess those who are the natural objects of their affections." Parental Kidnapping, supra note 48, at 226. But see note 7 supra.


54. But see Legalized Kidnapping, supra note 34, at 308 (argument that as long as parent retains the duty of support he is justified in claiming immunity even in the face of an adverse decree for permanent custody).
vious remedial efforts, and the imperative for innovative action. However, the efficacy of the statute in the prevention and elimination of child-snatching is subject to criticism. The legislature may have addressed the issue, but it has failed to solve the problem.

The threat of criminal conviction and the corresponding punishments invoked pursuant to section 14-320.1 have not proven effective as a deterrent to child-snatching. Most parents, including potential child-snatchers, are probably unaware of the existence of the law. Furthermore, it is likely that even if adequately informed of the consequences of a child-snatching conviction, the intense emotion accompanying the typical snatching situation would preclude any appreciable deterrent effect.

The utility of section 14-320.1 as a deterrent is further reduced by the practical inability of North Carolina to enforce the law beyond its borders. Although classification of child-snatching as a crime invokes usage of the extradition mechanism to prosecute violating parents located outside the state, the difficulties inherent in the extradition process itself render the law virtually useless. The United States Constitution requires that a person charged with a crime who flees from justice and is found in another state be delivered up and removed to the state having jurisdiction over him on demand of the executive authority of that state. As a matter of federal law, the chief state executive has a purely ministerial duty to extradite when the circumstances are within the contemplation of the Constitution. The governor, however, does have great discretion in the initial determination of whether the accused has been adequately charged and is in fact a “fugitive from justice.” If the governor decides extradition is unwarranted and refuses to comply with the request, there are no means of compulsion. His decision is final and not subject to judicial review.

57. The phrase “fugitive from justice” implies that one commits a crime within a state and then withdraws himself from its jurisdiction. Arguably, a parent who takes a child outside of North Carolina in violation of a custody decree does not commit a crime in North Carolina and then flee from the state. Rather, leaving the state with the child is in fact the crime. Thus, the accused may be deemed as not having fled from justice since the crime does not occur until the foreign jurisdiction is actually entered and extradition is therefore unwarranted.
58. The courts will not inquire into the motives that induce a governor to grant, honor or refuse an extradition request. Such inquiry would be adverse to the executive’s right to act freely within his constitutional authority. See Pettibone v. Nichols, 203 U.S. 192, 203-04 (1906); In re Sultan, 115 N.C. 57, 63, 20 S.E. 375, 378 (1894).
It is unlikely that a state will agree to extradite a parent who has violated a foreign decree when that state has judicially rejected the validity of the prior decree and awarded custody according to its determination that the violating parent is the proper custodian. Extradition, generally regarded as a serious procedure, may be successfully avoided on any one of several available technical grounds when a state is so inclined. Thus, any deterrent effect that section 14-320.1 might have seems far outweighed by the enormous increase in hostility and further extra-legal conduct that use of the criminal law itself engenders.

Section 14-320.1 fails to address directly the question of where and with whom the child should live. Pursuant to the statute, however, a snatching parent may be imprisoned and thereby completely precluded from an assertion of custody. Such a result, however, may be incongruent with the realistic demands of the situation. Since self-help is presently the "ultimate authority" in custody litigation, a snatching parent should not automatically be stigmatized as an unfit custodian. Ironically, the current status of custodial determination drives persons who are otherwise conscientious, law-abiding citizens to child-snatching tactics, often against their inclinations. Indeed, lawyers who are reluctant to advise the use of snatching maneuvers frequently place their clients at a decided disadvantage.

The lack of extraterritorial respect for custody decrees and their concomitant instability are not significantly affected by section 14-320.1. The act is inapplicable when a child is forcibly removed from another state in violation of an existing decree and brought into

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59. See In re Walker, 228 Cal. App. 2d 217, 39 Cal. Rptr. 243 (1964) (California refused to extradite an abducting mother to Texas on a kidnapping charge and granted her custody of the child). The chief extradition officer in the Governor's Office in Raleigh confirmed that in such situations extradition would be unlikely, offering in support examples of unreported incidences encountered through her office. Telephone interview with Ms. Sarah Jones, January 21, 1976.

60. Extradition may be refused if the chief state executive determines that (1) the accused has not been adequately identified, see, e.g., Lee Gim Bor v. Ferrari, 55 F.2d 86 (1st Cir. 1932), (2) the accused is not a fugitive from justice, see, e.g., In re Hubbard, 201 N.C. 472, 475-76, 160 S.E. 569, 571 (1931); note 57 supra, (3) the warrant does not sufficiently charge the accused with a crime, see, e.g., Cassis v. Fair, 126 W. Va. 557, 29 S.E.2d 245 (1944), or (4) the request was made with bad faith or for ulterior purposes, see, e.g., In re Sultan, 115 N.C. 57, 20 S.E. 375 (1894).


