

86639

CR. Sent
3-16-83

RESEARCH MONOGRAPH

CHILD SNATCHING



legislative research
s-420 state capitol/salem, oregon 97310
phone (503) 378-8871

PREPARED BY:

Alan Tresidder
Research Analyst

January 29, 1981

80:152

U.S. Department of Justice 86639
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
Oregon Legislature Research

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Legislative Research is a component of the Legislative Administration Committee

CHILD SNATCHING

80:152

Legislative Research was asked to describe Oregon law relating to custodial interference ("child snatching"), compare it with other states' laws, and describe the Canadian program. This monograph is prefaced with a discussion of the increasing problem of child snatching.

Nature of the Problem

Child snatching is generally defined as the concealment or restraint of a child by one of the parents in violation of a custody decree or visitation rights of the other parent. Congressional testimony has indicated that more than 10 million children under the age of 18 live in families headed by a single parent, and that number is expected to increase in the future.¹ Although accurate figures are not available, it is estimated by some that between 25,000 and 100,000 children are the victims of child snatching each year.²

¹U. S., Congress, Senate, Committee on the Judiciary and Committee on Labor and Human Resources, Parental Kidnapping Prevention Act of 1979: Joint Hearing on S.105, 96th Cong., 2d sess., 30 January 1980, p. 1.

²Michael Agopian, "Characteristics of Parental Child Stealing Offenses," paper presented to the Pacific Sociological Association Conference, San Francisco, as reprinted in U. S. Congress, Parental Kidnapping... 105, p. 62.

One U. S. Senator contends that parental kidnapping is widespread today because "there are no effective deterrents in either federal or state criminal and civil laws."³ He argues that there are even some incentives for child snatching.

Under present federal law, parents are not subject to prosecution for interstate abductions of their children. This is because the federal kidnapping statute specifically excludes parents from its coverage.⁴ State criminal laws take a variety of approaches and are neither uniform nor consistently enforced in spite of a uniform act. Some contend that "knowing prosecution is unlikely under both state and federal law, parents freely snatch their children with little or no threat of punishment."⁵

In addition to lack of penalties, the custody agreements of one state are frequently modified by another. This encourages parents, who have received an "unfavorable" custody arrangement in one state, to remove the child to another state and readjudicate custody. Courts frequently award custody to the parent with physical custody at the time of their court appearance. Under such a system it is possible for children

³Malcolm Wallop, "Children of Divorce and Separation," Trial 15 (May 1979): 35.

⁴18 U.S.C.1201. The federal kidnapping law is commonly referred to as the "Lindbergh Act."

⁵"Children of Divorce and Separation," p. 35.

to "belong" to their mother in one state and their father in another.

States' Response

Uniform Child Custody Jurisdiction Act. In an attempt to eliminate the incentives for child snatching, the Uniform Child Custody Jurisdiction Act (UCCJA) was drafted in 1968 by the National Commissioners on Uniform State Laws and approved by the American Bar Association. At the present time 39 states, including Oregon, have adopted the act.⁶

The basic purposes of the UCCJA are to discourage continued controversies over child custody in the interest of the child's need for a stable home environment, deter child abductions, and facilitate interstate cooperation in adjudicating custody matters.⁷

Critics of the act contend that it is not a great improvement over common law. They note that it "has some novel features aimed at promoting interstate cooperation and uniformity, but it still leaves the most important issues to the discretion of the courts."⁸ Other critics contend that

⁶States that have not adopted the act are: Alabama, Kentucky, Massachusetts, Mississippi, New Mexico, Oklahoma, South Carolina, Texas, Utah, Vermont, and West Virginia.

⁷Henry H. Foster and Doris Jonas Freed, "Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act," Hastings Law Journal 28 (March 1977): 1018-19.

