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*Brigitte M. Bodenheimer**

The National Conference of Commissioners on Uniform State Laws has approved and recommended for enactment in all the states a Uniform Child Custody Jurisdiction Act.[1] This Act is designed to alleviate the plight of "interstate children"[2]—an apt phrase coined by Professor Ehrenzweig and descriptive of the rootlessness of children shifted from state to state—who are the victims of custody battles often fought in the courts of more than one state or a state and a foreign country. In this article, Mrs. Bodenheimer, Reporter for the Special Committee which drafted the Act, describes the social and legal causes of the problem and explains the essential features of the Uniform Act. The full text of the Act is printed as an appendix to this article.

I. THE PROBLEM

> There are at least three million children of divorce under eighteen years of age in the U.S. today, and the divorce courts are adding about 300,000 more children to this group each year . . . . The manner in which the courts deal with these

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1. The Uniform Child Custody Jurisdiction Act was adopted at the annual meeting of the Commissioners at Philadelphia in July, 1968, and approved by the American Bar Association in August, 1968. Printed copies of the Act with Prefatory Note and Comments may be obtained from the National Conference of Commissioners. The Act without comments is printed as an Appendix to this article.

2. *See* Ehrenzweig, *The Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings*, 64 MICH. L. REV. 1 (1965).

> victims of domestic catastrophe has an impact, directly or indirectly, on a substantial proportion of our people. It presents a challenge to the stability of our social institutions and is assuming threatening significance.[3]

If the large number of other children who have been abandoned, neglected, or cruelly treated, or who have been orphaned by death or severe illness, were added to the children of divorce, we would find that innumerable children in the United States live under court-determined custody arrangements. Not all of these children are involved in custody disputes when the initial custody decree is rendered, since often there is no real choice of custodians and frequently there is agreement among the parties. Many of these children, however, are faced with a potential shift to another home, especially when a modification of the original decree is applied for in a court of another state. A child left behind after a fatal accident, for example, may have been awarded to the only relative who stepped forward willing to assume his care, but two years later another relative in another state may petition for the child's custody.[4] A divorce decree may have awarded custody of the children to the father in accordance with an agreement of the parties, but later the mother, who has the children with her on a visit or who has snatched them from the father in an unguarded moment, may insist in another state that she alone can properly care for the children.[5] Naturally, not all the custody change applications are granted, but the number of children shifted from state to state every year in the hope of winning a custody change is so large that the matter has become a national problem.

Any psychiatrist or psychologist, experienced parent, grandparent, or teacher will state that when there has already been one upheaval in the child's life due to divorce or some other misfortune, the first and foremost requirement for the child's health and proper growth is stability, security, and continuity. Dr. Andrew Watson, psychiatrist and professor of law, has said that stability is "practically the principal element in raising children, especially pre-puberty ones," and that "a child can handle almost anything better than he can handle

3. Fain, 1963 PROCEEDINGS, SECTION OF FAMILY LAW, A.B.A., in READINGS IN LAW AND PSYCHIATRY 316 (R. Allen, E. Ferster & J. Rubin eds. 1968).

4. *Cf. In re* Fore, 168 Ohio St. 363, 155 N.E.2d 194 (1958).

5. *Cf.* Hansen & Goldberg, Casework in a Family Court, in READINGS IN LAW AND PSYCHIATRY, *supra* note 3, at 330, which describes an intrastate custody award to the father which was agreed to by the mother purely for reasons of divorce strategy and with the resolve "to wait until a more opportune time" to petition for modification

instability."[6] Furthermore, Dr. Watson maintains that "poor parental models are easier to adapt to than ever shifting ones."[7] Similarly, Dr. Herbert Modlin of the Menninger Foundation stresses the importance of "constancy of mothering" and describes the characteristics of children in the various periods of preadolescent and preadult existence in which their needs vary somewhat, but there is always the requirement of continuity and a sense of family, satisfying a need to belong.[8]

A growing child's need for stability of environment and constancy of affection, especially when subjected to the trauma of a disintegrated home, seems today a well-accepted fact,[9] verifying old truths gathered from long experience of mankind. Among the legal writers expressing this view is Professor Homer Clark:

> One of the things that the child's welfare certainly demands is stability and regularity. If he is continuously being transferred from one parent to the other by conflicting court decrees, he may be a great deal worse off than if left with one parent, even though as an original proposition some better provision could have been made for him.[10]

Dr. Watson concludes that custody decisions once made "should nearly always be permanent and irrevocable."[11] Similarly, Professor Robert Levy proposes that custody decrees normally remain immutable for at least one or two years.[12]

Present law and judicial practice are strangely at odds with these realities and insights. The cardinal rule of custody law is that the court must be governed above all by a concern for the best interests or

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6. PROCEEDINGS OF SPECIAL COMMITTEE ON UNIFORM DIVORCE AND MARRIAGE ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 98, 101 (Dec. 15-16, 1968).

7. A. WATSON, PSYCHIATRY FOR LAWYERS 197 (1968). *See also id.* at 159.

8. READINGS IN LAW AND PSYCHIATRY, *supra* note 3, at 319-22. *See also* Plant, *The Psychiatrist Views Children of Divorced Parents*, 10 LAW & CONTEMP. PROB. 807, 812-14, 816 (1944).

9. *See Preface* to A. WATSON, *supra* note 7, at xi-xii.

10. H. CLARK, THE LAW OF DOMESTIC RELATIONS 326 (1968). *See also* Application of Lang, 9 App. Div. 2d 401, 409, 193 N.Y.S.2d 763, 771 (Sup. Ct. 1959): "[G]enerally, the custody of children is to be established, whenever possible, on a long-term basis."

11. A. WATSON, *supra* note 7, at 197. *See also* Michigan H.B. No. 2842, introduced in 1968, which was designed to put Dr. Watson's ideas into practice.

12. R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS 237 (1969). *See also* Goldstein & Gitter, *On Abolition of Grounds for Divorce: A Model Statute & Commentary*, 3 FAM. L.Q. 75, 88 (1969), suggesting that custody decisions be final if reached under proposed legislative guides. *Cf.* Professor Foster's suggestion that custody decrees rendered by a court of another jurisdiction remain unmodified for two years under normal circumstances. Mim. memorandum 4 (March 25, 1965).

welfare of the child. Other considerations enter into the initial custody decision, particularly the parents' desires to bring up their own children. But once a custody arrangement has been made with the blessings of a court, is it generally in the best interests of the child that a court, and particularly a court which has had no part in or information about the original custody decision, modify the decree?[13] The power to modify custody awards may originally have been merely the natural consequence of an equity-type proceeding in which the chancellor retained jurisdiction to make any necessary adjustments, intended to be used sparingly and under extraordinary circumstances. But whatever its origin, the notion that non-finality, fluidity, and modifiability of custody decrees are necessary in the interest of the child became generally accepted.

This unfortunate assumption is implicit in a number of leading Supreme Court cases. It was, in fact, clearly articulated by Justice Frankfurter in *Kovacs v. Brewer*:

> *Because the child's welfare is the controlling guide in custody determination, a custody decree is of an essentially transitory nature.* The passage of even a relatively short period of time may work great changes, although difficult of ascertainment, in the needs of a developing child. Subtle, almost imperceptible, changes in the fitness and adaptability of custodians to provide for such needs may develop with corresponding rapidity. A court that is called upon to determine to whom and under what circumstances custody of an infant will be granted cannot, if it is to perform its function responsibly, be bound by a prior decree of another court . . . .[14]

This assumption has particularly harmful effects when "interstate children" are involved, that is, when a court of another state is called upon to change a custody decree. 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

13. We are not here concerned with emergency measures which any state may take to protect a child within its borders, whether the child lives under a court custody order or in the legal custody of his natural parents. Nor are we concerned with adjustments in visitation arrangements, or with any changes in support obligations which are in any event not part of the custody decision itself. We are concerned with a change in the home itself and in the person or persons who have been parents, natural or designated, to the child, under the custody decree.

14. 356 U.S. 604, 612 (1958) (emphasis added). *See also* New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947). The need for stability of environment is mentioned by some writers, but a simultaneous requirement of non-finality seems to have been considered the stronger of the two. *See, e.g.*, Stumberg, *The Status of Children in the Conflict of Laws*, 8 U. CHI. L. REV. 42, 56-57 (1940). For a possible explanation, see note 19 *infra*.

he can do better for the child—or perhaps better for the local petitioner:

> I suppose that one of the fundamental difficulties in the situation is that trial judges (if not appellate judges, as well) are somewhat loath to defer to courts of other states. This may be due to a tendency of any individual to think that in a situation demanding the wisdom of Solomon he can come closer than anyone else. And there is always the suspicion that even a judge will be a little more sympathetic with a constituent.[15]

This tendency of each state to act independently and without regard to the prior pronouncements of other states is not held in check in the area of child custody law by the full faith and credit clause of the Constitution or by any clear rules of jurisdiction applicable to modifications of out-of-state custody awards. The case of *New York ex rel. Halvey v. Halvey*,[16] decided in 1947, removed any doubt that custody decrees modifiable in the state of origin may be freely changed by the courts of other states. While Justice Douglas, who wrote the majority opinion, avoided passing directly upon the applicability of the full faith and credit clause to custody decrees, the decision clearly nullified any practical effect the clause might have had:

> So far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the decree, New York may do. . . . [I]t is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered.[17]

This decision also nullified the effect of any voluntary recognition of custody decrees of sister states. Since today the states permit the modification of their custody decrees by their own courts, other states may in one breath state that they recognize the prior decree and, at the same time, give custody to another person, usually on a perfunctory finding of changed circumstances. The *Halvey* doctrine, since reaffirmed,[18] and the judicial assumption that children *need* custody decrees which may be freely reopened gave much encouragement to persons bent on retrieving a child lost in the first round of a custody battle.[19]

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15. Address by Justice Fairchild of the Supreme Court of Wisconsin, Conference of Chief Justices, Mim. 8 (August, 1961). *See also* Foster & Freed, *Children and the Law*, 2 FAM. L.Q. 40, 49 (1968).

16. 330 U.S. 610 (1947).

17. *Id.* at 614, 615.

18. Ford v. Ford, 371 U.S. 187 (1962); Kovacs v. Brewer, 356 U.S. 604 (1958).

19. The Supreme Court decisions referred to have been interpreted as indications that the policy of protecting the welfare of the child may outweigh the national policy of full faith and credit. *See* Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L.

