

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 a.m./p. m., on February 7, 19 78.

All members were present except: Representatives Brewster, Frey, Gillmore, Hurley and Mills, who were excused.

The next meeting of the Committee will be held at 3:30 a.m./p. m., on February 8, 19 78.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Rep. Marvin Littlejohn	Mr. Vincent DeCoursey
Mr. Alan States, Logan, Kansas	Rep. Reimer
John Blythe, Kansas Farmers Union	Rep. Phil Martin
Rep. David Heinemann	Mr. Dennis Moore
Rep. Glee Jones	Rep. Erne
Rep. Anita Niles	
Mr. Allan Hazlett	

The meeting was called to order by the Vice-Chairman, who introduced Rep. Littlejohn to discuss HB 2988. Rep. Littlejohn stated the bill had been introduced as a result of a trial which occurred in Phillips County, where an individual had been farming some land under a verbal agreement and the owner chose to not renew the contract, but the individual had already invested in fertilizer, herbicides, etc., and the suit was to recover what he had put into the land before termination.

Mr. Alan States, a farmer from Logan, Kansas, and President of the Phillips County Farm Bureau, testified that some problems have arisen because of the changing style of farming. In particular he mentioned problems caused by the time of termination of leases because in many instances, soil is treated with herbicides and fertilizer and then allowed to lie fallow for a period of time before planting. He explained that experience has proved this practice results in increased yields, but if a lease is terminated after a lessee has put a large amount of money into soil treatment, he should be entitled to recovery, and that is why the bill was introduced.

Mr. John Blythe stated that it is the objective of the bill to provide relief for the tenant as explained by Mr. States; that if there is need for an amendment to clarify the intent he would have no objection. He explained the key is the date of notice.

Rep. Heinemann stated that his HB 2809 was introduced because of concern generated in the cases of child exploitation for purposes of pornography. He explained that his bill may not be as explicit as some would desire, but that if members would check the references he felt it was appropriately referenced in.

Mr. Allan Hazlett stated he appeared on behalf of the Kansas Magazine Wholesalers Association. He explained his association is made up of local distributors who get their supplies from national distributors and that many times a truck will arrive and unload a large amount of material without the local distributor even knowing what is in the shipment. He stated it is their concern they might be liable even though they have no intention of distributing certain of the material which have been delivered. He expressed the opinion that the bill overlaps Senate Bills 474 and 587, and hearings have already been held in the Senate.

Rep. Jones appeared on behalf of HB 2821, and stated there are at least 264 magazines, films and other material exploiting children, which amounts to an industry of over a half million dollars. She told the committee as far as she is aware, there are no instances of such child abuse in Kansas, but she is anxious to prevent it before it happens. (See printed statement.)

Rep. Anita Niles also appeared in support of HB 2821, and advised members that surrounding states are also working on such legislation. (See printed statement.)

Mrs. Joan Wickston, Junior League of Topeka, spoke in favor of legislation which would protect the children of the state, and offered a printed position paper prepared by the Junior League. (See exhibit.)

Mr. Vincent DeCoursey testified in favor of the proposed legislation, but stated he prefers HB 2821 because it is more explicit. (See printed statement.)

Mr. Allan Hazlett opposed HB 2821 on the same grounds as his objection to HB 2809.

As no conferee appeared on HB 2694, it was passed over for later consideration.

Rep. Reimer appeared before the committee and explained that HB 2954 had been introduced to correct a problem that sometimes occurs with local official recall. He explained he didn't feel it was ever the intent that one hundred percent of the officials should be removed at one time, and the proposal limits the number of officials that can be removed at one time. He explained some of the problems which could occur where all officials might be removed at once with city election several months away. Also, he explained that the statutes are quite restrictive in regard to political reasons or reasons of general dissatisfaction. Also, he pointed out the statutes provide only four grounds for a special election.

Rep. Augustine related a situation in his area where there were only two officials left, making a quorum impossible, so no business was transacted for two months until the next election. Rep. Heinemann inquired if Rep. Reimer would object to having the District Judge

appoint persons to serve until the next election, and Rep. Reimer stated he personally would not, but that the Attorney General had ruled it would not be appropriate. Rep. Reimer stated it might be appropriate to make one change from publication in the statute books to publication in the state newspaper.

Rep. Martin told the committee he had visited with District Attorneys and others regarding HB 2326, and has received no adverse reaction. He explained there are sometimes defendants who reach a place in life where they are no longer dangerous to themselves or others, especially with appropriate safeguards. He further explained that other states have addressed the matter in much the same manner.

Mr. Dennis Moore, District Attorney for Johnson County, testified that presently, if persons at Larned State Hospital are ordered released by the doctors, there is no alternative, but this proposal allows the individual to be under some perimeters, and that there is no authority for that now. He stated that it is in the best interests of the patient and society that the person be under the jurisdiction of the court and receive counseling and medication if it is indicated.

Rep. Martin distributed a letter from Dr. Robert Menninger, balloon amendments and an opinion from the Attorney General's office, all of which support the proposal.

Rep. Erne appeared on his HB 2888, dealing with hypnosis for the purpose of entertainment. He explained that hypnosis is sometimes used by law enforcement officers in their investigation and this proposal sets up guidelines.

The meeting was adjourned.

JUDICIARY

2-7

NAME

ADDRESS

ORGANIZATION

Ken North

Jackson County
Courthouse, Topeka

Dist. attorney's
office

Raines Moore

" " "

" "

Joan Webster

Topeka

G. League Top.

Walter W. Graber

Pretty Prairie

Wheat Growers

Alan E. Stak

Logan

myself

John K. Blythe

Manhattan

Ks. Farm Bureau

John D. Miller

Topeka

Committee of Ks. Farm Organizations

Steve Stave

Topeka

Topeka Police Dept

Alton A. Loggatt

Topeka

Ks. Magazine Publishers Assn

W. Dampier

Manhattan

Ks. Farm Bureau

Phelan

St Louis

Southwestern Seed

Verne D. Manning

KCK

Kansas Attorneys Conference

In Congress, citizen outrage has prompted a majority of Senators and House members to swing behind harsher federal penalties. Both the FBI and the U.S. Postal Service are pressing widespread probes.

The child-pornography trade has ballooned into an industry grossing about a half billion dollars a year, and some officials believe that organized crime is moving in to capture the market.

The capitals of the illicit trade are Los Angeles, New York City, and Chicago, experts say. But some photographs and films distributed from these centers originate in towns across the nation.

Who are the victims? In most cases, they are emotionally disturbed runaways from broken homes. They sell themselves to survive on the streets or for what they mistakenly interpret as affection, police and psychologists say.

"~~Very~~ often these children are consenting partners in sexual activity.. But they are in fact children, and victims in the truest sense," says Lloyd Martin of the Los Angeles police department's sexually exploited-child unit.

Another type of victim: children sold into pornography by their parents. In Los Angeles, police found a 3-year-old girl, a 5-year-old girl and a 10-year-old boy who had been sold into the trade by their prostitute mothers.

What kind of person lures children into pornography? Officials say that some pornographers fit the stereotype of the grimy old man prowling juvenile hangouts such as Manhattan's Times Square. But this image, they say, is often misleading. "We've found that, in many cases, it's a different type--wealthy, mobile, educated, sometimes important members of the community," reports Robert Leonard, the president-elect of the National District Attorneys' Association.

SOME SORDID CASES. A defrocked Episcopal priest went to trial in Winchester, Tennessee, May 31 on charges that he took in neglected children at his Boys Farm, and secretly filmed adult "sponsors" sexually abusing the boys.

Other police investigations have led to the arrest of a dentist in suburban Chicago, and charges in New Orleans that a ring of men, including a Boy Scout troop in the filming of homosexual acts. A scoutmaster has been sentenced to 75 years in the same case.

What can be done to curb the blight of child pornography? Many authorities believe that the problem stems from the breakdown of families and that the solution must come from strengthening families and not from the law. But with public outrage building fast, States are rushing ahead with new laws.

"I know of no other issue where state lawmakers have been able to react so quickly and completely to a problem confronting their states as in curbing the sexual exploitation of children," a California state legislator told ~~xxxx~~ the U.S. House Judiciary Subcommittee on Crime.