⁸"Court's Adoption of Uniform Child Custody Jurisdiction Act Offers Little Hope of Resolving Child Custody Conflicts," Minnesota Law Review 60 (1976): 820.

the act contains three serious flaws: (1) it applies only to final decrees and some 60 percent of child snatchings occur before such a decree has been issued; (2) it does not provide for finding and returning the parent or child; and (3) it assumes a great deal of good faith among the adopting states, since the haven state retains the option to assume jurisdiction and modify any custody decree.⁹

Oregon. In addition to adopting the UCCJA, Oregon, like many states, has enacted criminal penalties for child snatching. But ORS 163.225, this state's kidnapping law, specifically exempts any relative of the victim if the sole purpose of the taking was to assume custodial control. Two other statutes deal with custodial interference. First, ORS 163.245, relating to second degree custodial interference, provides that such an offense is committed when a person, without legal right to do so, takes, entices, or keeps a person from his lawful custodian. Violation is a Class A misdemeanor. Second, ORS 163.257, regarding first degree custodial interference, applies to persons who remove the victim from the state, or expose him or her to substantial risk of illness or physical injury. Violation is a Class C felony. Oregon law defines a "lawful custodian" as a parent, guardian,

⁹Bruce Most, "The Child-Stealing Epidemic," Nation, May 7, 1977, p. 560.

or other person responsible by authority of law for the care, custody, or control of another.¹⁰

According to some, law enforcement agencies are reluctant to prosecute or become involved in child snatching cases because they view them as "domestic affairs."¹¹ Others contend that local district attorneys give child custody cases low priority, viewing them as civil matters.¹²

Related to child snatching is the entire issue of the custody proceedings. Some contend that awarding joint custody at the initial proceeding is one way to reduce incidences of child snatching. According to one judge, "unsatisfactory visitation is the biggest contributor to child snatching."¹³

In an attempt to alleviate the visitation problem, the 1977 Assembly adopted legislation providing that a court may award custody of a child to one or both parents.¹⁴ Many believe that joint custody arrangements offer the best hope of remedying custodial interference problems. Lawyer Doris Freed, co-chairman of the Custody Committee of the American Bar Association's Family Law Section, says that there has been a decrease in child snatching cases with the increase in joint

¹⁰ORS 163.215.

¹¹KATU, "Town Hall," December 14, 1980.

¹²Ibid.

¹³Ibid.

¹⁴Chapter 205, Oregon Laws 1977.

custody.¹⁵ Only eight states now authorize joint custody.¹⁶ Freed believes that while many parents are still hesitant about joint custody, it will become more common in the 1980s. Proponents contend that joint custody laws should help to avoid two problems that jeopardize children. First, child stealing should be reduced because both parents will have equal access. Second, the law will shift the focus of custody proceedings to a decision based on protecting the child's equal access to both parents and encourage parental sharing of responsibility.¹⁷

California. California has adopted several laws designed to eliminate, or significantly reduce, incidences of child snatching. The laws can be grouped into stiffer criminal penalties for child snatching, encouragement of joint custody, and use of state agencies to locate abducted children.

Regarding criminal penalties, California law provides that both custodial interference and kidnapping (child abduction) are felonies. The law makes it a felony to abduct

¹⁵Jean Gwaltney, "Can Joint Custody Work for Parents and Children Alike?" State Legislatures 6 (April 1980): 26-7.

¹⁶California, Iowa, Kansas, Nevada, North Carolina, Oregon, Texas, and Wisconsin.

¹⁷James A. Cook, "Joint Custody Represents the Softer Approach," Seattle Times, January 27, 1980.

a child from his parent or guardian or to conceal a child from a parent who has rights of custody. There is no parental exemption from the kidnapping laws.¹⁸

Regarding custody, the law assumes that joint custody is in the best interest of the child, unless proven otherwise.¹⁹ It requires any court declining to award joint custody to state, in its opinion, the reasons for such a denial.²⁰

Finally, California is the only state that has authorized the use of its Parent Locator Service (PLS) to assist in finding abducted children. All states have such a service, funded by the federal government. It is designed primarily to locate persons who are not current on court ordered child support payments.²¹ According to a spokesman for the U. S. Department of Health and Human Services any such use of social security money for such a program would not be allowed under the Social Security Act or the child support program.²² California has provided General Fund money

¹⁸Cal. Pen. Code Chapter 278. For some discussion of the law see: Charles J. Fleck, "Child Snatching by Parents: What Legal Remedies for 'Flee and Plea'?" Chicago-Kent Law Review 55 (1979): 303-317.