That children might perhaps 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, did not occur to most of the Justices at the time of *Halvey*. Indeed, only recently have improved communications between law and behavioral sciences led lawyers to question such traditionally ingrained notions as the false premise that children need freely changeable custody arrangements. Only Justice Rutledge, in his concurring opinion, predicted some of the unfortunate consequences of *Halvey* which have become common occurrences in our times:

> The result seems unfortunate in that, apparently, it may make possible a continuing round of litigation over custody, perhaps also of abduction, between alienated parents. That consequence hardly can be thought conducive to the child's welfare. . . .
>
> . . . [T]he effect of the decision may be to set up an unseemly litigous competition between the states and their respective courts as well as between parents. Sometime, somehow, there should be an end to litigation in such matters.[20]

Another off-shoot of the preference for the non-finality of custody decrees is the Supreme Court's decision in *May v. Anderson*,[21] which suggests that any person who is not personally served in the state or who is otherwise technically not under the personal jurisdiction of the court is not bound by its custody decree. This case clearly demonstrates that the modification of a custody decree—in this instance at the behest of one of the contenders who managed to stay out of the first adjudicating state—will often be in the interest of a feuding litigant, but has little to do with the interest of the child. Justice Jackson, in his

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REV. 153, 160, 173-74, 177-78 (1949). *See also* Reese, *Full Faith and Credit to Foreign Equity Decrees*, 42 IOWA L. REV. 183, 195-96 (1957); Note, *Child Custody Decrees—Interstate Recognition*, 49 IOWA L. REV. 1178, 1200 (1964). The illustration given by Reese and Johnson concerning a mother who became a drug-addict suggests that they had in mind the exercise of a state's power of *parens patriae* to protect a child from neglect or mistreatment rather than the modification of a custody judgment of another state. Reese & Johnson, *supra* at 173-74. The *parens patriae* power exists with respect to all children, whether they live under the statutory custody of their natural parents or with a custodian appointed by a court. When that power is exercised within its proper limits (*see* Justice Cardozo in Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 624 (1925)), it is a state emergency measure and not the disregard of a judgment rendered elsewhere. For a criticism of the use made of the child custody decisions of the Supreme Court to support the limitation on full faith and credit contained in section 103 of the proposed *Restatement (Second) of Conflict of Laws*, see Comment, *Full Faith and Credit to Judgments: Law and Reason Versus the Restatement Second*, 54 CALIF. L. REV. 282 (1966).

20. New York *ex rel.* Halvey v. Halvey, 330 U.S. 610, 619-20 (1947).

21. 345 U.S. 528 (1953).

dissent, forecast the dangers of an approach which "seems to reduce the law of custody to a rule of seize-and-run."[22] He warned:

> The convenience of a leave-taking parent is placed above the welfare of the child, but neither party is greatly aided in obtaining a decision. The Wisconsin courts cannot bind the mother, and the Ohio courts cannot bind the father. A state of the law such as this, where possession apparently is not merely nine points of the law but all of them and self-help the ultimate authority, has little to commend it in legal logic or as a principle of order in a federal system.
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> . . . [H]ere the Court requires personal service upon a spouse who decamps before the State of good-faith domicile can make provision for custody. . . . Wisconsin had a far more real concern with the transactions here litigated than have many of the divorce-mill forums . . . .
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> . . . Personal jurisdiction of all parties to be affected by a proceeding is highly desirable, to make certain that they have had valid notice and opportunity to be heard. But the assumption that it overrides all other considerations and in its absence a state is constitutionally impotent to resolve questions of custody flies in the face of our own cases.[23]

There is, however, another reason for the Supreme Court's unwillingness to apply the full faith and credit clause in custody cases. Justice Frankfurter suggested in his dissenting opinion in *Kovacs* that:

> This case vividly illustrates the evil of requiring one court, which may be peculiarly well-situated for making the delicate determination of what is in the child's best interests, to defer to a prior foreign decree, which may well be the result of a superficial or abstract judgment on what the child's welfare requires. . . . The minimum nexus between court and child that must exist before the court's award of the child's custody should carry any authority is that the court should have been in a position adequately to inform itself regarding the needs and desires of the child, of what is in the child's best interests.[24]

Thus, without directly addressing the question of state court jurisdiction, the Supreme Court left the nagging doubt that perhaps the prior custody decree was not as informed and as trustworthy a judgment as it should have been. Naturally, the Court cannot be expected to supervise the standards of state custody procedures through a selective application of the full faith and credit clause similar to its role in supervising state criminal cases.[25] But the practical effect of the Court's reluctance to take any stand on full faith and credit and jurisdiction has been to withhold all federal controls from interstate custody law.

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22. *Id.* at 542. *See also* text accompanying notes 94-108 *infra.*

23. *Id.* at 539-41. On the effects of the *Halvey* and *May* line of cases, *see also* G. STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 325-26 (3d ed. 1963).

24. Kovacs v. Brewer, 356 U.S. 604, 613-14 (1958).

25. Note, *Ford v. Ford: Full Faith and Credit to Child Custody Decrees?*, 73 YALE L.J. 134, 139-41 (1963).

The void left by the Supreme Court in declining to rule on state court jurisdiction was filled largely by the decision of the Supreme Court of California in *Sampsell v. Superior Court*,[26] which gained wide-spread acceptance and was incorporated into the proposed second version of the Restatement of Conflict of Laws.[27] *Sampsell* adopted a multiple jurisdiction test under which the child's domicile, the child's presence in the state, or personal jurisdiction over the claimants, are alternate bases for jurisdiction; and jurisdiction may be concurrent in several states. *Sampsell* was decided in 1948, one year after *Halvey*, and was strongly influenced by that case. Justice Traynor, speaking for the majority in *Sampsell*, pointed out that the really burning question of interstate custody law was not the question of jurisdiction but the question of whether a custody decree has binding force in another state. Noting that the *Halvey* holding permits other states to modify a California custody decree, Justice Traynor concluded:

> Since the courts of this state do not finally and conclusively determine custody in a divorce proceeding, there is no reason to attempt to arrive at some basis for jurisdiction that should be accepted as final and conclusive in all states.[28]

In other words, if, according to the United States Supreme Court, other states may freely modify a custody decree, it becomes rather unimportant to determine which state should take jurisdiction in the first place. Without the full faith and credit clause to rely on, and with nothing to stop out-of-state custody changes, there may be no point in having rules of jurisdiction at all.[29]

But Justice Traynor in *Sampsell* had no intention of letting down all the bars to indiscriminate assumption of jurisdiction by any state, no matter how slight the connection with the child and family. He spoke of the need "to avoid interminable and vexatious litigation," counseled confidence in the custody decisions of other states, and suggested the use of the doctrine of forum non conveniens to avoid jurisdictional conflicts.[30]

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26. 32 Cal. 2d 763, 197 P.2d 739 (1948).

27. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (Proposed Official Draft, Part 1, 1967).

28. 32 Cal. 2d 763, 780, 197 P.2d 739, 750 (1948).

29. In fact, this seems to be the situation today: "Child custody decisions afford no better than a quicksand foundation for analysis of jurisdiction. . . . Rules purporting to define judicial jurisdiction and to establish finality for prior decisions fade into thin air when they are contradicted by facts affecting the child's welfare." R. LEFLAR, AMERICAN CONFLICTS LAW 585 (1968). *See also* H. CLARK, *supra* note 10, at 320.

30. 32 Cal. 2d 763, 779-80, 197 P.2d 739, 750 (1948).

Justice Traynor referred to an influential article by Professor Dale Stansbury, written in 1944, which took a very optimistic view of the problem:

> Respect for other courts' judgments is a judicial habit which would scarcely be broken by acknowledging a multiple jurisdiction and removing the compulsion of full faith and credit in this one small field. Indeed it is not unreasonable to imagine that that respect would be increased and made more wholesome by placing it on a frankly discretionary basis . . . .[31]

These high hopes have not been realized. The unprecedented movement of the population during and after World War II and the high rates of family breakups and other social changes of the 1950's and 1960's greatly accentuated the problem. The legal vacuum created by the *Halvey* doctrine, combined with the social transformations of recent times, have created a situation in which self-help and the "rule of seize and run" flourish, as Justice Jackson had predicted.[32]

With the federal system not operating effectively in an area which is vital for the mental and physical health of growing generations, the states have done their best to ameliorate the situation. One helpful device has been the use of the "clean hands doctrine" to bar from court any child abductor or other violator of a custody decree of another state.[33] Of course, the doctrine cannot be applied when this punitive measure against a parent may work to the detriment of the child.[34] Also, the doctrine may often be circumvented by asking for the modification of a custody decree in another state during a period when the child is legally under the control of the petitioner, usually during a visit permitted by the decree.[35] Some courts have declined jurisdiction to avoid clashes with the courts of other states.[36] Other courts have

31. Stansbury, *Custody and Maintenance Law Across State Lines*, 10 LAW & CONTEMP. PROB. 819, 831 (1944).

32. 345 U.S. 528, 542 (1953) (dissenting opinion).

33. After Professor Ehrenzweig discovered that courts in some states consistently turned away violators of out-of-state custody decrees, he provided the theoretical explanation and the name of the doctrine and strengthened it in turn through his writings. *See* Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345 (1953), *reprinted in revised form in* SELECTED READINGS ON CONFLICT OF LAWS 822 (M. Culp ed. 1956).

34. *See, e.g., In re* Guardianship of Rodgers, 100 Ariz. 269, 413 P.2d 744 (1966); Smith v. Smith, 135 Cal. App. 2d 100, 286 P.2d 1009 (Dist. Ct. App. 1955).

35. *See, e.g.*, Brocker v. Brocker, 429 Pa. 513, 241 A.2d 336 (1968), involving a father who applied to a court of another state for custody of his children within the authorized period of visitation. *See* Comment, *Conflicting Custody Decrees: In Whose Best Interest?*, 7 DUQUESNE L. REV. 262 (1969).

36. *See, e.g.*, Brazy v. Brazy, 5 Wis. 2d 352, 92 N.W.2d 738 (1959); State *ex rel.* Kern v. Kern, 17 Wis. 2d 268, 116 N.W.2d 337 (1962).

attempted to work out their own rules of jurisdiction.[37] But the problem has become too big to be handled by each of the 50 states independently.

There are three possible alternative courses of action to remedy the situation: First, there could be congressional legislation under the authorization of the full faith and credit clause;[38] second, the United States Supreme Court could become active in this area and hammer out, case by case, a set of rules providing for selective recognition of custody decisions of other states based on reasonable standards for jurisdiction and restricting modifications;[39] and third, the states can impose rules on themselves by uniform legislation. Since there is little likelihood that any action will be taken by Congress or the Supreme Court within the near future, the Commissioners on Uniform State Laws have prepared a law which can remedy the harm done to children who are caught in the present jungle of the conflict of laws.

II. THE UNIFORM ACT

A. The Preparatory Work

In a letter received by the National Conference of Commissioners a number of years ago, the father of a young boy bitterly complained that he had been unable, through proper procedures of the law, to see his son, who, under a divorce decree, was to spend two months of the summer with him. He had been advised by his former wife that any attempt to enforce his visitation rights in the state in which she now lived would be met by her departure from that state, "and so on from court to court and state to state."[40] A survey conducted by the National Conference convinced the Commissioners that the "rule of seize and run" is indeed rampant throughout the country and operates beyond the borders of the United States; that many courts freely alter custody decisions made out-of-state; that conflicting custody decrees in two states are no rarity; and that innumerable children are without

37. *See, e.g.*, Sharpe v. Sharpe, 77 Ill. App. 2d 295, 222 N.E.2d 340 (1966) ("single court" theory of jurisdiction chosen over a "home-court" theory).