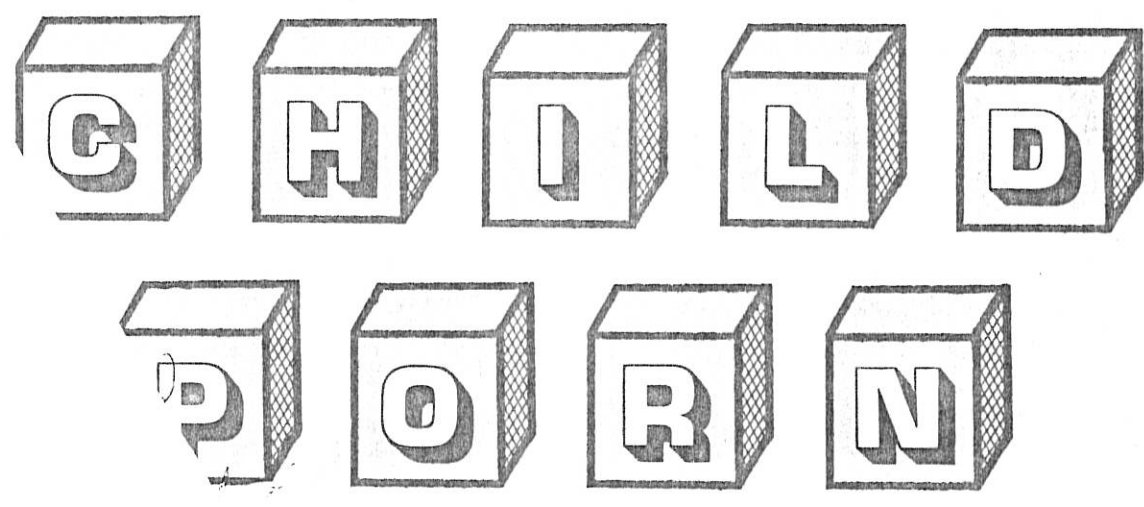
Assemblyman Kenneth Maddy (R-Fresno), chairman of the Assembly's Committee on Criminal Justice, outlined the results of a 50-state survey on child pornography legislation, conducted by the NCSL.

"Prior to the 1977 legislative sessions, very few states had laws prohibiting the use of children in obscene material or performances," he said, "and those that did exist were generally written in broad language, without adequate powers for prosecution."

Although Congress has not given final action to the bill now before them, it seems certain they will soon move to prohibit the interstate transportation of juveniles for sexual purposes. Lawmakers are under pressure to deal with sentiments such as those

expressed recently by former New York City Mayor, Abraham Beame, ..."if we don't draw the line against pornography and specifically against child pornography, we can kiss goodbye to civilization as we know and cherish it."

Rep. Glen Jones



The multibillion dollar pornography industry has taken on a new form, widely available at the many thousands of porn shops across the country. It features children, even as young as three years old, in sexually explicit films and magazines.

A recent estimate puts the number of these magazines at 264, a large number of them produced in the United States.

The children are not difficult to recruit, according to Dr. Judianne Densen-Gerber, a New York psychiatrist and president of Odyssey Institute, an organization which deals with the sexual, emotional and physical abuse of children. Magazine and film producers simply use their own children or draw from the more than 1,000,000 American runaways each year.

"They may be induced to pose for \$5 or a trip to Disneyland or even a kind word," Dr. Densen-Gerber says.

Dr. Densen-Gerber adds that posing for these pornographic films and magazines is "highly destructive to children. It leads them to join our deviant populations: drug addicts, prostitutes, criminals and preadult parents."

Many of the children are victims of more brutal crimes. Los Angeles Police Investigator Jackie Howell states that, "We have found that a child molester is often also the photographer. Photography is only a part of it, a sideline more often than not to prostitution, sexual abuse, and drugs."

Obscenity or child abuse?

It has been extremely difficult to prosecute these cases because the films are made in secret, generally with the complicity of parents or guardians. Also, federal and state statutes have not, for the most part, dealt with children as a separate problem and are therefore included in the same ambiguous obscenity statutes as adults.

At the present time 47 states have statutes regulating the distribution of obscene material to minors. However, only six states have statutes on the books which specifically prohibit the use of children in an obscene performance which would be harmful to them. These states are Connecticut, North Carolina, North Dakota, Rhode Island, South Carolina, and Tennessee.

The Connecticut statute (Conn. G.S.A. §53-25) specifically prohibits the procurement, use, employment, or exhibition of a child under 16 years of age for any obscene, indecent or immoral purpose. Violators are fined up to \$250 or imprisoned less than one year or both.

In North Carolina (N.C.G.S. §14-190.1 *et seq.*) it is a misdemeanor to hire, employ, or use a minor under 16 in photographs for preparation of an obscene film or photograph for the purpose of distribution for sale. Punishment is set at the discretion of the court.

It is a felony in North Dakota (N.D.C.C. §12.1-27.1-03) to permit a minor to participate in an obscene per-

formance which would be harmful to him.

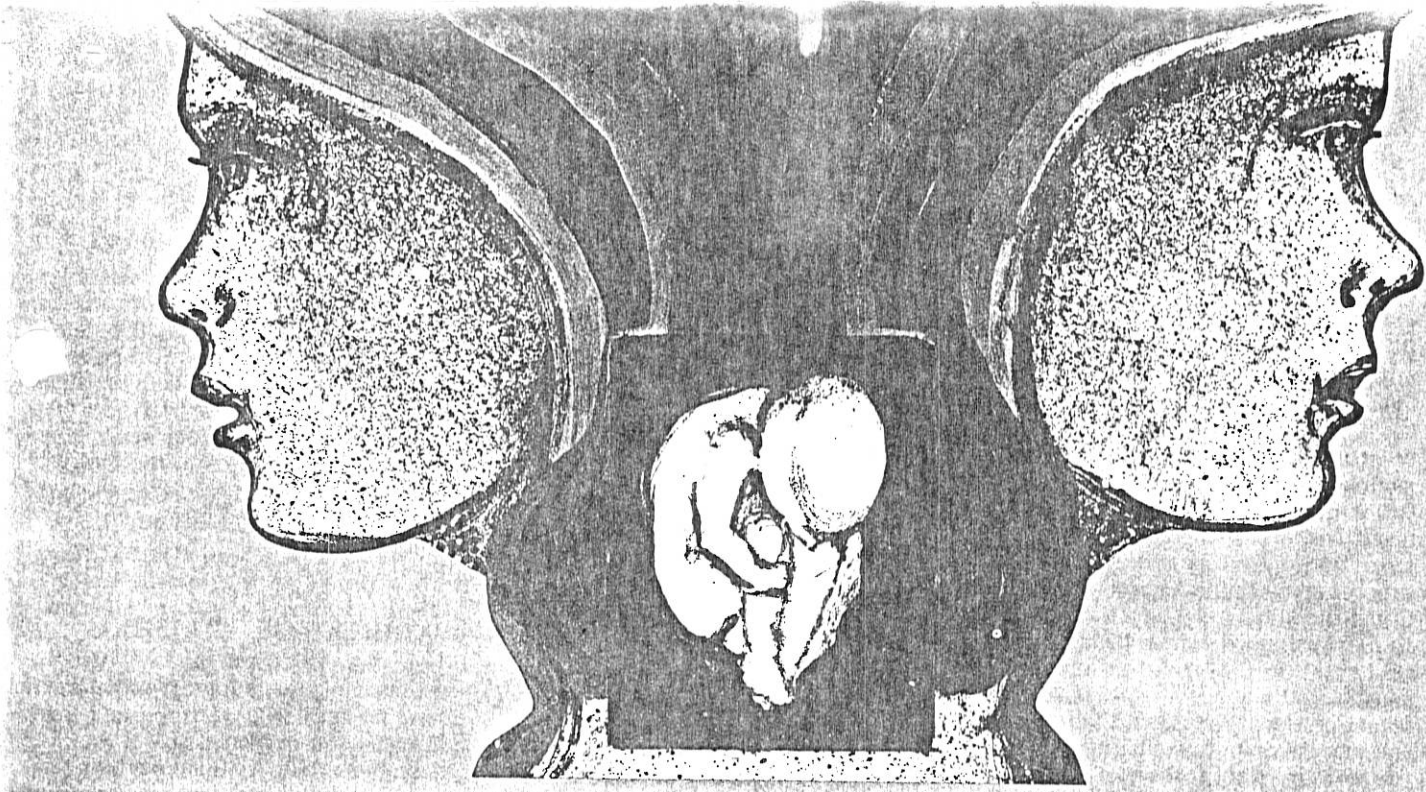
The most recently passed legislation on the child pornography issue was by Rhode Island on May 10 (R.I.P.L., Ch. 131). The statute sets penalties for exploiting children in sex films or photographs (first offense—imprisonment of not more than 1 year or a fine of not more than \$1,000 or both; second offense—not more than 3 years imprisonment or a fine of not more than \$3,000 or both; subsequent offenses—not more than 5 years imprisonment or a fine of not more than \$5,000 or both).