¹⁹Cal. Civ. Code 4600.5.

²⁰During consideration of Oregon's joint custody law in 1977, the Senate Judiciary Committee deleted language from SB 446 that said "joint custody shall be encouraged."

²¹In Oregon this function is the responsibility of the Central Locate Unit, Support Enforcement Division, Department of Justice.

²²U. S., Congress, Parental Kidnapping... 105, p. 33.

for this specific PLS function, thereby overcoming federal objections.

The California PLS has specific authority to locate parents and abducted children in child snatching cases as well as absent parents for the purpose of enforcing child support obligations. Currently, location in child snatching cases is limited to children taken in violation of visitation or custody orders of California courts.²³

Other states. As noted earlier, 39 states have adopted the UCCJA, and most states have varying degrees of civil or criminal penalties for child snatching. The most common approach, according to Congressional Research Service, is the adoption of custodial interference laws.²⁴ In a number of jurisdictions, including Oregon, parents are specifically exempt from kidnapping or related statutes but included under custodial interference laws. Some states which recognize parental immunity have not enacted custodial interference laws.²⁵ This leaves no statutory grounds for penalty in such states.

²³Ibid.

²⁴To date, 33 states have adopted such a law. For a complete review of other states' custodial interference, kidnapping, and parental immunity laws see: American Law Division, Congressional Research Service memorandum to Senator Malcolm Wallop "Parental Kidnapping-State Statutory Survey," August 9, 1979 as reprinted in U. S., Congress, Parental Kidnapping... 105, pp. 145-155.

²⁵See S.C. Code 16-3-910.

In reviewing other states' laws regarding custodial interference or kidnapping, it is evident that there is no uniform manner of statutorily addressing the issue. Penalties, if any, may be either misdemeanors or felonies, and the offenses include custodial interference, second degree unlawful restraint, child stealing, child abduction, and kidnapping.

Federal Response

Congressional action. Legislation to combat the growing problem of child snatching had been introduced in each session of Congress since 1973.²⁶ The most recent attempt (PL 96-611, the Parental Kidnapping Prevention Act of 1979) was adopted by the 96th Congress with an effective date of July 1, 1981. The law contains two major sections relating to child custody. The first requires state courts to accept custody decrees awarded by other states. According to its sponsor, Senator Wallop, "by adding a new subsection ...the federal government is, in effect, adopting key provisions of the UCCJA for the entire country for purposes of interstate custody cases."²⁷ It is the Senator's opinion that this will remove the incentive parents had to remove their children to states where they could easily obtain decree modifications. It is unclear what the actual effect of this section will be. With a requirement

²⁶U. S., Congress, Parental Kidnapping... 105, p. 18.

²⁷Mary Fisk Docksai, "Child Snatching," Trial 15 (April 1979): 55.

that state courts honor the custody decrees of another, it is conceivable that the effect could be to encourage one parent to ensure that he or she got the first decree, with the knowledge that another court would be bound by that decision.

The second main section of the law allows the use of the Federal Parent Locator Service (FPLS) in locating parents who "take, restrain, or conceal their children."²⁸

Federal agency opposition. Federal law authorizes the Federal Bureau of Investigation (FBI) to apprehend persons for whom a state felony warrant has been issued.²⁹ In testimony before a congressional committee, an Acting Deputy Attorney General said, "it is our policy to refrain from involvement in child snatching cases through the use of the Fugitive Felon Act."³⁰ So, while present law allows the FBI to enter cases involving intra-state custodial interference (which would be a felony under present Oregon law) they do not as a matter of policy do so. Because of FBI opposition, a proposal to amend the Lindbergh Act and make it a federal misdemeanor for any parent, relative, or other person to snatch and transport a child across state lines was not adopted. In the new law, Congress expressly declared its intent that the Fugitive Felon

²⁸Ibid.