38. This was Professor B. Currie's preference. *See* Currie, *Full Faith and Credit, Chiefly to Judgments: A Role for Congress*, 1964 SUP. CT. REV. 89, 115-18.

39. This is suggested in Comment, *supra* note 35, at 274-75. *See also* Note, *supra* note 25, at 148-50, proposing that the Supreme Court, without detailed supervision of state custody litigation, extend the protection of full faith and credit to custody decrees rendered in the state of permanent residence or another state with a substantial interest in the child.

40. Letter by William Clemmons to Committee on State Legislation, Council of State Governments, July 30, 1957.

secure and permanent homes because of severe shortcomings in interstate custody law. The need for uniform legislation to correct the law appeared to be patent and urgent.

The Family Law Section of the American Bar Association also studied the matter under the energetic chairmanship of its Committee on Child Custody, Mr. Harry Fain. That Committee was aided by Professor Leonard Ratner, who surveyed the field and pointed the way in his monumental study entitled "Child Custody in a Federal System"[41] and in a draft of a proposed uniform law.[42] Other scholars, encouraged by the prospect of a legislative solution, expressed their views and suggestions. When the National Conference of Commissioners in 1965 officially authorized the drafting of a uniform law, it was able to draw on the groundwork laid by Professor Ratner and on a considerable amount of other expert opinion. Professor Albert Ehrenzweig stressed the interdependence of the courts in custody matters and the need to concentrate the proceedings in one court.[43] Professor Henry Foster suggested that payment of travel expenses be imposed to insure the appearance of other parties and strongly advocated severe restrictions on modifications of out-of-state custody decrees.[44] Professor David Engdahl prepared several helpful memoranda on the legal points involved and wrote a preliminary draft.[45] Professor John Bradway suggested that it is less essential to determine with precision *which state* has jurisdiction than to insure that the courts involved cooperate fully in fact-gathering and for other purposes.[46] While there were differences of opinion, some of them due to the unsettled state of legal theory, practically all the writers desired legislation which would give a strong measure of interstate finality to custody litigation, curb child abductions and other self-help measures, and insure interstate judicial cooperation.

The Commissioner's Special Committee on Child Custody Jurisdiction Act made use of many of the ideas of the experts and did extensive research of its own. Several tentative drafts were prepared

41. 62 MICH. L. REV. 795 (1964).

42. Ratner, *Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act*, 38 S. CAL. L. REV. 183, 196 (1965).

43. *See* Ehrenzweig, *supra* note 2.

44. Foster, Mim. memorandum, *supra* note 12.

45. *See* D. Engdahl, Memorandum, September 13, 1965 (unpublished memorandum for the Legislative Research Center of the University of Michigan Law School).

46. J. Bradway, Memorandum, August 18, 1965 (unpublished). Professor Bradway would want us to move from "competitive jurisdiction isolation" to "interstate judicial cooperation" in custody cases.

under the chairmanship of Professor William Brockelbank and later under the chairmanship of Dean John Wade. Judge Eugene Burdick of North Dakota, under whose overall jurisdiction the Special Committee operated, actively participated in the drafting effort. Consultations were had with many of these scholars, and particularly with Professor Robert Levy to coordinate the work on this uniform law with his work on uniform marriage and divorce legislation.[47] Professor Elliott Cheatham took an active interest in the progress of the Uniform Act and contributed section 23 on International Application.

B. Basic Provisions

The basic scheme of the Act is simple. First, one court in the country assumes full responsibility for custody of a particular child. Second, for this purpose a court is selected which has access to as much relevant information about the child and family in the state as possible. Third, other essential evidence, which is inevitably out-of-state in the case of an interstate child, is channelled into the first court which might be called the "custody court." Fourth, other states abide by the decision of the custody court and enforce it in their territory, if necessary. Fifth, adjustments in visitation and other ancillary provisions of the decree, and custody changes, if any, are as a rule made by the original custody court. Sixth, if the child and his family no longer have appreciable ties with the state of the original court, a new custody court is selected to take the place of the original one for purposes of adjustments and modifications, and pertinent information is channelled from the prior to the subsequent custody court.

This scheme is carried out by the major provisions of the Act. Section 3 provides that jurisdiction in custody cases is normally limited to the courts of the state which is the child's home state or in which there are other strong contacts with the child and his family. Sections 6 and 7 assure that any possible jurisdictional conflict between the courts of several states are resolved by the priority-in-time or the inconvenient forum principle, aided by direct interstate judicial communications. Sections 19-22 instruct courts to assist each other in gathering out-of-state evidence by holding hearings on behalf of a custody court in another state, by forwarding court records, and in other ways. Sections 13 and 15 provide that a custody decree rendered in accordance with the jurisdictional standards of the Act be accorded recognition and direct enforcement in any other state. Under section

47. *See* note 12 *supra*.

14 the power to modify a custody decree remains exclusively in the court which made the prior decree so long as that court satisfies the jurisdictional requirements of the Act.

Section 8 codifies the "clean hands" doctrine as applied to custody proceedings; section 10 assures that all persons claiming custody of the same child are joined in one proceeding; section 12 specifies that parties given reasonable notice and opportunity to be heard are bound by a custody decree; and sections 11, 19(b) and 20(b) encourage the appearance in court of all parties and the child, whether in or out of the state, through payment of travel expenses when necessary.

Every section of the Act is to be applied in the light of its basic purposes, as expressed in section 1, to discourage continuing controversies over child custody in the interest of stability of home environment for the child, to deter child abductions and similar practices employed to obtain custody awards, and to promote mutual interstate judicial assistance in custody cases.

C. *Scope of the Act*

The Uniform Act deals almost exclusively with the interstate aspects of custody proceedings. It does not concern itself with the manner in which the judge arrives at the custody judgment, the use of trained personnel to make custody investigations or social studies, or the provision of independent legal representation for the child.[48] There is, however, a great deal of interdependence between the latter intra-state aspects and the interstate custody law since the Act here under discussion requires high standards of custody procedures under local law in order to be completely successful. Undoubtedly the Uniform Act itself will stimulate better informed and more carefully considered custody determinations, not only because it stresses the need for bringing in out-of-state evidence, but also because the initial decision, which cannot ordinarily be reopened in another state, takes on much greater significance than before. Furthermore, the American Bar Association is actively concerned about this area of the law,[49] and the

48. On matters concerning intra-state custody law, *see generally* H. CLARK, *supra* note 10, at 572-601; Fain, *Custody of Children*, 1 CALIF. FAMILY LAWYER 539 (1961); Foster & Freed, *Child Custody* (pts. 1 & 2), 39 N.Y.U.L. REV. 423, 615 (1964); Hansen, *Three Dimensions of Divorce*, 50 MARQ. L. REV. 1, 8-12 (1966).

49. See A.B.A. Model Statute, in PROCEEDINGS OF THE SECTION OF FAMILY LAW 38 (1963); Leavell, *Custody Disputes and the Proposed Model Act*, 2 GA. L. REV. 162 (1968).

Commissioners on Uniform State Laws are preparing legislation to improve intra-state custody law and procedure as part of their current Uniform Marriage and Divorce Project.[50]

D. *Interstate Jurisdiction*

1. *Relationship to Recognition.*—One of the most important functions of interstate rules of custody jurisdiction is to serve as criteria for the recognition of custody decrees by other states. As Justice Traynor intimated in *Sampsell*, as long as custody decisions have no binding force in other states and are freely modifiable by them, it is not essential to have clearly circumscribed rules of jurisdiction. But once it has become clear that a halt to unending custody litigation can be achieved only by interstate recognition of decrees rendered elsewhere, jurisdictional rules assume an elevated importance. Standards of jurisdiction are the only practicable means at our disposal to distinguish decrees that deserve recognition by other states from those that do not.[51]

Custody decrees vary a great deal in quality. There are perfunctory decrees made in migratory divorce cases, and there are highly sophisticated custody decisions arrived at with all the aid a family court procedure can supply.[52] There are decrees which are equitable and fair to all parties and there are others which are partial to the local resident. There are punitive decrees, which change custody to discipline a parent,[53] and there are others, which will not let a parent's misdeed influence the court's concern for the child. It is, however, neither practically possible nor desirable from the standpoint of stability for the child to single out for recognition only those custody decrees that are wise, fair, and fully cognizant of all the factors that should enter into a custody decision. Thus, the Uniform Act provides some means short of withholding recognition to cope with the problems of partial and of punitive decrees.[54] The fact of recognition itself, along with restriction on modifications in section 14, have the retroeffect of strengthening the care used and the responsibility felt by the original judge who knows that his custody order may determine the entire course of the life of the child before him.

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50. *See* R. LEVY, *supra* note 12, at 222-46.

51. *See* Note, *supra* note 25, at 148-50.

52. Foster & Freed, *supra* note 48, at 615-22; Hansen, *supra* note 48.

53. *See* Ehrenzweig, *supra* note 33, at 370, in SELECTED READINGS ON CONFLICT OF LAWS 837.

54. *See* text accompanying notes 123-130 & 136 *infra*.

The only distinction that commends itself as a criterion for the recognition of out-of-state custody judgments is that between informed—or potentially informed—custody decisions and custody decisions based on inadequate information. The court most likely to decide correctly is the court having maximum access to the relevant evidence.[55] It follows that custody decisions rendered in states in which as much as possible of the essential information about the child and his potential custodians is available will be considered trustworthy enough to command respect and recognition in other states.[56] Jurisdictional rules that place jurisdiction where most of the facts are found are therefore the best method we can devise to determine interstate recognizability.

2. *The Bases of Jurisdiction.* (a) *General considerations.*—In attempting to devise workable jurisdictional rules, the Commissioners were conscious that they must do so with an eye to recognition of the decree and that the cardinal rule here, as elsewhere in custody law, is that the interest of the child should govern the choices to be made. As a general proposition the state in which there is the best opportunity to investigate the facts is most qualified to take jurisdiction. The Commissioners' research convinced them, however, that there is no perfect solution to this problem in the sense of laying down absolutely certain and exclusive rules of jurisdiction. They found that it is no accident that courts and legal writers have searched for and debated the answer to this question for decades.[57] Having determined that the state should handle the case that is closest to the relevant facts, we have only begun the search for an answer. We must next know which facts are relevant and which of several possible states harbors more relevant evidence than the others.

Suppose a married couple lives in state *A* for several years, then leaves their children in state *B* with friends while they consider obtaining a divorce. The parents eventually separate and the wife takes a job in state *C* while the husband is transferred to another city in state *C*. By the time the custody dispute between father and mother is taken to court, both parents have been settled in their new communities for six months and the children have lived with the friends in state *B* for a year and will remain there until the end of the proceedings. The friends do not claim custody.