62. For example, if Mother has a custody decree from state $X$ and Father snatches the child to state $Y$ and obtains a favorable custody decree there, Mother's only recourse may be to re-snatch the child back to state $X$.

63. UNIFORM CHILD CUSTODY JURISDICTION ACT, Prefatory Note.
North Carolina where the issue of custody may be relitigated.\textsuperscript{64} While the legislature seeks to punish child-snatchers, the court retains the ability to reward them with favorable decrees. In addition, the statute does not apply when a custody determination is pending prior to the issuance of a final decree; nor does it affect the relitigation of custody while a child is legally visiting the non-custodial parent in the foreign forum.

Perhaps the ultimate evidence of the impotence of General Statutes section 14-320.1 is the fact that it simply is not used. There has been no appellate court consideration of the statute\textsuperscript{65} and there is an appalling lack of knowledge as to its very existence.\textsuperscript{66} In the meantime, incidences of child-snatching continue to increase.\textsuperscript{67}

Clearly, the imposition of criminal sanctions alone has failed to prohibit child-snatchings. Crucial changes in the structure of interstate custody litigation are no longer merely desirable, they are essential. Various legal commentaries have advanced a plethora of prospective solutions.\textsuperscript{68} Among them are suggestions that (1) modification of custody decrees be governed by the law of venue,\textsuperscript{69} (2) all out-of-state visitation be restricted,\textsuperscript{70} (3) extrajudicial proceedings be employed in the determination of custody,\textsuperscript{71} (4) congressional action be invoked,\textsuperscript{72}

\begin{quotation}
64. \textit{See} \textit{Cal. Penal Code} § 278 (West Cum. Supp. 1977) for exemplary treatment of this problem. The legislation provides that it is a felony to hold or hide a child in California in violation of a custody order.

65. \textit{See} note 12 \textit{supra}.

66. \textit{See} note 13 \textit{supra}. Counsel in the child custody department of the Attorney General's Office in Raleigh confirmed the fact that the statute is rarely invoked and little is known about it. Telephone interview with Mr. Parks Eisenhower, January 24, 1976. An informal survey by the author of local attorneys practicing in the area of child custody evidenced a similar lack of knowledge.

67. \textit{See} notes 5 & 6 \textit{supra}.

68. See Bodenheimer, \textit{Multiplicity of Custody Proceedings}, \textit{supra} note 7, at 726-34 for general remedial recommendations.


70. \textit{Id.} at 535 (discussing York v. York, 246 Iowa 132, 141-42, 67 N.W.2d 28, 34 (1954) (refusal to allow out-of-state visitation on theory that presence of children in foreign jurisdiction might force custodial parent to defend his rights that had been already fairly and conclusively determined)).

71. \textit{See} \textit{The Interstate Child}, \textit{supra} note 24. A procedure similar to that used in adoption and mental commitments has been proposed on the ground that an adversarial system can never effectuate the child's best interests. The plan encompasses a concentration of responsibility for the child in a single "guardianship" court which would maintain a complete dossier, appoint individual curators, and to which all subsequent actions would be referred. \textit{Id.} at 9-10.

72. Currie, \textit{supra} note 27, at 115-17. Arguably Congress alone can provide adequate relief since it is the only body that can effectively collate and consider the widespread and varied experiences, the relevant sociological and psychological data and the legal expertise imperative to satisfactory resolution.
\end{quotation}
(5) a vigorous policy of self-restraint and cooperation be exercised by the judiciary,\(^7\) and (6) uniform legislation be nationally enacted.\(^7\) The need for far-reaching and effective change is immediate. In view of the slight likelihood that any action will be taken by Congress or the Supreme Court in the near future,\(^7\) and the time and difficulties inherent in complete rejection of the judicial process, uniform legislation emerges as the most practical and realistic solution offered thus far.

The Uniform Child Custody Jurisdiction Act attempts to substitute orderly, uniform processes of law for the presently chaotic state of affairs.\(^7\) Primarily designed to "alleviate the plight of 'interstate children,'"\(^7\) the Act imposes jurisdictional standards for initial and subsequent custodial determinations. If uniformly observed, such standards would terminate child-snatching by rendering it utterly useless to gain physical custody of a child.