The South Carolina statute (S.C. Code §16-414.1 *et seq.*) says that it is unlawful to knowingly hire, employ or use a minor to prepare, publish, print or distribute any obscene material. Violations carry a penalty of imprisonment of up to 2 years and a fine not exceeding \$1,000 or both.

In Tennessee (Tenn. C.A. §39-3013) it is unlawful to knowingly hire, employ or use a minor under 18 years old to take part in an obscene theatrical production or live performance. Penalties call for a \$250-\$5,000 fine or not more than one year imprisonment or both. Subsequent violations are a felony and fines are \$500-\$10,000 or imprisonment of 2-5 years.

Recently, however, a number of state legislators have introduced bills designed to crack down on the use of children in sexually explicit scenes in films and magazines.

The general trend in the new



legislation is to prevent child pornography statutes from becoming bogged down in First Amendment obscenity problems and, instead, to tie the issue to the category of child abuse for the purpose of invoking child protection laws.

Bills introduced

HB 286 has passed the House in Illinois and has been introduced in the Senate. The bill defines the offense of obscenity involving a minor, makes violations a felony, and prescribes a fine of up to \$25,000 for a first offense. A second or subsequent offense includes a fine of up to \$50,000.

Illinois Governor James R. Thompson has announced that a task force will be formed to investigate reports of child abuse and child pornography in state institutions.

Bills have been introduced in the California Legislature (SB 428 and AB 702) to prohibit the employment of any person under 18 from engaging in sexual activities for commercial purposes. Violations are punishable by not more than one year in prison.

Another California bill (SB 740) would prohibit the same things but would make violations a felony with prison sentences depending on the age of the child involved (7 years old or younger—50 years in the state prison; 8 to 12 years old—25 years in prison; and 13 to 17 years old—10 years imprisonment).

In Pennsylvania, an amendment to an obscenity statute (HB 70) dealing with child pornography has been favorably reported out of the House Judiciary Committee. The amendment makes it a felony to permit a child under 16 to engage in a sexual act, to photograph or sketch the child or to transport or mail material that contains depictions of the act.

A Pennsylvania bill designed to separate child pornography from the problems surrounding adult pornography has also been introduced. It would prohibit the sale of publications, pictures and films that depict children under 16 performing sexual acts. In addition, it prohibits photographing or knowingly permitting children to engage in these activities. The bill does not attempt to define what is obscene.

Two nearly identical bills have been introduced in the Michigan House and Senate to stop the exploitation of children for pornographic purposes by parents or guardians, producers, financiers, distributors or sellers of a sexually explicit film, magazine or picture. In HB 4332 the definition of a child is a person below 17 years of age and in SB 381 the age of a child is defined as below 18 years of age. The bills also state that anyone depicted as a minor is presumed to be a minor.

Legislation has been introduced in the Ohio Senate to clarify the law on child pornography. The bill prohibits the sale and distribution of

sexual material involving children and increases the maximum penalty to a five year prison sentence and a \$25,000 fine for first offenders and a \$50,000 fine for repeat offenders.

Several New York bills have been introduced (SB 2649, SB 2729, SB 2743, AB 3587, AB 3601) which make it a felony to permit a child to perform in an obscene performance, to use minors in the production of an obscene performance, or to profit from the sale of pornographic materials that use minors.

Federal Proposal

Bills have been introduced in the U.S. House of Representatives by Rep. John Murtha of Pennsylvania, Rep. Dale Kildee of Michigan and Rep. John Murphy of New York to prohibit sexual exploitation of children and transportation of photographs or films in interstate or foreign commerce depicting the sexual exploitation.

The Odyssey Institute has prepared a state model statute which defines a minor as a person under 18 years of age. The statute makes it a crime for a person to knowingly promote, employ, use or permit a minor to engage in any sexual performance for purposes of preparing a film, photograph, or motion picture which is obscene.

The Odyssey Institute has also prepared a federal statute model.
(By Linda Bailey, CSG, Lexington)

file
child porn

Calendar No. 398

2-7

95TH CONGRESS
1ST SESSION

S. 1585

[Report No. 95-438]

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 18), 1977

Mr. MATHIAS (for himself, Mr. CULVER, Mr. BAYH, Mr. BROOKE, Mr. BIDEN, Mr. BURDICK, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. DECONCINI, Mr. EAGLETON, Mr. FORD, Mr. GARN, Mr. GRAVEL, Mr. GRIFFIN, Mr. HASKELL, Mr. HATAKAWA, Mr. HUMPHREY, Mr. INOUE, Mr. KENNEDY, Mr. LAXALT, Mr. MAGNUSON, Mr. MATSUNAGA, Mr. McCLURE, Mr. MCGOVERN, Mr. McINTYRE, Mr. METCALF, Mr. METZENBAUM, Mr. MORGAN, Mr. MOYNIHAN, Mr. PELL, Mr. PROXMIRE, Mr. RIBICOFF, Mr. RIEGLE, Mr. SCHMITT, Mr. STAFFORD, Mr. STEVENS, Mr. WALLOP, Mr. ZORINSKY, Mr. HUDDLESTON, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 16 (legislative day, SEPTEMBER 15), 1977

Reported by Mr. CULVER, with an amendment, and an amendment to the title

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, or magazine.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Protection of Children
- 4 Against Sexual Exploitation Act of 1977".

5 SEC. 2. (a) The Congress finds that—

1 "§ 2251. Sexual exploitation of children

2 "(a) It shall be unlawful for any person knowingly
3 to employ, use, persuade, induce, entice, or coerce any minor
4 to engage in, or to have a minor assist any other person to
5 engage in, any sexually explicit conduct for the purpose of
6 promoting any film, photograph, negative, slide, book,
7 magazine, or other print or visual medium.

8 "(b) It shall be unlawful for any parent, legal guardian,
9 or person having custody or control of a minor to knowingly
10 permit the minor to engage in, or to assist any other person
11 to engage in, sexually explicit conduct.

12 "(c) For the purposes of this section, the term—

13 "(1) 'minor' means any person under the age of
14 sixteen years;

15 "(2) 'sexually explicit conduct' means actual or
16 simulated—

17 "(A) sexual intercourse, including genital-ge-
18 nital, oral genital, anal genital, or oral-anal, whether
19 between person of the same or opposite sex;

20 "(B) bestiality;

21 "(C) masturbation;

22 "(D) sado-masochistic abuse, including but not
23 limited to flagellation, torture, or bondage;

24 "(E) lewd exhibition of the genitals or pubic
25 area of any person; and

1 ~~“(c) ‘promoting’ means producing, directing, manu-~~
2 ~~facturing, issuing, publishing, or advertising.~~

3 ~~“(d) Any person who violates this section shall be~~
4 ~~fined not more than \$10,000, or imprisoned not more than~~
5 ~~ten years, or both.”.~~

6 ~~(b) The table of chapters of part I of title 18, United~~
7 ~~States Code, is amended by inserting immediately after the~~
8 ~~item relating to chapter 109 the following:~~

“110. Sexual exploitation of children----- 2251”.

9 *SEC. 2. (a) The Congress finds that—*

10 *(1) the use of children as subjects in the production*
11 *of pornographic materials is very harmful to both the*
12 *children and to society as a whole;*

13 *(2) the production and sale of such pornographic*
14 *materials represent many millions of dollars in annual*
15 *revenue and that the sale and distribution of such mate-*
16 *rials are carried on to a substantial extent through inter-*
17 *state and foreign commerce and through the means and*
18 *instrumentalities of such commerce; and*

19 *(3) existing Federal laws dealing with the interstate*
20 *distribution of pornographic materials do not protect*
21 *against the use of children in the production of such*
22 *materials and that specific legislation in this area is both*
23 *advisable and needed.*

24 *(b) The Congress determines that the provisions of*

1 chapter 110 of title 18, United States Code, are necessary
 2 and proper for the purpose of carrying out the powers of
 3 Congress to regulate commerce and to establish uniform and
 4 effective laws on the subject of sexual exploitation of children.