55. Ratner, *supra* note 41, at 809; Stumberg, *supra* note 14, at 56.

56. See Stumberg, *supra* note 14, at 61-62.

57. *Compare* RESTATEMENT OF CONFLICT OF LAWS § 117 (1934), *with* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (Proposed Official Draft 1967).

A court in state *A*, the matrimonial home, would undoubtedly find witnesses who could give information about the life of the parents and children while they lived there and the relationship of each parent to the children. This is relevant evidence because the facts of the past shed some light on the kind of home either one of the parents could give to the child in the future. There is, however, not a shred of evidence in state *A* about the present situation, and none of the custody claimants are in the state. It would therefore be concluded that state *A*, although it possesses relevant evidence, is not in the best position to investigate the facts.

State *B* where the children now live, has information on the present condition of the children and on the care they are receiving from the parents' friends. However, since the friends are not the children's potential custodians, there is little evidence of great relevance in the state. There are no facts in the state about the kind of care the children will receive from either one of their potential custodians, except for any light the children themselves can shed on that question and possibly some testimony by the friends.

This leaves state *C* where both contestants live. While they have not been settled in the state for more than six months, their own availability as witnesses, combined with testimony of persons in the state who have come to know them, should reveal important facts about their respective abilities to provide an adequate home for the children. It would probably be concluded that a court in this state has more access to the relevant evidence than the other two.

If the facts were slightly different in that husband and wife each settled in different states, states *C* and *D* respectively, it would be impossible to say which of these two states has the better opportunity to investigate the facts. Of course, while there may be sufficient evidence in one of the states to permit a court to assume jurisdiction, it is the nature of an interstate custody case that the judge needs information from another state to complete the picture, and often he needs these facts as much as the information he finds in his own state.[58]

Consider another illustration: suppose the matrimonial home is in state *A*, and the husband remains there. The wife and children with the consent of the husband move to state *B*, which is the wife's former home state and where her parents live. They have been in state *B* for three months when court proceedings are prepared. Relevant facts about the children's present condition and care are in state *B* along

58. *See* text accompanying notes 135-36 *infra*.

with some of the facts about the qualifications of one of the potential custodians. State *A* has the information concerning the past relationship between each parent and the children as well as most of the facts about the other potential custodian. Here again, it will be difficult to decide which state has more of the relevant evidence.

These two illustrations clarify what facts are most relevant in making a custody decision and what considerations govern the search for the most appropriate state to assume jurisdiction. Although the child is the center of attention in a custody proceeding, the main inquiry is directed toward two or more adults and toward making a prediction for the future concerning the superior ability of one of them to surround the child with the necessary security, affection, and all other needs of a growing child. As Professor Rheinstein pointed out, " a determination of the child's best interests [cannot] be made without an inquiry into the comparative merits of the parties."[59] That inquiry, focused on the parents' potential future relationship with the child, is in fact the main object of the proceedings. The child himself may supply some evidence in that regard, although it is difficult for the judge to gain more than a superficial impression from a brief interview with him, unless an older child is involved who might express a preference. Usually, the most significant evidence will have to come from the parents themselves, from other persons who might be entrusted with the care of the child, and from those who can testify about the competence of these persons as custodians.

The child's residence or presence in one of the states in question has some bearing, but not a decisive one, on the choice of the state that is to take jurisdiction. If, for example, the child lives with relatives in state *B* for a year while the father is in Vietnam and the mother is in state *A*, the matrimonial home, where she is slowly recuperating from an operation, and the relatives refuse to relinquish the child after the father's return and the mother's recovery, the fact that state *B* is presently the child's residence does not exclude jurisdiction of state *A*, which might in fact be the more appropriate forum.

While it is difficult in many cases to determine with certainty which of several states has maximum access to the relevant evidence, those factors which are insufficient to provide jurisdiction can be stated with more precision. The fact alone that the child is physically present in the state does not give the court enough local information about his possible future custodians to permit it to assume jurisdiction. The same

59. Rheinstein, *Jurisdiction in Matters of Child Custody*, 26 CONN. B.J. 48, 64 (1952).

is true if the child and one of the contestants are physically present in the state for some temporary purpose, like the institution of custody proceedings after the child has been legally or illegally removed from another state, or for purposes of migratory divorce.[60] The child, or child and adult, do not have sufficient ties to the community in these situations to justify jurisdiction to decide custody. Naturally, if the child is stranded in the state or is being endangered by the adult with whom he is staying, a court, usually a juvenile court, would assume jurisdiction to take necessary emergency measures, including removal of the child from the custody of the person involved.[61]

Despite these difficulties, the search by the Commissioners for some definite jurisdictional rule did end in partial success. They attempted to find a substitute criterion for the child's "domicile" which would better pinpoint the state with which the child has a rather permanent connection.[62] They considered the state "where the child habitually lives,"[63] his "permanent abode,"[64] "actual residence"[65] or "permanent residence,"[66] and the "established home."[67]

Professor Ratner's concept of the "established home" has the great advantage that it not only avoids the ambiguities of "domicile" and "residence,"[68] but also gives an exact definition of the term itself. "Established home" is defined as "the last place where the child has lived with a parent [or a person acting as parent] for a sufficient time to become integrated into the community."[69] That period of time is fixed at a minimum of six months on the reasonable assumption of fact

60. *See* Ehrenzweig, *supra* note 2, at 6, 10. *See also* text accompanying notes 82-85 *infra*.

61. *See* text accompanying notes 87-91 *infra*.

62. There is general agreement today that the child's domicile as an exclusive test for custody jurisidiction is unsatisfactory since "domicile" is a technical concept which relates back to the father's (or the mother's) domicile and may be located in a state where the child does not actually live or where perhaps he has never been. *See, e.g.*, EHRENZWEIG, CONFLICT OF LAWS 281-82 (1962); Stansbury, *supra* note 31, at 820-22, 827; Stumberg, *supra* note 14, at 62. The domicile criterion has, however, been retained by the second Restatement as an alternate basis for custody jurisidiction. RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, § 79. Yet the reasons advanced against the child's domicile as an exclusive criterion would seem to be equally applicable when domicile of father or mother is relied upon under a non-exclusive test.

63. G. STUMBERG, *supra* note 23, at 323.

64. Ehrenzweig, *supra* note 2, at 6.

65. Stansbury, *supra* note 31, at 823. *Cf.* Rheinstein, *supra* note 59, at 64.

66. Note, *supra* note 25, at 148-50.

67. Ratner, *supra* note 41, at 815.

68. *See* Rheinstein, *supra* note 59, at 60-63; Reese & Green, *That Elusive Word, "Residence"*, 6 VAND. L. REV. 561 (1953).

69. Ratner, *supra* note 41, at 815.

that "[m]ost American children are integrated into an American community after living there six months."[70]

Professor Ratner discovered, however, that the "established home" criterion does not suffice as an exclusive rule of jurisdiction because it does not cover all of the varied factual situations that commonly arise. For example, some children have not lived anywhere long enough to have an established home, or parents and children have left the established home before separation and have not returned, or none of the parties reside in the state of the established home at the outset of the proceedings.[71] Accordingly, it was necessary to devise a number of subsidiary rules of exclusive jurisdiction to cover these situations, supplemented with definitions of "transient abode," "non-transient abode," "authorized residence," and so forth.[72]

The Commissioners incorporated Professor Ratner's "established home" idea, in modified form, into the Uniform Act as a nonexclusive "home state" concept, but did not follow him all the way along his path of subsidiary rules, although many of his other suggestions found their way into the Act.

The "home state" rule was adopted in order to have one definite and certain criterion, a rule of thumb which is easy to apply. It was combined with a more flexible but not wide-open test, based on strong contacts of the child and family with the state.

(b) *Home state.*—Section 3 of the Act gives custody jurisdiction to the child's "home state," the state in which the child lived for at least six consecutive months with a parent or person acting as parent immediately before the custody proceedings.[73] Thus, if the child lived in a state for six months with his mother or a foster parent who claims custody immediately before the case goes to court, that state automatically has jurisdiction without the need for any further inquiry.

If the child is removed from the home state or is retained elsewhere and not returned, home state jurisdiction is extended by section 3(a)(1)(ii) for an additional six months to give the stay-at-home parent or custodian the opportunity to sue in his own state and under the home state rule. This extension protects a parent whose child has been abducted, for example, by relieving him of the necessity of following

70. *Id.* at 818.

71. *Id.* at 818-19.

72. *Id.*; Ratner, *supra* note 42, at 185-86, 198-200.

73. See UNIFORM CHILD CUSTODY JURISDICTION ACT § 3(a)(1). *See id.* § 2(5) for further details of the definition of "home state;" and *see id.* § 2(9) for a definition of "person acting as parent."

the abductor and the child to another state or to several states in succession to reclaim the child in court. But the six-month extension is not limited to cases of wrongful or unauthorized removal or retention. It applies also if a child is away at school[74] or if he has run away from home to another state. Despite some authority to the contrary,[75] it is today generally agreed that physical presence of the child in the state is not a prerequisite for custody jurisdiction.[76] In order to make this entirely clear, section 3(c) spells this out expressly.

(c) Strong contacts.—If the family has moved frequently and there is no state in which the child has lived for six months just prior to suit, jurisdiction is determined under a "strong contacts" test contained in section 3(a)(2). The same is true if the child has been absent from his home state for less than six months, but his parent or other custodian has also moved away; or if the child's absence, for instance in a boarding school, has been for longer than six months.

This test requires that "the child . . . and at least one contestant, have a significant connection with this State," and that "there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships." The test is expressly limited by the rule of section 3(b) that "physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction . . . ."

Jurisdiction under this test may be concurrent with jurisdiction under the "home state" rule if the ties of the family are equal or stronger with another state. Jurisdictional conflict is avoided by the priority-in-time or inconvenient forum rules, which will be discussed later in this article.[77] For example, if the original matrimonial home was state *A*, where husband, wife, and children lived for a number of years before they moved to state *B*, where they lived for six months

74. If he is in school away from home for longer than six months, jurisdiction must be based on the "strong contacts" rule of the UNIFORM CHILD CUSTODY JURISDICTION ACT § 3(a)(2).

75. Justice Frankfurter's remark in Kovacs v. Brewer, 356 U.S. 604, 614 (1958) that "the very least that should be expected . . . is that the child be physically within the jurisdiction" has had some influence. However, when read in its context, it is clear that all the Justice meant to say was that the custody court should be in a position to make a thorough investigation of the facts. *See* Ratner, *supra* note 42, at 190-93.

76. *See* Justice Traynor in Sampsell v. Superior Court, 32 Cal. 2d 763, 781, 197 P.2d 739, 751 (1948); RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, § 79. A contrary rule would encourage child abductions.

77. UNIFORM CHILD CUSTODY JURISDICTION ACT §§ 6, 7; text accompanying note 92 *infra*.

before they separated, and the wife returned to state *A* with the children, state *B* is the "home state" and the left-behind husband can sue there if he wishes. There are also strong contacts with state *A* which give that state concurrent jurisdiction if it is chosen as the forum state.