²⁹18 U.S.C. 1073. The Fugitive Felon Act is that law which authorizes the FBI to seek persons for "unlawful flight to avoid prosecution."

³⁰U. S., Congress, Parental Kidnapping... 105, p. 48.

Act apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable state statutes. The law requires that the U. S. Attorney General submit a report to Congress indicating steps taken to comply with congressional intent. Each report must include (1) data relating to the number of applications for complaints, (2) the number of complaints issued, and (3) any other information that will assist Congress in assessing the Department of Justice's compliance with the law.

A spokesman for the Department of Health, Education and Welfare also opposed the recent legislation.³¹ The department objected in particular to that portion of the bill that authorizes use of the FPLS in child snatching cases. Testifying before a congressional committee, the HEW spokesman said:

The administration is supportive of measures to deter parental kidnapping, but we do object to making the FPLS available to locate children who have been taken in violation of custody decrees. The FPLS records are obtained...from tax filings and social security records. To extend the use of tax return information, where no substantial federal interest has yet been demonstrated, would be inconsistent with congressional and administration policies to protect most strictly the privacy of taxpayers and information supplied in their returns.³²

Although the new law authorizes use of the FPLS to locate missing children, some contend that the FPLS role is

³¹The Department of Health, Education and Welfare became the Department of Health and Human Services on May 4, 1980 when the Department of Education was created.

³²U. S., Congress, Parental Kidnapping... 105, p. 51.

unclear because no one is sure what responsibilities the FPLS will have once the child is located.³³

International Response

The Hague Conference. The Hague Conference on Private International Law has prepared a preliminary draft convention on the Civil Aspects of International Child Abduction which recognizes child snatching as a growing international problem. The United States, as a member of the Hague Conference, was actively involved in providing information for the conference.

According to the U. S. State Department, the purpose of the convention was to "deter international child abduction, providing for the rapid return of a child abducted across an international boundary to the country and to the adult care from which it was abducted."³⁴ In effect, this convention is an attempt to provide for an international UCCJA by establishing a compact that would assist in the return of children taken from this country.

Canada. Canadian law, as in the U. S., provides a number of judicial options in dealing with the problem of child snatching. The Canadian Criminal Code provides that abduction of a child under 14 years of age is punishable by imprisonment

³³Ellen Goodman, "Law Bans Snatching Children," Oregon Journal, January 6, 1981.

³⁴Letter from Department of State to Senator Charles Mathias of February 11, 1980 as reprinted in U. S., Congress, Parental Kidnapping... 105, p. 326.

for 10 years.³⁵ According to the Chief Crown Counsel of Vancouver, British Columbia, judges "bend over backwards to find persons charged under this section not guilty."³⁶

If, in the judgment of the court, a noncustodial parent is interfering with the orders of the court, that court may order the person to stay completely away from the child. This option includes issuing a court order prohibiting the parent from entering premises where the child is located, making any contact with the child, or making any endeavor to contact the child. If the court is of the opinion that the noncustodial parent might not comply with such an order, the court may order that parent to enter into a recognizance and require the posting of a bond, report to the court periodically, or to some person the court designates for periodic visits.³⁷

Finally, the court may find that someone charged with child snatching is either in contempt of court or in breach of an order of the court. The breach of court is most frequently used and may result in a fine or imprisonment.

It should be noted that, as in the U. S., custody decrees are valid only in the province in which they are issued

³⁵Revised Statutes of Canada, Chapter C-34 (1970), section 250.

³⁶Telephone conversation with Bruce Donald, Senior Crown Counsel, Vancouver, British Columbia, January 28, 1981.

³⁷Revised Statutes of British Columbia (1979) Chapter 121, section 37.

and even though provincial supreme court judges are federally appointed, there is no law requiring one province to honor the custody decree of another.

END