5 SEC. 3. (a) Title 18, United States Code, is amended
 6 by adding immediately after chapter 109 the following:

7 "Chapter 110—SEXUAL EXPLOITATION OF
 8 CHILDREN

"Sec.
 "2251. Sexual exploitation of children.

9 "§ 2251. Sexual exploitation of children

10 "(a) It shall be unlawful for any person knowingly
 11 to employ, use, persuade, induce, entice, or coerce any minor
 12 to engage in, or to have a minor assist any other person to
 13 engage in, any sexually explicit conduct for the purpose of
 14 promoting any film, photograph, negative, slide, book, mag-
 15 azine, or other print or visual medium, if such person knows
 16 or has reason to know that such film, photograph, negative,
 17 slide, book, magazine, or other print or visual medium will
 18 be mailed or otherwise transported in interstate or foreign
 19 commerce.

20 "(b) It shall be unlawful for any parent, legal guardian,
 21 or person having custody or control of a minor to knowingly
 22 permit such minor to engage in, or to assist any other person
 23 to engage in, sexually explicit conduct for the purpose of

1 promoting any film, photograph, negative, slide, book, mag-
2 azine, or other print or visual medium, if such parent, legal
3 guardian, or person knows or has reason to know that
4 such film, photograph, negative, slide, book, magazine, or
5 other print or visual medium will be mailed or otherwise
6 transported in interstate or foreign commerce.

7 “(c) For the purposes of this section, the term—

8 “(1) ‘minor’ means any person under the age of
9 sixteen years;

10 “(2) ‘sexually explicit conduct’ means actual or
11 simulated—

12 “(A) sexual intercourse, including genital-
13 genital, oral-genital, anal-genital, or oral-anal,
14 whether between persons of the same or opposite
15 sex;

16 “(B) bestiality;

17 “(C) masturbation;

18 “(D) sado-masochistic abuse (for the purpose
19 of sexual stimulation; and

20 “(E) lewd exhibition of the genitals or pubic
21 area of any person; and

22 “(3) ‘promoting’ means producing, directing,
23 manufacturing, issuing, publishing, or advertising for
24 pecuniary profit.

1 “(d) Any person who violates this section shall be fined
2 not more than \$10,000, or imprisoned not less than two
3 years nor more than ten years, or both, for the first offense,
4 or fined not more than \$15,000, or imprisoned for not less
5 than five years nor more than fifteen years, or both, for each
6 such offense thereafter.”

7 (b) The table of chapters of part I of title 18, United
8 States Code, is amended by inserting immediately after the
9 item relating to chapter 109 the following:

“110. Sexual exploitation of children----- 2251”.

10 SEC. 4. (a) Section 2423 of title 18, United States
11 Code, is amended to read as follows:

12 “§ 2423. Coercion or enticement of minor

13 “(a) (1) It shall be unlawful for any person to trans-
14 port, or to cause to be transported, in interstate or foreign
15 commerce or within the District of Columbia or any territory
16 or possession of the United States, any minor for the purpose
17 of such minor engaging in prostitution or with intent to
18 induce, entice, or compel such minor to engage in prostitution.

19 “(2) For purposes of this section, the term ‘minor’ means
20 any person under the age of eighteen years.

21 “(b) Any person who violates this section shall be fined
22 not more than \$10,000, or imprisoned not more than ten
23 years, or both.”

2-1-78

Anita Niles

Within the last year or so, it has become apparent that an insidious, evil growth is spreading across our nation.

Child pornography sold in America was formerly smuggled in from abroad. Now, most of it is produced in our larger cities using, as one source, the steady stream of bewildered, broke runaways.

Pornographers who stalk children at city bus stations find many victim eager to pose for \$5 or \$10, or simply a meal or a kind word.

In many cases the pornography is a by product of child prostitution. Pimps invite children to parties, photograph them in sex acts, and circulate the pictures as advertisements to men seeking young sex partners.

There are at least 264 different boy and girl pornography magazines being sold in adult bookstores nationwide. These magazines, slickly produced, are selling for prices averaging more than \$7 each.

Most of the children, 8 years old or older, are runaways from extremely abusive or neglectful homes. But, younger children, some as young as 3 years old, must be provided by their parents or guardians, who themselves are often drug addicts, pornography performers, prostitutes, or parents who photograph themselves having incestuous relationships with their children. They exchange the films and photographs with others who belong to clubs advocating this type of activity.

There is one club in southern California claiming 2,500 members.

These revolting materials are products of sick people. We would like to think there is no demand for this material in

Kansas, but wherever there are adult pornography shops, we can be assured someone will be buying, whether it is in New York, Kansas City, Wichita or Topeka, and whether it is displayed or under the counter.

I urge the members of this committee to take positive action in this regard.

2-7

To: HOUSE JUDICIARY COMMITTEE
Rep. Brewster, Chairperson

Mr. Chairman and members of the Committee -- The Kansas Council for Children and Youth wish to be placed on record in supporting HB 2821 by Representatives Jones and A. Niles.

The KCCY believes that every effort needs to be exerted through our social, legal and legislative bodies to give children and youth the protection necessary to prevent sexual exploitation.

Thank you for the opportunity to make our position known. We are sorry that we could not appear in person.

Lee A. Wastell, Co-chairperson
KCCY Legislative Committee

2/3/78

2-1

STATEMENT OF POSITION ON CHILD ABUSE AND NEGLECT
JUNIOR LEAGUE OF TOPEKA, KANSAS, INC., 1978

STATEMENT OF POSITION:

Recognizing that children are our most precious natural resource, that every child deserves the right to develop to his or her full potential, that the family is essential to the nurturing and development of the full potential of each child, that children are not able to speak on their own behalf, and that while the cost of caring for our children may be great, the cost of their neglect is astronomical, the Junior League of Topeka, Inc. is committed to assuring that children and their families have the opportunities and services essential to the optimal physical, emotional, mental and social growth of children.

TO THIS END, WE SUPPORT:

1. The implementation of the 1977 Kansas Child Protection Act.
2. The allocation of additional funds to employ more child protective workers.
3. The development of the Kansas Children's Lobby.
4. The continuation of the Kansas Chapter of the National Committee for the Prevention of Child Abuse and Neglect.
5. The continuation of the Topeka Chapter of Parents Annonymus.
6. A coalition of agencies, groups, and individuals who are involved in the area of child abuse and neglect.
7. The concept of family centered maternity care.
8. The concept of family life education.
9. The continued improvement of child protection regulations.
10. Legislation and enforcement of regulations which eliminate sexual exploitation of children.
11. The continued up-grading and growth of services for abused and neglected children and their families.
12. Increased awareness and involvement of citizens regarding child abuse and neglect, its causes, treatment and prevention.

BACKGROUND FOR POSITION PAPER
ON CHILD ABUSE AND NEGLECT

- I. The Association of Junior Leagues adopted Child Advocacy as an Association-wide program in 1975.
- II. The Junior League of Topeka, Inc. began participation in 1976 by conducting a needs assessment in Topeka in the areas of learning disabilities, adoption and foster care, day care, child abuse and neglect, and perinatal care.
- III. The Junior League of Topeka, Inc. formed a Child Advocacy Committee which selected Child Abuse and Neglect as its focus area. This Committee has:
 - A. Helped plan and attended the Governor's Conference on Child Abuse and Neglect, Fall 1976.
 - B. Attended the Second Annual Governor's Conference on Child Abuse and Neglect, Fall 1977.
 - C. Attended the Junior League's National Institute on Child Advocacy, Fall 1976.
 - D. Attended the Bi-State Conference on Child Abuse and Neglect, Fall 1976.
- IV. Over the years, the Junior League of Topeka, Inc. has demonstrated an active and continuing involvement on behalf of children by working for the establishment of the following:
 - A. Emergency Shelter Care Home
 - B. Seminar for Neglected and Abused Children
 - C. Community Youth Homes (Residential care homes for dependent and neglected children.)

TESTIMONY

Vincent DeCoursey, Executive Director
Kansas Catholic Conference
House Judiciary Committee

2-7-78

February 7, 1978

RE: House Bills 2809 and 2821

I wish to thank the Chairman and the members of the House Judiciary Committee for the privilege of presenting testimony in support of House Bills 2821 and and 2809. Of these two bills we much prefer the provisions of House Bill 2821 as being more explicit in its definitions. We commend the intent of both bills.