Another example of possible alternative jurisdiction is presented by the facts of the well-known case of *Painter v. Bannister.*[78] Mark Painter lived in California with his parents when his mother and younger sister were killed in an accident in December, 1962. The boy remained with his father until July, 1963 when the father asked the Bannisters, the maternal grandparents, to take care of him temporarily since other arrangements had proved unsatisfactory. The Bannisters took Mark, then age five, to their farm home in Iowa. His father remarried in November, 1964, and when he asked the grandparents for the return of his son, they refused to let the boy leave. It is clear that the Iowa court had jurisdiction under the "home state" rule, since Mark had lived there continuously with his grandparents who acted as parents[79] for some fifteen months. The court found as a fact, however, that Mr. Painter did not permanently relinquish custody, and intended a mere temporary arrangement. It is clear that a California court could not have taken jurisdiction under the "home state" test extension since Mark had departed from California more than six months before suit. However, the child and father had a strong connection with California where they both had lived all their lives until the boy went to Iowa. There was available in California substantial evidence about Mr. Painter, about his new wife, their home, and the future manner in which they would care for the boy if custody should be awarded to the father. Since the temporary relinquishment of the child affects the strength of the ties which remained with California, it seems that California would have had concurrent jurisdiction if the case had come up under the Uniform Act.[80]

(d) *Mere presence.*—The basic notion underlying the Act—that jurisdiction be limited to those states which have maximum access to the relevant facts—implicitly excludes jurisdiction when the child and

78. 258 Iowa 1390, 140 N.W.2d 152, *cert. denied,* 385 U.S. 949 (1966). No jurisdictional question was involved in the case itself.

79. To be a "person acting as parent" under the definition of section 2(9), a grandparent must have physical custody of the child and claim a right to legal custody.

80. Under the provisions of sections 12, 13, and 15 of the Act, a custody decree obtained in California can be enforced in Iowa like an Iowa decree. *See* text at note 111 *infra.* Custody of Mark Painter originally awarded to his grandparents in the Iowa case, has since been given to his father by a California court. *See In re* Painter, No. 22077 (Super. Ct. Santa Cruz Co., Calif. 1968) (unpublished).

custody claimant are merely physically present without any durable ties with the state. Although this principle is clear from the "home state" and "strong contacts" rules, it is spelled out expressly in section 3(b) of the Act. Only if this distinction is strictly made can the jurisdictional standards of the Act be justified as criteria for the recognition of custody decrees by other states.

If the presence of the child and a contestant in the state is only temporary, such as a visit with relatives, business meetings, or the institution of the custody proceeding itself, a court in that state does not have jurisdiction to determine custody.[81] For example, if the child is in state *B* on a three-month visit under a custody decree of state *A*, state *B* does not have jurisdiction. Similarly, presence in the state for the purpose of migratory divorce requiring "domicile" of only short duration, does not confer custody jurisdiction:

> Although custody proceedings are usually brought as an incident to a suit for divorce, jurisdiction to make the award involves considerations which are quite different from those involved in jurisdiction to dissolve a marriage.[82]

Submission by the other parent to the jurisdiction of a migratory divorce court does not change the situation. Since mere technical personal jurisdiction does not add relevant new evidence,[83] consent cannot confer a basis for interstate jurisdiction which does not otherwise exist:

> The trial court unquestionably had jurisdiction over the parties, for by answering plaintiff's complaint on the merits defendant waived any claim of lack of jurisdiction over her . . . . This appearance, however, did not confer jurisdiction on the court over the subject matter of the action, for such jurisdiction may not be waived by a party or conferred on the court by consent.[84]

Under the "strong contacts" clause, jurisdiction exists only if it is in the child's interest for the court to assume jurisdiction, and the child's interest does not necessarily coincide with the interest or convenience

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81. *Compare* Professor Ratner's legislative proposal which uses a three-month test. A person who is living in the state "while on a trip or on a visit that has not lasted more than three months" would be only temporarily present. *See* Ratner, *supra* note 42, at 198.

82. Stumberg, *supra* note 14, at 53. *See also* H. CLARK, *supra* note 10, at 578; Ehrenzweig, *supra* note 2, at 6, 10. Professor Rheinstein distinguishes between "mere physical presence" and "residence" of a child in the state of divorce. Mere presence of the child with one of the parties in a state of migratory divorce would not be sufficient for custody jurisdiction in his view. *See* Rheinstein, *supra* note 59, at 62-65.

83. Usually the defendant spouse remains in the home state and merely files an answer through an attorney. *Cf.* Johnson v. Muelberger, 340 U.S. 581 (1951).

84. Sampsell v. Superior Court, 32 Cal. 2d 763, 773, 197 P.2d 739, 746 (1948). When referring here to jurisdiction over subject matter, Justice Traynor is dealing with interstate custody jurisdiction in a divorce case.

of his feuding relatives.[85] Of course, if the other parent actually travels to the state of migratory divorce (and consequently more than one contestant and the child are present in the state), and there is an opportunity for a full hearing on custody, this could satisfy the jurisdictional requirements of the Act.

Certainly, custody jurisdiction will be present in the great majority of divorce cases. Only when there is divorce migration of the evasionary type, will there be a question with respect to custody jurisdiction. We are, however, already used to "divisible divorce" in this type of case, and persons who can afford this type of divorce usually have the financial resources for a custody proceeding in the child's home state or another state which has strong contacts with the child and family. In any event, with the trend toward liberalization of divorce grounds in many states, there may be fewer evasionary divorce migrations. As far as the child himself is concerned, his main interest is in an early settlement of the custody question in a court which can sufficiently investigate the facts so that the decree, in many cases once made, can remain unchanged.[86]

(e) *Emergency jurisdiction.*—It is sometimes stated without qualification that the state in which a child is physically present has jurisdiction to determine his custody.[87] But if one looks closer, one finds invariably that the power of a state to take measures concerning the custody of a child found within its borders derives from "the protection that is due to the incompetent or helpless,"[88] or from the responsibility in an emergency to act as *parens patriae*.[89] As Justice

85. "[T]he best interests of the child might not be dependent on whether the court has personal jurisdiction over both parents." Comment, *The Puzzle of Jurisdiction in Child Custody Actions*, 38 U. COLO. L. REV. 541, 542 (1966). The fact that personal jurisdiction over both spouses may for all practical purposes have become a jurisdictional basis for divorce has no bearing on child custody jurisdiction which involves a third person whose interests at the time of divorce cannot be left completely to the disposition of his parents. *Cf.* Goldstein & Gitter, *supra* note 12, at 88, 92, who would grant party status to the children in divorce actions. Whether or not personal jurisdiction over persons claiming custody is necessary in order to make the decree binding on them is another question which is discussed *infra* at notes 94-108.

86. *See* A. WATSON, *supra* note 7, at 197. Section 7(f) calls attention to the fact that the custody issue may be separated from the divorce issue. Courts with migratory divorce jurisdiction could speed up matters by declining jurisdiction with respect to custody as early as possible in the proceedings so that a custody action in an appropriate court can immediately be instituted. *See also* § 24.

87. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, § 79.

88. Finlay v. Finlay, 240 N.Y. 429, 431, 148 N.E. 624, 625 (1925) (Justice Cardozo).

89. "The state in which the child is physically present must have power to take the necessary steps for his protection . . . . [A] court of a state where the child is only physically present at the time will refuse to entertain the action unless it believes this to be necessary for

Cardozo said, the limits of this jurisdiction are suggested by its origin. The presence of the child "may not be used as a pretence for the adjudication of the status of parents . . . nor for the definition of parental rights dependent upon status."[90] It follows that this is an extraordinary jurisdiction reserved for emergency circumstances.[91] It is not intended for the settlement of custody disputes between parents or others. Section 3(a)(3) of the Act accordingly limits this emergency jurisdiction based on physical presence of the child to cases of abandonment or to emergency situations of neglect or mistreatment. This jurisdiction is in most states exercised by a juvenile court. Physical presence of the child may also be sufficient for a residual jurisdiction provided by section 3(a)(4) of the Act to assure the parties of a forum when no other court has or is prepared to exercise jurisdiction under the two main criteria of the Act.

(f) Resolving conflicts.—While jurisdiction may exist in more than one state under the "home state" and "strong contacts" clauses, jurisdiction may not be *exercised* concurrently in two or more states. Two mechanisms are provided to avert conflicting jurisdiction. First, priority of filing of the petition determines which of the courts that have jurisdiction may proceed with the case—the subsequent court will yield its jurisdiction to the prior one under section 6(a).[92] Sections 6(b) and 6(c) assure that courts will be informed of pending prior proceedings in other states involving the same child. Direct interstate contacts between courts are expected and encouraged in order to carry out the Act's strong policy against competitive and conflicting proceedings in custody cases. Secondly, jurisdiction may be declined by one of the courts under the inconvenient forum principle. The Act contains an elaborate provision in section 7, specifically tailored to child custody cases, which is intended to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. Again, direct interstate

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the best interests of the child." RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, § 79, comment *a*, at 296-97.

90. Finlay v. Finlay, 240 N.Y. 429, 431, 148 N.E. 624, 625 (1925).

91. "In emergency situations we might also ascribe jurisdiction to take necessary temporary measures to any state in which the child is merely physically present." Rheinstein, *supra* note 59, at 64. *See also* Ratner, *supra* note 41, at 812; Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S.2d 763 (1959).

92. *See* Currie, *supra* note 38, at 89 n.3, suggesting abstention from the exercise of jurisdiction "in deference to the mere pendency of an action in another state" to be "in full accord with what appears to be the spirit" of the full faith and credit clause. *See also* Brazy v. Brazy, 5 Wis. 2d 352, 92 N.W.2d 738 (1959).

judicial communication and cooperation are anticipated under this provision in order to make the principle fully workable and to assure a proper forum to the parties.

Both mechanisms may often be combined. If the court with power to proceed with the case under the priority of filing rule determines that the subsequent court is the more appropriate forum, it may, under sections 6(a) and 6(c), yield jurisdiction to that court.

These rules are designed primarily to avoid conflicting jurisdiction in initial custody proceedings. Once a custody decree has been rendered, the original court has preferential jurisdiction under section 14.[93] If, however, the original court's jurisdiction has ended, conflicts that might arise among subsequent courts would again be resolved with the aid of the first-in-time or forum non conveniens principle.

Once the channels of communication have been opened among the courts, it should not take much time to settle questions of jurisdiction. Section 24 of the Act calls attention to the need for speed and expedition in this regard. Inter-court communications by telephone or telegraph in custody cases may be the answer.