The Act requires that exclusive authority to decide or modify custody be vested in only one court, to which all other courts must defer. Mere physical presence of the child within the state is not sufficient to establish jurisdiction. Rather, the state that has the most substantial connection with the child will be the only state in which custody may be properly litigated, both initially\(^7\) and with regard to modification.\(^7\) All parties who have been served or who submit to the jurisdiction of the court will be bound by the ensuing decree.\(^8\) Codification

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73. See notes 39 & 40 and accompanying text supra.
74. For example, the Uniform Child Custody Jurisdiction Act discussed at notes 76-86 and accompanying text infra. See generally Bodenheimer, U.C.C.J.A., supra note 6.
76. UNIFORM CHILD CUSTODY JURISDICTION ACT, Prefatory Note.
77. Bodenheimer, U.C.C.J.A., supra note 6, at 1207; see id. at 1219-21.
78. UNIFORM CHILD CUSTODY JURISDICTION ACT § 3.
79. Id. § 12.
80. Id. § 12. This section represents an attempt to avoid the requirement of personal jurisdiction in custody suits. But see May v. Anderson, 345 U.S. 528 (1953) (plurality ruling that in personam jurisdiction is imperative to the effective termination of the "personal right" to custody). The decision has been widely criticized as encouraging parents who fear an unfavorable decree to refuse to submit themselves to the jurisdiction of the court, thereby avoiding being bound by the decision and prolonging further final custody determination. See Bodenheimer, U.C.C.J.A., supra note 6, at 1232; Currie, supra note 27, at 113 (contends decision is narrowly limited to facts of the case); The Interstate Child, supra note 24, at 9 n.42 (contends decision is limited to facts of the case); Hazard, supra note 4. The practical impact of May has been ap-
of the "clean hands" doctrine mandates a denial of jurisdiction to anyone who "wrongfully" transports a child out of state. The Act further provides for simplified enforcement of existing decrees and requires the replacement of judicial competition with judicial cooperation.

The Uniform Child Custody Jurisdiction Act is exemplary. Coupled with criminal sanctions such as General Statutes section 14-320.1, the Act's refusal to reward the child-snatching parent with a favorable decree provides an optimal solution and virtually ensures the elimination of child-snatching in the United States.

Uniform adoption of the Act is imperative to its success. North Carolina, through both its statutory custody provisions and an admirable policy of judicial restraint, has reflected an orientation toward the primacy of the child and the need for judicial cooperation in custody disputes. This, however, is no longer adequate. The legislature is therefore urged to consider adoption of the Uniform Child Custody Jurisdiction Act.

American courts have for far too long "suited the convenience and desire of the non-custodial parent, while sacrificing the well-being of [the child]." Child-snatching poses an odious threat to the child's


See note 39 supra.

2. UNIFORM CHILD CUSTODY JURISDICTION ACT § 8. This section applies even when no official custody decree has yet been rendered in any other state, thereby attempting to eliminate all forms of "reprehensible" conduct in custody affairs. Further, custody decrees obtained in contravention of the principles of the Act, through presence in the state for only a short period, will be refused any recognition. If the child would be irreparably harmed by strict enforcement of this section, the abductor may be favored with a decree, but will be punitively charged with all expenses.

81. Id. §§ 13-15.

82. Id. §§ 16-24.

83. But see Hudak, supra note 3, at 547, 549 (criticizes Act as "impractical and naive" and as having the capacity to perpetrate the evils it seeks to alleviate); Comment, Family Law: Court's Adoption of Uniform Child Custody Jurisdiction Act Offers Little Hope of Resolving Child Custody Conflicts, 60 Minn. L. Rev. 820 (1976).


85. Hudak, supra note 3, at 548.
Zoning—Restrictions on Mobile Homes: The Beginning of the End?

Fifty years after zoning ordinances first underwent judicial examination\(^1\) the New Jersey Supreme Court, one of the nation’s leading state forums for zoning adjudication,\(^2\) in *Taxpayers Association v. Weymouth Township*\(^3\) upheld the validity of a municipal ordinance that limited the use of mobile home units within trailer parks to elderly persons. The *Weymouth* decision comes just one year after the New Jersey court’s landmark decision in *Southern Burlington County NAACP v. Township of Mount Laurel*\(^4\) striking down exclusionary zoning regulations. Considered in light of *Mount Laurel*, the *Weymouth* result may appear to limit the extent to which the court is willing to find an impermissible exclusionary intent or effect in local land use regulations—even when those regulations expressly restrict residential land use on the basis of types of occupancy.\(^5\) The decision could thus be misread as being another in a series of recent decisions\(^6\) that in effect give judicial ap-