I suppose that the first thing to mention is that even to consider such a law as being necessary is a sad commentary on the state of morality in this nation of ours. Sexual conduct that has been considered criminal since the founding of our country is now seemingly either tacitly or explicitly approved by law. Only when the horror becomes outrageous, as in the case of sexual exploitation of a child for profit or for private amusement does the necessity for legislation seemingly become persuasive.

I suppose no one quarrels with the intent of the bill. Questions arise because of claimed infringements on the doctrine of free speech as defined by the courts as they relate to the First Amendment to the Constitution. If I might be permitted a few words about the alleged violations of the First Amendment I would wonder first of all what would be the position of James Madison, who was the prime mover in the adoption of the Bill of Rights, were he to be asked if such practice as this bill addresses should be tolerated under the First Amendment?

If communities and states cannot protect themselves from monstrous distortions of "freedom" then we are well on our way to a system of government totally unrelated to the views of our founding fathers.

We ask your approval of House Bill 2821.

2-7-78

PHIL MARTIN
 REPRESENTATIVE 114TH DISTRICT
 PORTIONS OF EDWARDS, PAWNEE AND
 STAFFORD COUNTIES
 P. O. BOX 275, R. R. 2
 LARNED, KANSAS 67550



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: RULES AND JOURNALS
 MEMBER: WAYS AND MEANS
 JUDICIARY

The Honorable E. Richard Brewster
 Chairman, House Judiciary Committee
 State House Office 402
 Topeka, Kansas 66612

RE: House Bill 2326

Mr. Chairman and Committee Members:

House Bill 2326 proposes an amendment to statutory procedures for release of a defendant who was found not guilty by reason of insanity. The balloon copy of the bill incorporates language as originally drafted and also states new language granting authority for a re-entry program.

The purpose of the bill is twofold:

- 1) It proposes medical and social assistance, where needed, for an individual returning to society, and
- 2) In certain instances temporary supervision of a patient by appropriate persons or agencies would be permissible.

The legislation is directed to help the patient and to also provide safeguards for the public.

House Bill 2326 allows a District Court to make a finding that the discharge of a patient will not pose a danger to the patient or others only if the patient continues to take prescribed medication or to receive periodic psychiatric treatment or guidance counseling. If such a finding is entered then the Court is granted authority to designate certain provision for temporary supervision.

Dennis Moore, District Attorney of Johnson County, Kansas has put a great deal of thought and effort into the re-entry concept and is present to address the committee. Mr. Moore and I are also willing to consider any questions or suggestions the committee might have.

PHIL MARTIN
 Representative
 114th District



27-78

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

February 7, 1978

Honorable Phil Martin
Representative, District 114
House of Representatives
Room 115 South, Statehouse
Topeka, Kansas 66612

Dear Representative Martin:

You have inquired concerning the constitutionality of H.B. 2326 with its proposed amendments. H.B. 2326 would amend that part of K.S.A. 1977 Supp. 22-3428 which provides for the discharge of persons committed to the state security hospital for safekeeping and treatment when such persons are found not guilty because of insanity in a criminal proceeding.

Currently, K.S.A. 1977 Supp. 22-3428 provides for a hearing in district court prior to discharge of such a patient upon request by the county attorney. At such hearing the court determines whether the involuntary patient continues to be a danger to himself, herself or others. If the court finds that the patient continues to be a danger to himself, herself or others the court shall order the patient to remain in the state hospital, otherwise the court shall order the patient discharged.

Your amendment to K.S.A. 1977 Supp. 22-3428 provides for the conditional release of such committed persons when the court finds from the evidence presented at the hearing that the discharge of the person will not pose a danger to the defendant or others only if the person continues to take prescribed medication or to receive periodic psychiatric treatment or guidance counseling. The court may order as a condition to the discharge that the person continue to take prescribed medication and report as directed to a doctor to determine whether or not the person is taking the medication. The court may also order that the person be placed under the temporary supervision of a state probation and parole officer or district court probation and

Honorable Phil Martin
Page Two
February 7, 1978

parole personnel, or any appropriate private agency, who will be authorized to prepare a suitable re-entry program for the person consistent with the recommendations, if any, of the person designated by the court to perform the mental evaluation required by the section. The conditional release period under the jurisdiction of the court may extend for a period of two years unless earlier vacated by the court upon a hearing. Provision is also made for further orders by the court to effect the ends of the re-entry program or for a proceeding under K.S.A. 59-2913 to determine whether the person is mentally ill.

Courts have generally held that release of persons found not guilty by reason of insanity may be conditioned upon the acceptance of psychiatric out-patient care or supervision, but that such conditions must have some rational relationship to the person's status. The court in Scheidt v. Meridith, 307 F. Supp. 63 (Colo. 1970), said, "The interests of the community and the individual are relevant to the granting of a conditional release. Thus, it would be clearly proper to require that a person accept psychiatric out-patient care or supervision. However, terms which are designed to regulate the activities of convicted criminals, and which are punitive in nature, cannot be imposed in such a case."

Other courts have construed similar conditional release provisions in other jurisdictions where persons are found not guilty by reason of insanity and committed to an institution and have discussed the constitutional issues involved. Equal protection requires that standards governing release of persons who have been acquitted on criminal charges because of insanity be substantially the same as the standards applicable to civil committees. The federal courts have accepted the proposition that the dangerousness demonstrated by the commission of a crime and acquittal by reason of insanity constitutes a rational basis for some disparity in release provisions governing acquittees and committees. Overholser v. Leach, 103 U.S. App. D.C. 291, 257 F.2d 669.

The fact that the proposed release procedure and conditions are somewhat different from those found in Chapter 59 of the Kansas Statutes Annotated for those persons civilly committed does not offend the equal protection clause. Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made, i.e., a reasonable justification. Baxtrom v. Herold, 383 U.S. 111, 86 Sup. Ct. 762, 15 L.Ed.2d 623 and Jackson v. Indiana, 406 U.S. 729, 92 Sup. Ct. 1853, 32 L.Ed.2d 445. It may be fairly determined by the legislature that the individuals contemplated by K.S.A. 22-3428 pose a significant risk to the community and that the public is entitled to the additional protection afforded by judicial supervision. United States v. Ecker, 543 F.2d 178 (1976).

Honorable Phil Martin
Page Three
February 7, 1978

It appears, then, that conditions which are conducive to the best interests of the individual and the community may safely be imposed by the courts under this bill. I would, however, change the word "defendant" to "patient" or "person" so as to avoid any inference that the treatment of the person is in any way related to the criminal process.

I trust that this will be of some assistance to you. If you have further questions, please do not hesitate to call.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

BY:



DANIEL L. WATKINS
Assistant Attorney General

DLW:jj

American Civil Liberties Union of Kansas

2-7-78

February 7, 1978

Dear Representative Martin:

As per your request I sought input from within this organization as to the amendment to HB 2326. The feeling is that the amendment vastly improves the bill by providing for boundries on the length of time the patient is subject to the court as well as the provisions for community treatment.

I received several suggestions to further tighten the amendment:
Two separate judges might be advisable since the trial judge shouldn't make the mental illness determination as well as ordering the determination.

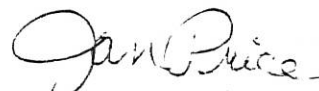
Spell out the right of the patient to counsel at all hearings.

Add a provision for notice and hearing near the last part of the amendment where there is already provision for filing an application to determine whether the patient is mentally ill in cases where the patient is not satisfactorily complying with the provisions for conditional release.

A second amendment to amend the original law would be good providing for the burden of proof of dangerousness to be upon the State instead of upon the patient.

I hope these suggestions are helpful. Keep up the good work.

Sincerely,



Jan Price
Executive Director

110 E. 7th, Topeka, Kansas 66603



2-7-78

The Menninger Foundation

BOX 829 TOPEKA, KANSAS 66601 913/234-9566

February 7, 1978

Chairperson
Judiciary Committee
of the Kansas
House of Representatives
State House
Topeka, Kansas

RE: House Bill # 2326
Introduced by Representative Martin

Dear Chairperson:

Because of a previous commitment to patients, I am unable to testify at the hearing of this bill on February 7. However, my objection to the proposed legislation (House Bill #2326) is that the bill would mandate that a physician, who accepts the responsibility to monitor the distraught patient's medication, is indeed only accepting the responsibility to serve as a "parole officer". The physician is not asked to establish any kind of therapeutic or treatment relationship with the patient, nor is he asked to enter into any therapy process with the patient, nor is he asked to do anything other than to determine if indeed the patient is taking the medication and not whether the medication is being effective. The bill lacks any kind of merit because it is asking the physician to serve a function other than being a physician. Personally, I am concerned about the therapeutic relationship in prescribing medication, along with all of the medical and psychiatric history needed to determine the appropriateness of any medication or any modifications that would be needed. Would I have the right to discontinue it?