E. Persons Bound by Custody Decree

Suppose husband and wife live separately in the matrimonial home state and the children stay with the mother. With the husband's consent the wife and children move to state *B* where the wife has found employment. The husband's first visit to the children is one year later when, pretending to take the children to a park, he drives them to his parents in state *C*. He then returns to state *A*. The wife immediately starts divorce and custody proceedings in state *B*. There is no question that the court in state *B* has custody jurisdiction under the "home state" clause of the Act. The husband in state *A* and the grandparents in state *C* were made party defendants and were served by registered mail, and the return receipts came back signed by them. The defendants failed to appear for a hearing, either in person or by attorney. The grandparents informed the wife by letter that they would keep the children until their son remarried in a year or two and would then turn them over to him. The court in state *B*, after receiving evidence from state *A*, and the report of a social study in state *B*, issued a divorce decree awarding custody of the children to the wife with visitation privileges for the husband under condition that he post bond to insure the children's return after each visit.

93. *See* text accompanying notes 113-22 *infra*.

The case of *May v. Anderson*[94] has raised a doubt as to whether, under circumstances such as these, a custody decree rendered in one state is binding on a person in another state and recognizable by that state. If the decree in the illustration does not bind the husband or the grandparents, the custody proceedings were an idle gesture, and the wife will have to start over in the courts of state *A* and state *C* and perhaps in more states to which the children may be taken to escape from the mother's pursuit; if this is the law, she may despair of it and turn to self-help, surreptitiously removing the children from the grandparents' grip. This is exactly the kind of evil the Uniform Act is intended to prevent.

In the sixteen years since *May v. Anderson* was decided, the case has been severely criticized[95] and has had little practical effect.[96] Its inconclusive plurality opinion by Justice Burton[97] has been interpreted to mean what Justice Frankfurter's concurring opinion said it meant, namely, that other states are *authorized* to recognize as binding on their resident a custody decision of another state in which personal jurisdiction over this resident was not obtained.[98] The Uniform Act has been drafted on the basis of this interpretation. Any other reading of the case would have a seriously unsettling effect on the lives of countless children. A child's security could be shattered years later by a party to the proceedings who claims that although he was duly notified out of state the decree did not preclude his rights to custody.

That the Burton opinion in *May v. Anderson* caused the Commissioners some headaches, cannot be denied. In fact, several of the tentative drafts contained long-arm provisions to avoid the harmful effect of that opinion on the lives of interstate children.[99] This course

94. 345 U.S. 528 (1953).

95. The most stringent criticism is found in Justice Jackson's dissenting opinion. *See* text accompanying notes 21-23 *supra*. *See also* H. CLARK, *supra* note 10, at 323-26; Currie, *Justice Traynor and the Conflict of Laws*, in SELECTED ESSAYS ON CONFLICT OF LAWS 629, 677-80 (1963); H. GOODRICH, CONFLICT OF LAWS, § 136, at 274 (4th ed. E. Scoles 1964); Hazard, *May v. Anderson: Preamble to Family Law Chaos*, 45 VA. L. REV. 379 (1959).

96. Foster, *Domestic Relations*, 23 U. PITT. L. REV. 465-78 (1961-62); Comment, *supra* note 85. But Wisconsin codified the plurality holding of the case in WIS. STAT. ANN. § 247.05 (Supp. 1968); *see* 1961 WIS. L. REV. 347; H. CLARK, CASES AND PROBLEMS ON DOMESTIC RELATIONS 524 (1965).

97. Justice Burton was joined by only three Justices; three members of the Court dissented and Justice Frankfurter concurred on other grounds. One Justice did not participate.

98. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, § 79, comment *c*. *See also* Currie, *supra* note 38, at 113, expressing the belief "that the decision is narrowly limited by the circumstances of the case."

99. As to the use of long-arm statutes in the family law area, see R. CRAMTON & D. CURRIE, CONFLICT OF LAWS, CASES-COMMENTS-QUESTIONS 687 (1968). *See also* Smith v. Smith,

of action was abandoned, however, when it was realized that it would be difficult to stretch the long arm far enough to reach abductors in cases like the previous illustration where the husband has never been a resident of the adjudicating state and the child is not present in that state. Moreover, it was felt that a workable interstate custody law could not be built with or around the plurality opinion in *May v. Anderson* in which Justice Burton had intimated that the case was mainly concerned with parental rights and not with the issue of the future interests of the children.[100] As Professor Clark remarked, it is "difficult to see how any dispute over custody can be separated from the interests of the children."[101]

The issue raised by *May v. Anderson* will become of greater practical importance once the free and easy modifiability of out-of-state custody decrees is ended. It is therefore necessary to give a further explanation for section 12 of the Act which provides:

> A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

There is a question whether *May v. Anderson* was concerned with the subject of this section—the intrastate validity of custody decrees.[102] Whatever the answer to this question, it was necessary for a uniform state law to lay a firm basis for the interstate recognition of custody decrees by clarifying first when a custody decree satisfies internal due process requirements.

Section 12, along with section 13 on interstate recognition, can be justified on two alternative grounds: first, the traditional notion, which has been retained by the new proposed Restatement,[103] that custody determinations are proceedings in rem or proceedings affecting status; or second, an evolving theory that minimum contacts of the state with the matter in litigation combined with fairness to the parties permit state judicial action binding on persons beyond its territorial limits,

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45 Cal. 2d 235, 288 P.2d 497 (1955); Soule v. Soule, 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961); Mizner v. Mizner, 439 P.2d 679 (Nev.), *cert. denied*, 393 U.S. 847 (1968).

100. 345 U.S. at 533.

101. H. CLARK, *supra* note 10, at 324 n.36.

102. *See* A. EHRENZWEIG & D. LOUISELL, JURISDICTION IN A NUTSHELL § 14, at 76 (2d ed. 1968).

103. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS, *supra* note 57, §§ 69, 79.

irrespective of whether an action in rem or in personam is involved.[104] The latter theory is particularly appropriate in custody cases which are sui generis since they do not readily fall into either category. The dominant objective of attaining as permanent a solution as possible for the benefit of the child outweighs any other considerations. The necessary minimum connection with the litigation is assured under the Act by the jurisdictional prerequisites of section 3 which require not only minimum, but maximum contact. The fact that the child whose custody is claimed has his home in the state or has other strong contacts with the state gives any claimant ample connection with the state of adjudication.[105] This, along with proper notification and opportunity to be heard under sections 4 and 5, satisfies the requirement of fairness to all parties.

If the reason for desiring personal jurisdiction in the strict sense is to bring all the custody claimants before the court so that the judge can hear and see them and make a personal evaluation, and to give them an opportunity to present their evidence,[106] this aim is not often attained by a requirement of personal jurisdiction. Technical jurisdiction via the long arm or appearance through an attorney is commonly the result.[107] To assure personal appearance of the parties and of the child, the Act, in sections 11, 18, 19, and 20, uses other means which are superior to technical personal jurisdiction. For example, travel expenses may be advanced or reimbursed.[108] The courts are strongly encouraged to insist on the personal appearance of the parties and of the child, if necessary, with the aid of a court order issued in the state of a person's residence. If travel to the adjudicating court is not practically feasible, out-of-state depositions or hearings before a court in another state may be arranged by the court on its own motion.

104. *See* Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241. Professor Hazard shows in this article that as a result of decisions like Mullane v. Central Hanover Bank, 339 U.S. 306 (1950), on the one hand, and International Shoe Co. v. Washington, 326 U.S. 310 (1945), on the other, the distinction between actions in rem and in personam is disappearing and that the two lines of cases are converging in the rule that a state has jurisdiction if the litigation has local elements and reasonable notification has been given to persons concerned who are out-of-state. Under this theory there is no need for long-arm provisions.

105. *See* Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795, 826-27 (1964).

106. *See* Rheinstein, *supra* note 59, at 57, 63.

107. *See* Johnson v. Muelberger, 340 U.S. 581 (1951).

108. *See* Foster, *supra* note 44. If none of the parties are in a financial position to pay the travel cost, other sources of payment may be found. The Act leaves this possibility open; but the child custody problems of the very poor seem to be as a rule of a different nature. *See* Kay & Phillips, *Poverty and the Law of Child Custody*, 54 CALIF. L. REV. 717 (1966).

The opportunity of a custody claimant to have his side of the argument considered by the court is thus amply provided.

Other provisions of the Act are designed to settle in one single proceeding all claims to the custody of the same child. The parties are required under section 9 to inform the court of any additional person they know who claims custody or visitation rights or has physical custody of the child. Under section 10, these persons and others about whom the judge learns from other sources must be joined as parties.

F. Interstate Recognition and Enforcement

From the standpoint of its most immediate practical effect, the Act might have been named the Uniform Child Custody Judgment Recognition and Enforcement Act. Section 13 on recognition and section 15 on enforcement, together with section 14 which limits relitigations in other states, are the key provisions which will assure a great measure of interstate stability of custody decrees.

Whether demanded by full faith and credit or not, the states may recognize and enforce the custody decrees of other states,[109] and they may do so by the enactment of this uniform law. That interstate recognition is an absolute necessity today has been demonstrated before. The fact that the custody judgment is not a final one is no obstacle to recognition. It can be recognized and enforced until modified.[110]

Recognition under section 13 is mandatory only in the case of those custody decrees which have met the jurisdictional standards of the Act. Discretionary recognition beyond this legislative mandate is not prohibited, but custody decrees which contravene the basic policies of the Act, such as a decree obtained by a child abductor after a few days' presence in a state, should not be recognized.

A custody judgment which is recognized under section 13 is automatically enforceable in another state by filing a certified copy of the decree with the clerk of the appropriate court. As provided by section 15, a decree, in effect, becomes a custody decree of the state in which it is filed as of the moment of filing. This speedy method of enforcement has been derived from the Uniform Enforcement of Foreign Judgments Act.[111]

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109. *See* EHRENZWEIG, *supra* note 62, at 167.

110. *See* RESTATEMENT (SECOND) OF CONFLICTS, *supra* note 57, § 109 (2). *See also* Ratner, *supra* note 41, at 829-30.

111. 9A UNIFORM LAWS ANNOTATED § 2; *cf.* Note, *Interstate Enforcement of Modifiable Alimony and Child Support Decrees*, 54 IOWA L. REV. 597 (1969).

Contempt proceedings or other proceedings that might arise in the enforcing state do not open up the custody decree to petitions for modifications. If modification is desired, section 14 requires that the petition be directed to the court which has jurisdiction to modify.[112] The only valid objection in the enforcing state is a claim that the decree is not entitled to recognition.

G. *Jurisdiction to Modify*

Interstate recognition alone does not suffice to remedy the present instability of custody decrees. Under the rule of *Halvey v. Halvey*,[113] a court may well accord recognition to a sister state decree, but then proceed to modify it on the ground or pretext of changed conditions. Indeed, this practice is at the root of the present wilderness in custody law.[114]

Section 14 of the Act, therefore, restricts modifications of out-of-state custody decrees.[115] In order to modify a custody decree of another state, the court must first have jurisdiction under section 3; second, the jurisdiction of the prior court must have ceased or that court must have declined to exercise its modification jurisdiction. In other words, a person seeking a modification of a custody decree must address his petition to the prior custody court unless that court no longer has jurisdiction under the "home state" or "strong contacts" test. The fact that the court had previously considered the case and has the case file among its records, is one factor favoring its continued jurisdiction. But once all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction moves elsewhere, and the transcript of the record and other documents of the original custody court are transmitted to the next court.[116]

In fact, section 14 is nothing but an extension of the mandate of recognition of section 13. Most courts which render custody decrees retain continuing jurisdiction under the local law. Courts in other states often assume jurisdiction to modify without regard to this pre-existing and continuing jurisdiction of the prior court.[117] Section 14 directs the

112. *See* Ratner, *supra* note 41, at 832-36.

113. 330 U.S. 610 (1947).

114. *See, e.g.*, Ratner, *supra* notes 41 & 42.

115. Another restriction on the modification of out-of-state custody decrees exists under the clean hands doctrine of section 8, discussed *infra*.

116. On the desirability of building on the evidence relied on by the prior court, see Paulsen & Best, *Appointment of a Guardian in the Conflict of Laws*, 45 IOWA L. REV. 212, 226 (1960); Ehrenzweig, *supra* note 2, at 7, 9, 11.

117. *See* R. LEFLAR, *supra* note 29, at 587-88.

courts to respect and defer to this continuing jurisdiction as long as it exists under the interstate standards of section 3.

A typical example is the case of the couple who are divorced in state *A*, their matrimonial home state, and whose children are awarded to the wife, subject to visitation rights of the husband. Wife and children move to state *B*, with or without permission of the court to remove the children. State *A* has continuing jurisdiction and the courts in state *B* may not hear the wife's petition to make her the sole custodian, eliminate visitation rights, or make any other modification of the decree, even though state *B* has in the meantime become the "home state" under section 3. The jurisdiction of state *A* continues and is exclusive as long as the husband lives in state *A* unless he loses contact with the children, for example, by not using his visitation privileges for three years.

The jurisdiction of state *A* would continue after the departure of wife and children under the present law in most states.[118] But state *B* has often assumed a concurrent jurisdiction which has been the source of a great many interstate conflicts between courts. Justice Fairchild of Wisconsin vividly describes some of the "head-on collisions" the courts of his state have had with courts of other states in cases of this kind.[119] In *Brazy v. Brazy* the Supreme Court of Wisconsin directed the trial court to defer to a court in California, but this did not end the struggle. Under section 14 of the Act, Wisconsin would have continuing jurisdiction in a case like *Brazy* and the courts of the other states involved would have to defer to Wisconsin. It is interesting that the Supreme Court of Wisconsin applied the principles of section 14 and the spirit of the whole Act in *Zillmer v. Zillmer*.[120] In this case the divorce and custody were granted to the mother in Kansas, the matrimonial home state. A question as to the mental condition of the mother arose and the grandparents in Wisconsin, where the children were then living, applied for modification of the custody decree in Wisconsin. The Wisconsin Supreme Court, although noting that Wisconsin probably had jurisdiction, steadfastly refused to exercise this jurisdiction for the reason that comity required that it defer to the Kansas court. In fact, Wisconsin exercised "a sort of ancillary jurisdiction" according to Justice Fairchild, and permitted the children

118. *See* H. CLARK, *supra* note 10, at 322-23.

119. *See* Fairchild, *supra* note 15, at 5-8. *See also* Brazy v. Brazy, 5 Wis. 2d 352, 92 N.W. 2d 738 (1958); Greef v. Greef, 6 Wis. 2d 269, 94 N.W.2d 625 (1959).

120. 8 Wis. 2d 657, 100 N.W. 2d 564, 101 N.W.2d 703 (1960).

to stay with the grandparents temporarily, since some evidence of the poor mental condition of the mother had come to the attention of the Wisconsin courts. The custody decree was subsequently modified by the Kansas court and custody was given to the father. As Justice Fairchild said:

> There was an atmosphere of cooperation rather than competition. The Wisconsin courts assumed that the Kansas court would make as wise a decision as could be made with the information available. The Kansas court decided the matter with the assurance that its decision would be respected and enforced in Wisconsin.[121]

Section 14 is not at variance with the *Halvey* decision. *Halvey* merely declared that a custody judgment which is not final under local law may be modified in states other than the state of rendition, but did not decide under what circumstances another state has jurisdiction to modify a custody decree. If a state should impose restraints on the power of its courts to modify their initial custody decrees, a consistent interpretation of the *Halvey* doctrine would seem to make these restraints binding on other states.[122]

H. The Problem of the Punitive Custody Decree

Deference to another state's custody judgment and continuing jurisdiction becomes problematical when that state removes a child from its home and parent for no other reason than to inflict punishment on the parent.[123] The case of *Berlin v. Berlin*,[124] which brought the courts of Maryland and New York into open conflict, is a typical example. Mr. and Mrs. Berlin lived in Maryland for six years until their divorce by a Maryland court, which awarded custody of the two children to the mother. Mrs. Berlin then moved to New York City with the children, as permitted by the decree, and remarried. She failed to live up to the visitation provisions of the decree and disregarded contempt orders issued by the Maryland court. The father saw the children only once, two years after the divorce, when he came to New York and with the aid of two private detectives tried forcibly to remove the children from the state. A year later the Maryland court modified

121. Fairchild, *supra* note 15, at 9-10.

122. *Cf.* Yarborough v. Yarborough, 290 U.S. 202 (1933). *But see* Elkind v. Byck, 68 Cal. 2d 453, 439 P.2d 316, 67 Cal. Rptr. 404 (1968). These cases relating to child support involve considerations, however, which differ from those involved in custody cases.

123. *See* Ehrenzweig, *supra* note 33, at 370, in SELECTED READINGS ON CONFLICT OF LAWS 873 (M. Culp ed. 1956).

124. Berlin v. Berlin, 239 Md. 52, 210 A.2d 389 (1965); Berlin v. Berlin, 21 N.Y.2d 371, 235 N.E.2d 109, 288 N.Y.S.2d 44 (1967), *cert. denied*, 393 U.S. 840 (1968).

its original decree and awarded custody to the father. This decision was upheld on appeal on the ground that the mother, "besides disregarding the visitation rights of the father, exhibited contempt for the lawful orders of the awarding court . . . ."[125] Thereupon, Mrs. Berlin applied to a court in New York for custody of her children and her petition was granted. The Court of Appeals of New York, although conscious of the need to end custody litigation and to abide by a decree of a prior court whenever possible, found itself unable to recognize the Maryland decree:

> [W]e have here a situation where both parties are fit to rear the children, although they unfortunately have been unable to subordinate their own conflicts to the welfare of their children. The boys, however, have been in the continuous custody of their mother since the couple's divorce, almost 8 years. They have been attending school in New York and have no doubt established friendships here and adjusted to the difficulties which have been engendered by their parents' marital difficulties. Moreover, in the years that have followed the Maryland custody decree, the children have barely seen their father. It cannot be said that a *change* in custody (required by adherence to the prior Maryland custody decree), which could have a disruptive effect on the lives of these young children, is in their best interests.[126]

Cases like *Berlin* seem to occur with increasing frequency.[127] A custody court's orders—usually visitation orders—are violated by a parent who has left the state and the court in helpless anger over this affront to its dignity gives custody to the other parent. As a California court stated in a similar situation, the mother "was not a fit and proper person . . . in view of her persistent defiance of court orders . . . ."[128]

It is clear that the dignity of the court has taken precedence in these cases over the interest of the child in the stability of his home. The child has been punished in order to discipline his parent. We cannot expect other courts to recognize such decrees. On the other hand, continued contact between the child and the non-custodial parent is important not only to the parent, but usually to the child as well.

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125. Berlin v. Berlin, 239 Md. 52, 59, 210 A.2d 380, 384 (1965).

126. Berlin v. Berlin, 21 N.Y.2d 371, 376, 235 N.E.2d 109, 112, 288 N.Y.S.2d 44, 48 (1967).

127. *See, e.g., In re* Guardianship of Rogers, 100 Ariz. 269, 413 P.2d 744 (1966); Moniz v. Moniz, 142 Cal. App. 2d 527, 298 P.2d 710 (Dist. Ct. App. 1956); Stout v. Pate, 120 Cal. App. 2d 699, 261 P.2d 788 (Dist. Ct. App. 1953), *cert. denied*, 347 U.S. 968 (1954); State *ex rel.* Fox v. Webster, 151 So. 2d 14 (Fla. 1963); Stout v Pate, 209 Ga. 786, 75 S.E.2d 748 (1953), *cert. denied*, 347 U.S. 968 (1954); Sharpe v. Sharpe, 77 Ill. App. 2d 295, 222 N.E.2d 340 (1966).

128. Moniz v. Moniz, 142 Cal. App. 2d 527, 530, 298 P.2d 710, 712 (Dist. Ct. App. 1956) (conclusión of the trial court referred to with approval by the appellate court).

Visitation rights granted in a custody decree must be respected and observed.

What is the solution under the Act to this serious problem? Since the reason for the punitive decree is the present lack of power of a court to enforce its visitation provisions in another state, the first remedy is to use the enforcement provisions of section 15. This section applies to the enforcement not only of the primary right to custody, but also to the enforcement of other provisions contained in the custody decree. Here, as elsewhere in carrying out the letter and spirit of the Act, cooperation of the enforcing state is vital. Payment of travel and other expenses, including attorneys' fees, may be imposed on the violator under section 15(b).

In order to avoid this problem, it will also be necessary for the initial custody court to see to it that visitation provisions are drafted carefully, anticipating the possible departure of the custodial parent from the state. An alternative would be to include a provision in the decree that visitation privileges are to be redetermined before departure. The decree could specify that any failure to apply for redetermination or any failure to comply with original or altered visitation requirements will be met with enforcement and imposition of costs in another state.[129] Jurisdiction to modify visitation arrangements usually remains with the initial custody court so that, in any event, a court in another state to which a petition for changes in visiting privileges is addressed, will refer the petitioner back to the original court.

Thus the occasions for the use of the punitive decree in custody cases will decrease under the Act and should cease altogether as judicial cooperation increases among the courts of the various states. It is doubtful that there is ever justification for punitive custody changes which disrupt a child's life merely to uphold the authority of a court, especially since the disciplinary measure usually leads to further defiance of the court and lack of respect for the punitive measures by other courts. As Justice Breitel observed:

> The dignity of the several courts would be preserved, but the welfare of the children would be destroyed. The answer is, of course, that the parents' contempts of the courts must be a subordinate consideration.
>
> The New York courts can well survive this offense to their dignity; the children should not, however, suffer further offense to their welfare.[130]

129. Also, the posting of security to insure compliance with the terms of the custody decree may be required, as is the practice in some courts today. *See* Greef v. Greef, 6 Wis. 2d 269, 94 N.W.2d 625 (1959); 2 H. FOSTER & FREED, LAW AND THE FAMILY 562 (1966).