Also, this establishes another class of patients. No other psychiatric patient is required to undergo, by law, the monitoring of medications.

Lastly, who would pay for the services if this bill is passed?

Sincerely,

Robert Menninger, M.D.
Medical Director
Community Service Office

RM/r1f

STATE OF KANSAS
Tenth Judicial District

2-7-78

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

January 17, 1978

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

Gentlemen:

Kansas law (K.S.A. 1976 Supp. 22-3428) provides that in a criminal case where a defendant is found not guilty by reason of insanity, the court may place such defendant in the state security hospital for treatment. This statute also provides that at such time as the chief medical officer of the institution finds and determines that the defendant no longer continues to be a danger to others, that said institution may then provide notice that it intends to release said defendant after 30 days. Within 15 days of the receipt of such notice, the district attorney may ask for a hearing before the court to determine whether said defendant should be released. If after a hearing the court finds that the "...patient continues to be a danger to himself, herself or others the court shall order the patient remain in the state hospital, otherwise the court shall order the patient discharged."

The shortcoming I see in this statute is that it provides for no half-way measures to assure that a person about to be released who is in continuing need of medication and/or periodic psychiatric counseling receives these supportive services. Under the present statute, if the court finds that the patient continues to be a danger to himself or others, the court is required to order the patient to remain in the state hospital. However, if the court finds that the defendant no longer continues to be a danger to himself or others, the court is required to order the immediate discharge of the defendant. This statute which provides for the outright release of an individual from a highly structured environment of a state hospital without supportive services, if the same are indicated, does a disservice not only to the defendant, but also to the community in which such an individual resides. While he may be capable of coping with stressful situations in the structured environment of a state hospital, he may be unable to cope with stressful situations upon his release without the assistance of continued medication and/or psychiatric or psychological counseling.

Rep. Phil Martin introduced in the 1977 Legislature House Bill 2326 which provides as a condition to discharge of a patient that the court may order the patient to continue to take prescribed medication if the court finds from the evidence presented at the hearing that the discharge of the defendant will not pose a danger to the defendant and/or others, only if the defendant continues to take prescribed medication. While I wholly support the concept of this amendment, I would like to see additional language

January 17, 1978

Page two

added which would require that, if indicated, as a condition to discharge the individual would be placed under the temporary jurisdiction of a state or county parole office or a private agency to assure that an individual in need continues to receive psychiatric treatment and/or guidance counseling.

Attached to this letter is a copy of House Bill No. 2326. The new language in that bill which appears in italics beginning on line 56 and continuing through line 74, has been stricken. Attached to the bill is our new proposed language which would be inserted in that section, which makes provision not only for discharge of the defendant who continues to take prescribed medication but also would permit the court to order periodic psychiatric treatment and/or guidance counseling, if indicated.

I would very much appreciate your reviewing this bill together with the proposed amendments and advise me in the near future if you could support the concept of such legislation. As you may know, a deadline for individual bills in the Kansas Legislature is January 23 and the deadline for committee bills is, I believe, February 10, 1978. Time is short so I would very much appreciate your immediate consideration of this proposed legislation.

Very truly yours,

Dennis W. Moore
District Attorney

DWM/jlh

cc: Hon. Lewis Smith
Hon. Harold R. Riggs
Hon. Buford Shankel
Hon. Robert Jones
Hon. Earle Jones
Mr. Hugh Kreamer
Mr. David Gilman
Mr. Randy Austin
Mr. Larry Loftus

Mr. Jim Bouska
Mr. David Waxse
Mr. Joe Anderson
Mr. James Eisenbrandt
Chief Myron Scafe
Mr. Nick Tomasic
Mr. Gene Olander
Mr. Vern Miller
Mr. William Grimshaw

2-7-78

HOUSE BILL No. 2326

By Representative Martin

2-9

0015 AN ACT relating to criminal procedure; concerning defendants
0016 found not guilty because of insanity; amending K.S.A. ~~1076~~ _____1977
0017 Supp. 22-3428 and repealing the existing section.

0018 *Be it enacted by the Legislature of the State of Kansas:* _____1977

0019 Section 1. K.S.A. ~~1076~~ Supp. 22-3428 is hereby amended to
0020 read as follows: 22-3428. (1) When a person is acquitted on the
0021 ground that he or she was insane at the time of the commission of
0022 the alleged crime the verdict shall be "not guilty because of
0023 insanity," and the person so acquitted shall be committed to the
0024 state security hospital for safekeeping and treatment.

0025 (2) Whenever it appears to the chief medical officer of the
0026 state security hospital that a person committed under this section
0027 is not dangerous to other patients, he or she may transfer such
0028 person to any state hospital. Any person committed under this
0029 section may be granted convalescent leave or discharge as an
0030 involuntary patient after thirty (30) days notice shall have been
0031 given to the district or county attorney, sheriff and district court
0032 of the county from which such person was committed.

0033 (3) Within fifteen (15) days after the receipt of the notice
0034 provided for in subsection (2), the county attorney may request
0035 that a hearing on the proposed leave or discharge be held. Upon
0036 receiving any such request the district court shall order that a
0037 hearing be held on the proposed leave or discharge, giving notice
0038 thereof to the state hospital where the patient was transferred, and
0039 the court shall order the involuntary patient to undergo a mental
0040 evaluation by a person designated by the court. A copy of all
0041 orders of the court shall be sent to the involuntary patient and
0042 such patient's attorney. The report of the court ordered mental
13 evaluation shall be given to the county attorney, the involuntary

0044 patient and such patient's attorney at least five days prior to the
 0045 hearing. The hearing shall be held within thirty (30) days after the
 0046 receipt by the court of the county attorney's request. The invol-
 0047 untary patient shall remain in the state hospital until the hearing
 0048 on the proposed leave or discharge is to be held. At such hearing
 0049 the court shall determine whether the involuntary patient contin-
 0050 ues to be a danger to himself, herself or others. The patient
 0051 shall have the right to present evidence at such hearing and to
 0052 cross-examine any witnesses called by the county attorney. At the
 0053 conclusion of the hearing, if the court finds that the patient
 0054 continues to be a danger to himself, herself or others the court
 0055 shall order the patient to remain in the state hospital, otherwise
 0056 the court shall order the patient discharged. ~~If the court finds~~
 0057 ~~from evidence presented at the hearing that the discharge of the~~
 0058 ~~defendant will not pose a danger to the defendant or others only if~~
 0059 ~~the defendant continues to take prescribed medication, then the~~
 0060 ~~court, if it orders the discharge of the defendant, may order as a~~
 0061 ~~condition to the discharge that the defendant continue to take~~
 0062 ~~prescribed medication and report as directed to a person licensed~~
 0063 ~~to practice medicine and surgery to determine whether or not the~~
 0064 ~~defendant is taking such medication. If the court is informed by~~
 0065 ~~the person to whom the defendant is ordered to report that the~~
 0066 ~~defendant is not taking medication proscribed, then the court shall~~
 0067 ~~order the county or district attorney to file an application to~~
 0068 ~~determine whether the defendant is a mentally ill person as~~
 0069 ~~provided in K.S.A. 59-2913. Thereafter, the court shall proceed to~~
 0070 ~~hear and determine the application and the provisions of the act~~
 0071 ~~for obtaining treatment for a mentally ill person shall apply to all~~
 0072 ~~subsequent proceedings.~~ The costs of all proceedings and the
 0073 mental evaluation authorized by this section shall be paid by the
 0074 county from which such person was committed.

0075 (4) In any case where the defense of insanity is relied on the
 0076 court shall instruct the jury on the substance of this section.

0077 Sec. 2. K.S.A. 1076/Supp. 22-3428 is hereby repealed.

0078 Sec. 3. This act shall take effect and be in force from and after
 0079 its publication in the statute book.

If the court finds from evidence presented at the hearing that the discharge of the patient will not pose a danger to the patient or others only if the patient continues to take prescribed medication or to receive periodic psychiatric treatment or guidance counseling, then the court, if it orders the discharge of the patient, may order as a condition to the discharge that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking such medication. The court also may order that the patient be placed under the temporary supervision of a state probation and parole officer or district court probation or parole personnel, or any appropriate private agency, who will be authorized to prepare a suitable community re-entry program for the patient consistent with the recommendations, if any, of the person designated by the court to perform the mental evaluation. Such re-entry program will be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other out-patient services that the designated agency identifies as beneficial. The jurisdiction of the court over the patient will terminate two years from the date of his or her conditional release and the supervisory authority over the patient then will expire unless earlier vacated by court order. At any time during the conditional release period, the patient, through his or her attorney, may move for full or partial release from the conditions of discharge, and the court shall hold an evidentiary hearing on the motion within fifteen (15) days of its filing. A copy of such motion shall be served on the county or district attorney at the time of filing. If the court finds from the evidence at the hearing that the conditional provisions of discharge should be modified or vacated, it may so order. If at any time during the transitional period the designated medical officer or supervisory personnel informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court after a hearing for which notice thereof has been given to the county or district attorney and the patient, may make orders for additional conditions of the discharge designed to effect the ends of the re-entry program, or the court may order the county or district attorney to file an application to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2913. In cases where such an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the provisions of the act for obtaining treatment for a mentally ill person and such provisions shall apply to all subsequent proceedings.

RE: PROPOSAL NO. 43 - "CHILD GRABBING" (OR CHILD CUSTODY)*

Proposal No. 43, assigned to the Special Committee on Judiciary - B, was a study of problems relating to parental custody of children contrary to a court order, including problems arising when a child is taken outside of the state.

Background

The term "child grabbing" refers to the taking of a child to another state by or on behalf of a non-custodial parent for the purpose of bringing a proceeding in that other state wherein an award of custody to that non-custodial parent is sought.

Under K.S.A. 60-1610, a district court having jurisdiction in a divorce, annulment, or separate maintenance proceeding is required to make provision for the custody of the minor children of the parties to the proceeding. The court may modify or change any custody order at any time and the court retains jurisdiction to make a custody order to advance the welfare of a minor child if the child is physically present in the county, or if the domicile of the child is in the state, or if the court has previously exercised jurisdiction to determine the custody of a child who was domiciled in the state at that time. In a typical divorce proceeding, a court will award custody of the minor children to one of the divorcing parents.

Article IV, Section 1 of the Constitution of the United States requires that full faith and credit be given in each state to the judicial proceedings of every other state. Whether the full faith and credit clause applies to custody decrees has not been decided by the U.S. Supreme Court. That court has held, however, that a second state need not honor the terms of a custody decree by another state if modification of the decree would have been permitted in the state rendering that decree.

* H.B. 2713 and H.B. 2714 accompany this report.

New York ex rel Halvey v. Halvey, 330 U.S. 610 (1947). Likewise, where the decree-rendering forum awards custody to one of the spouses without having had personal jurisdiction over the other spouse, a second forum is not bound by the federal constitution to give full faith and credit to the custody decree. May v. Anderson, 345 U.S. 528 (1953).* Kansas custody decrees, as noted above, are modifiable and, therefore, need not be honored by the courts of another state.

Situations arise where a parent not awarded custody in Kansas, or not within the personal jurisdiction of the court when the custody decree was rendered, will take his or her child to another state and there commence a proceeding for custody alleging a change of circumstances after the original decree was rendered. The reverse also occurs, i.e., a parent not awarded custody in another state or not within the personal jurisdiction of the court where the custody decree was rendered, will bring the child to Kansas and here commence a proceeding for custody on the same or similar grounds. The Kansas Supreme Court recently held that, absent unusual circumstances, where a parent brings a child into this state for temporary visitation under an order of a court of another state, which has continuing jurisdiction to change or modify its decree, in the interest of comity a Kansas court may, and in most instances should, give full faith and credit to the decree of the other state and decline to hear on its merits an application to change custody made here under such circumstances. Jolly v. Avery 220 Kan. 692 (1976). Even assuming the holding's applicability to child grabbing, the court's language is advisory and not mandatory and the decision, therefore, could not be used as a solution to that problem.

K.S.A. 21-3422 makes it a Class A misdemeanor to take away any child under the age of 14 years, with the intent to detain or conceal such child from the person having the lawful charge of the child. Because the crime is merely a misdemeanor, extradition of a child grabber to Kansas cannot

K.S.A. 60-1611 appears to track with this decision.

be assured and most likely will not occur. Hence, even state criminal law generally cannot restore the child to the parent awarded custody in Kansas.

The issue is whether child grabbing should be prevented and, if so, how this may be accomplished.

Seventeen states have dealt with this problem by adopting the Uniform Child Custody Jurisdiction Act, a 1968 product of the National Conference of Commissioners on Uniform State Laws. In that Act, the section on jurisdiction establishes two major bases for jurisdiction. First, a child's home state has jurisdiction. Second, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If the second basis produces concurrent jurisdiction in more than one state, mechanisms provided in later sections are used to assure that only one state makes the custody decision.

Committee Activity

The Committee reviewed the Uniform Child Custody Jurisdiction Act and two Colorado Supreme Court cases dealing with questions which arose subsequent to that state's adoption of the Act. A conferee from the Washburn University School of Law described to the Committee the impact on current law that the Uniform Act would have. The Committee examined alternatives to K.S.A. 21-3422 and considered a recently promulgated Wyoming criminal statute directed at professional child grabbers. The Committee also discussed the possibility of codifying a modification of Jolly v. Avery, making mandatory a court's refusal to hear on the merits a child grabber's petition for custody.

Conclusions and Recommendations

Recognizing the possible effects of child grabbing on the children-victims of this activity, and believing it necessary to take action to prevent this practice, the Committee recommends passage of the two appended bills. H.B. 2714

creates the crime of aggravated interference with parental custody and makes the crime a Class E felony. H.B. 2713 amends the Uniform Child Custody Jurisdiction Act. The committee recommends that both bills be introduced in the House of Representatives.

November 18, 1977

Sen. Donn J. Everett,
Vice-Chairperson
Sen. Ron Hein
Sen. Joseph F. Norvell
Sen. Jim Parrish
Rep. Ben Foster

Respectfully submitted,

Rep. Richard Brewster,
Chairperson
Special Committee on
Judiciary - B

Rep. Michael G. Glover
Rep. John F. Hayes
Rep. Fred C. Lorentz
Rep. Phil Martin
Rep. Kent A. Roth

*Session of 1978***HOUSE BILL No. 2713**

By Special Committee on Judiciary—B

Re Proposal No. 43

12-7

0017 AN ACT enacting the uniform child custody jurisdiction act,
0018 relating to jurisdictional grounds and civil procedures with
0019 regard to judicial determinations of child custody matters;
0020 amending K.S.A. 60-1605, 60-1610 and 60-1611 and K.S.A.
0021 1977 Supp. 38-820 and 60-1604 and repealing the existing
0022 sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 New Section 1. (a) The general purposes of this act are to:

0025 (1) Avoid jurisdictional competition and conflict with courts
0026 of other states in matters of child custody which have in the past
0027 resulted in the shifting of children from state to state with
0028 harmful effects on their well-being;

0029 (2) promote cooperation with the courts of other states to the
0030 end that a custody decree is rendered in that state which can best
0031 decide the case in the interest of the child;

0032 (3) assure that litigation concerning the custody of a child
0033 take place ordinarily in the state with which the child and the
0034 child's family have the closest connection and where significant
0035 evidence concerning the child's care, protection, training, and
0036 personal relationships is most readily available, and that courts of
0037 this state decline the exercise of jurisdiction when the child and
0038 the child's family have a closer connection with another state;

0039 (4) discourage continuing controversies over child custody in
0040 the interest of greater stability of home environment and of secure
0041 family relationships for the child;

0042 (5) deter abductions and other unilateral removals of children
0043 undertaken to obtain custody awards;

0044

0045 (6) avoid re-litigation of custody decisions of other states in
0046 this state insofar as feasible;

0047 (7) facilitate the enforcement of custody decrees of other
0048 states;

0049 (8) promote and expand the exchange of information and
0050 other forms of mutual assistance between the courts of this state
0051 and those of other states concerned with the same child; and

0052 (9) make uniform the law of those states which enact it.