130. Application of Lang, 9 App. Div. 2d 401, 405, 410, 193 N.Y.S.2d 763, 767, 771

I. Deterrence of Self-Help Measures

If the Act's jurisdictional standards for initial and modification decrees are faithfully observed and recognition is accorded to the custody decrees and the continuing jurisdiction of other states, child abductions and other self-help measures should prove useless to gain legal custody of a child. The "seize and run" artist who snatches a child and takes him to another state before there has been a custody adjudication cannot obtain a custody decree by his mere presence and the presence of the child in the state. If he waits six months to bring himself under the "home state" rule and the court in the prior home state has not yet taken jurisdiction, the court in the second state may decline to exercise jurisdiction because under section 7(c)(5) this "would contravene . . . the purposes stated in section 1." The clean hands principle aside, if he tried spiriting away the child after custody had been awarded to someone else, a court in the second state would send him back to seek a modification under section 14 in the original court. Even if the removal of the child was "legal" for purposes of a permitted visit in another state, he could not during the period of visitation obtain a changed custody decree in another state,[131] since that state would recognize the prior decree and take no action to change it.

Often the principle of comity recognition and respect for the continuing jurisdiction of the prior court solves the self-help problem. For example, in *Application of Lang* a New York court refused to interfere with a Swiss court's custody orders in the case of two young Swiss boys who had been repeatedly abducted across the ocean by their parents. Justice Breitel, speaking for the court, declared:

> Adherence to the principle of comity provides the key to rational disposition for the welfare of the children, not only in this case, but in many, if not most, of the custody cases involving self-help. And for this reason: comity makes futile and thus discourages the resort to self-help which in the custody dispute is an irresponsible and barbaric remedy. Not only does self-help make the eventual placement of the children an arbitrary consequence but it breeds reprisal in kind, as, indeed, happened in this case.[132]

The Justice said that "the crux of the matter here is that only by withholding the power may the interests of the children be served."[133]

(1959); *cf.* Hull v. Superior Court, 54 Cal. 2d 139, 151, 352 P.2d 161, 168, 5 Cal. Rptr. 1 (1960) (Traynor, J. concurring).

131. *See* the facts in Brocker v. Brocker, 429 Pa. 513, 241 A.2d 366 (1968).

132. Application of Lang, 9 App. Div. 2d 401, 408, 193 N.Y.S.2d 763, 770 (1959). The same result would be reached under section 23, on international application, of the Uniform Act.

133. *Id.* at 407, 193 N.Y.S.2d at 768.

As outlined so far, the Uniform Act leaves a few loopholes, and section 8 codifies the "clean hands" principle in order to close them. For example, if the original custody court in state *A* has lost modification jurisdiction under section 14, a father-abductor could, if he retains the child in state *B* for six months, establish "home state" jurisdiction there. But a court in state *B*, if it does not decline jurisdiction under section 7, would refuse to hear the father's petition for modification under section 8(b). The Act applies the clean hands rule to initial as well as modification proceedings, although the rule is entirely discretionary in the case of initial custody proceedings. For example, if there has been a de facto separation under an agreement that the children remain with the wife, and the father snatches them one day while they are playing in their yard and takes them to another state, a court in the second state may well decline to hear the case even after there is "home state" jurisdiction.

If the taking or retention violates a custody order, denial of jurisdiction is mandatory, unless it is necessary to assume jurisdiction in the interest of the child. The "unless" clause is of great importance because denial of jurisdiction is a punitive measure against a parent, which must not be allowed to result in harm to the child. Although withholding jurisdiction is not as drastic a punishment as taking the child from his custodian, there are various situations in which the clean hands rule cannot be applied because it would be detrimental to the child.[134] The child abductor may be charged under section 8(c) with the expenses of other parties who are forced to assert their rights against him in a distant state.

J. Interstate Judicial Assistance

Section 1 lists prominently among the purposes of the Act the desire to "avoid jurisdictional competition and conflict with courts of other states in matters of child custody" and the desire to "promote and expand the exchange of information and other forms of mutual assistance between the courts" of the various states in custody cases.

These are not empty words. In cases of interstate children, one court operating in isolation cannot do justice to the child or the litigants. A large portion of the relevant facts may be in another state, or the evidence may be dispersed over three or four states. The judge

134. *See, e.g., In re* Guardianship of Rodgers, 100 Ariz. 269, 413 P.2d 744 (1966); *In re* Walker, 228 Cal. App. 2d 217, 39 Cal. Rptr. 243 (Dist. Ct. App. 1964); Smith v. Smith, 135 Cal. App. 2d 100, 286 P.2d 1009 (Dist. Ct. App. 1955).

needs the help of courts in these other states when he determines his jurisdiction, when he considers whether or not to decline jurisdiction, when the evidence is to be gathered from out of state, when his visitation orders are to be enforced, and when he takes over from another custody court which lost its continuing jurisdiction.

We have seen that there is not an exact answer to the question of jurisdiction in every case. On the other hand, a court in one state must assume responsibility for the custody of a particular child. If the court that is chosen under the tests the Act provides undertakes this task on behalf of all the states involved and with their assistance, we may recognize the truth of Professor Bradway's wise words—that it matters less *which* court takes jurisdiction, but that the courts of the several states concerned join in the effort and act in partnership to bring about the best possible solution for the child's future.[135]

We have mentioned those decrees which are partial to the local resident and may therefore cause resistance to recognition by other states. Such decrees are undoubtedly due in many cases not to any prejudice in favor of the local petitioner, but to the one-sided nature of the evidence presented to the court. The petitioner's own story and his own witnesses are often all the evidence the judge has before him when making the custody decision. The Act contains a number of provisions to assure the gathering of the out-of-state facts which do not reach the court through the adversary process.[136] The court itself takes an active part in obtaining the evidence through the assistance of courts in other states. The judge is thus able to broaden his field of vision beyond state boundaries and can arrive at a fully informed judgment which considers all claimants, residents and non-residents alike, on an equal basis and in relation to the welfare of the child.

III. CONCLUSION

The need to extricate interstate children from their present predicament is evident. If we continue our present course of unending custody litigations in state after state, and of placing a premium on self-help measures to gain possession of the child, the number of children caught in the net of interstate judicial conflict will continue to grow, to their lasting detriment and the detriment of society. The

135. Bradway, *supra* note 46. *See also* Ehrenzweig, *supra* note 2; Ehrenzweig, *supra* note 33, at 372, in SELECTED READINGS ON CONFLICT OF LAWS 839 (M. Culp ed. 1956); Fairchild, *supra* note 15.

136. *See* §§ 6, 9, 10, 16-22.

Uniform Child Custody Jurisdiction Act promises to remedy this intolerable state of affairs. By centering jurisdiction in a court which is close to much of the relevant evidence and by providing new modes of gathering additional facts out-of-state, the Act gives assurance that the original custody determination will, to the extent humanly possible, be an informed and carefully considered decree. By declaring that this decree will be respected and enforced by other states without relitigating the custody issue, the Act assures the interstate child of stability and continuity of his home and takes the wind out of child snatchings and other maneuvers to gain legal custody of a child in the courts of a distant state or country.

In doing so, the Act calls for new judicial approaches, some trans-state thinking, and "extralitigious" procedures to supplement the strict adversary process which are not novelties to custody judges in many states. It should not prove difficult to open up lines of communication with courts of other states to iron out jurisdictional problems and to obtain mutual assistance in the collection of the facts. Judicial conferences on a regional or national level could well achieve agreement on the necessary forms and court rules to make interstate cooperation in custody litigation a reality.

Courts in states which have not adopted the Act may put into operation those provisions of the Act which are within their judicial discretion without awaiting legislative action. But the full benefits of the Uniform Act cannot be attained until state legislatures have enacted it into law.

APPENDIX
UNIFORM CHILD CUSTODY JURISDICTION ACT†

SECTION 1. [*Purposes of Act; Construction of Provisions.*]
(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

SECTION 2. [*Definitions.*] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes the initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a

†Printed without Prefatory Note and Comments.

prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

SECTION 3. [*Jurisdiction.*]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

SECTION 4. [*Notice and Opportunity to be Heard.*] Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 5.

SECTION 5. [*Notice to Persons Outside this State; Submission to Jurisdiction.*]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court [including publication, if other means of notification are ineffective].

(b) Notice under this section shall be served, mailed, or delivered, [or last published] at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

SECTION 6. [*Simultaneous Proceedings in Other States.*]

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

SECTION 7. [*Inconvenient Forum.*]

(a) A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.
(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.
(f) The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.
(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings, in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.
(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.
(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

SECTION 8. [*Jurisdiction Declined by Reason of Conduct.*]
(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.
(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.
(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

SECTION 9. [*Information under Oath to be Submitted to the Court.*]
(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:
(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

SECTION 10. [*Additional Parties.*] If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this State he shall be served with process or otherwise notified in accordance with section 5.

SECTION 11. [*Appearance of Parties and the Child.*]

[(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.]

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

SECTION 12. [*Binding Force and Res Judicata Effect of Custody Decree.*] A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

SECTION 13. [*Recognition of Out-of-State Custody Decrees.*] The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

SECTION 14. [*Modification of Custody Decree of Another State.*]

(a) If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional

prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.
(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

SECTION 15. [*Filing and Enforcement of Custody Decree of Another State.*]
(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any [District Court, Family Court] of this State. The clerk shall treat the decree in the same manner as a custody decree of the [District Court, Family Court] of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.
(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

SECTION 16. [*Registry of Out-of-State Custody Decrees and Proceedings.*] The Clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:
(1) certified copies of custody decrees of other states received for filing;
(2) communications as to the pendency of custody proceedings in other states;
(3) communications concerning a finding of inconvenient forum by a court of another state; and
(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk of the [District Court, Family Court] of this State, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

SECTION 18. [*Taking Testimony in Another State.*] In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

SECTION 19. [*Hearings and Studies in Another State; Orders to Appear.*]
(a) A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State; and to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].
(b) A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

SECTION 20. [*Assistance to Courts of Other States.*]
(a) Upon request of the court of another state the courts of this State which are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State [or may order social studies to be made for use in a custody proceeding in another state]. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced [and any social studies prepared] shall be forwarded by the clerk of the court to the requesting court.
(b) A person within this State may voluntarily give his testimony or statement in this State for use in a custody proceeding outside this State.
(c) Upon request of the court of another state a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

SECTION 21. [*Preservation of Documents for Use in Other States.*] In any custody proceeding in this State the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches [18, 21] years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

SECTION 22. [*Request for Court Records of Another State.*] If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

SECTION 23. [*International Application.*] The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody, rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

SECTION 24. [*Priority.*] Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously.

SECTION 25. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 26. [*Short Title.*] This Act may be cited as the Uniform Child Custody Jurisdiction Act.

SECTION 27. [*Repeal.*] The following acts and parts of acts are repealed:
(1)
(2)
(3)

SECTION 28. [*Time of Taking Effect.*] This Act shall take effect . . . .