0053 (b) This act shall be construed to promote the general pur-
0054 poses stated in this section.

0055 New Sec. 2. As used in the uniform child custody jurisdiction
0056 act:

0057 (a) "Contestant" means a person, including a parent, who
0058 claims a right to custody or visitation rights with respect to a
0059 child;

0060 (b) "custody determination" means a court decision and court
0061 orders and instructions providing for the custody of a child,
0062 including visitation rights; it does not include a decision relating
0063 to child support or any other monetary obligation of any person;

0064 (c) "custody proceeding" includes proceedings in which a
0065 custody determination is one of several issues, such as an action
0066 for divorce or separation, and includes child neglect and depen-
0067 dency proceedings;

0068 (d) "decree" or "custody decree" means a custody determi-
0069 nation contained in a judicial decree or order made in a custody
0070 proceeding, and includes an initial decree and a modification
0071 decree;

0072 (e) "home state" means the state in which the child immedi-
0073 ately preceding the time involved lived with his or her parents, a
0074 parent, or a person acting as parent, for at least six consecutive
0075 months, and in the case of a child less than six months old the
0076 state in which the child lived from birth with any of the persons
0077 mentioned. Periods of temporary absence of any of the named
0078 persons are counted as part of the six-month or other period;

0079 (f) "initial decree" means the first custody decree concerning
0080 a particular child;

0081 (g) "modification decree" means a custody decree which mo-

0082 difies or replaces a prior decree, whether made by the court which
0083 rendered the prior decree or by another court;

0084 (h) "physical custody" means actual possession and control
0085 of a child;

0086 (i) "person acting as parent" means a person, other than a
0087 parent, who has physical custody of a child and who has either
0088 been awarded custody by a court or claims a right to custody; and

0089 (j) "state" means any state, territory, or possession of the
0090 United States, the Commonwealth of Puerto Rico, and the Dis-
0091 trict of Columbia.

0092 New Sec. 3. (a) A court of this state which is competent to
0093 decide child custody matters has jurisdiction to make a child
0094 custody determination by initial or modification decree if:

0095 (1) This state (A) is the home state of the child at the time of
0096 commencement of the proceeding, or (B) had been the child's
0097 home state within six months before commencement of the pro-
0098 ceeding and the child is absent from this state because of the
0099 child's removal or retention by a person claiming the child's
0100 custody or for other reasons, and a parent or person acting as
0101 parent continues to live in this state; or

0102 (2) it is in the best interest of the child that a court of this state
0103 assume jurisdiction because (A) the child and the child's parents,
0104 or the child and at least one contestant, have a significant con-
0105 nection with this state, and (B) there is available in this state
0106 substantial evidence concerning the child's present or future care,
0107 protection, training, and personal relationships; or

0108 (3) the child is physically present in this state and (A) the
0109 child has been abandoned or (B) it is necessary in an emergency
0110 to protect the child because the child has been subjected to or
0111 threatened with mistreatment or abuse or is otherwise dependent
0112 and neglected; or

0113 (4) (A) it appears that no other state would have jurisdiction
0114 under prerequisites substantially in accordance with paragraphs

0115 (1), (2), or (3), or another state has declined to exercise jurisdiction
0116 on the ground that this state is the more appropriate forum to
0117 determine the custody of the child, and (B) it is in the best interest
0118 of the child that this court assume jurisdiction.

0119 (b) Except under paragraphs (3) and (4) of subsection (a),
0120 physical presence in this state of the child, or of the child and one
0121 of the contestants, is not alone sufficient to confer jurisdiction on
0122 a court of this state to make a child custody determination.

0123 (c) Physical presence of the child, while desirable, is not a
0124 prerequisite for jurisdiction to determine the child's custody.

0125 New Sec. 4. Before making a decree under this act, reason-
0126 able notice and opportunity to be heard shall be given to the
0127 contestants, any parent whose parental rights have not been
0128 previously terminated, and any person who has physical custody
0129 of the child. If any of these persons is outside this state, notice
0130 and opportunity to be heard shall be given pursuant to section 5.

0131 New Sec. 5. (a) Notice required for the exercise of jurisdic-
0132 tion over a person outside this state shall be given in a manner
0133 reasonably calculated to give actual notice, and may be:

0134 (1) By personal delivery outside this state in the manner
0135 prescribed for service of process within this state;

0136 (2) in the manner prescribed by the law of the place in which
0137 the service is made for service of process in that place in an action
0138 in any of its courts of general jurisdiction;

0139 (3) by any form of mail addressed to the person to be served
0140 and requesting a receipt; or

0141 (4) as directed by the court, including publication, if other
0142 means of notification are ineffective.

0143 (b) Notice under this section shall be served, mailed, or de-
0144 livered, or last published at least thirty (30) days before any
0145 hearing in this state.

0146 (c) Proof of service outside this state may be made by affidavit
0147 of the individual who made the service, or in the manner pre-
0148 scribed by the law of this state, the order pursuant to which the
0149 service is made, or the law of the place in which the service is
0150 made. If service is made by mail, proof may be a receipt signed by
0151 the addressee or other evidence of delivery to the addressee.

0152 (d) Notice is not required if a person submits to the jurisdic-
0153 tion of the court.

0154 New Sec. 6. (a) A court of this state shall not exercise its
0155 jurisdiction under this act if at the time of filing the petition a

56 proceeding concerning the custody of the child was pending in a
57 court of another state exercising jurisdiction substantially in
58 conformity with this act, unless the proceeding is stayed by the
59 court of the other state because this state is a more appropriate
60 forum or for other reasons.

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

69 (c) If the court is informed during the course of the proceed-
70 ing that a proceeding concerning the custody of the child was
71 pending in another state before the court assumed jurisdiction it
72 shall stay the proceeding and communicate with the court in
73 which the other proceeding is pending to the end that the issue
74 may be litigated in the more appropriate forum and that infor-
75 mation be exchanged in accordance with sections 19 through 22.
76 If a court of this state has made a custody decree before being
77 informed of a pending proceeding in a court of another state it
78 shall immediately inform that court of the fact. If the court is
79 informed that a proceeding was commenced in another state after
80 it assumed jurisdiction it shall likewise inform the other court to
81 the end that the issues may be litigated in the more appropriate
82 forum.

New Sec. 7. (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

0193 shall consider if it is in the interest of the child that another state
0194 assume jurisdiction. For this purpose it may take into account the
0195 following factors, among others:

0196 (1) If another state is or recently was the child's home state;

0197 (2) if another state has a closer connection with the child and
0198 the child's family or with the child and one or more of the
0199 contestants;

0200 (3) if substantial evidence concerning the child's present or
0201 future care, protection, training, and personal relationships is
0202 more readily available in another state;

0203 (4) if the parties have agreed on another forum which is no
0204 less appropriate; and

0205 (5) if the exercise of jurisdiction by a court of this state would
0206 contravene any of the purposes stated in section 1.

0207 (d) Before determining whether to decline or retain jurisdic-
0208 tion the court may communicate with a court of another state and
0209 exchange information pertinent to the assumption of jurisdiction
0210 by either court with a view to assuring that jurisdiction will be
0211 exercised by the more appropriate court and that a forum will be
0212 available to the parties.

0213 (e) If the court finds that it is an inconvenient forum and that
0214 a court of another state is a more appropriate forum, it may
0215 dismiss the proceedings, or it may stay the proceedings upon
0216 condition that a custody proceeding be promptly commenced in
0217 another named state or upon any other conditions which may be
0218 just and proper, including the condition that a moving party
0219 stipulate such party's consent and submission to the jurisdiction
0220 of the other forum.

0221 (f) The court may decline to exercise its jurisdiction under
0222 this act if a custody determination is incidental to an action for
0223 divorce or another proceeding while retaining jurisdiction over
0224 the divorce or other proceeding.

0225 (g) If it appears to the court that it is clearly an inappropriate
0226 forum it may require the party who commenced the proceedings
0227 to pay, in addition to the costs of the proceedings in this state,
0228 necessary travel and other expenses, including attorneys' fees,
0229 incurred by other parties or their witnesses. Payment is to be

0230 made to the clerk of the court for remittance to the proper party.

0231 (h) Upon dismissal or stay of proceedings under this section
0232 the court shall inform the court found to be the more appropriate
0233 forum of this fact, or if the court which would have jurisdiction in
0234 the other state is not certainly known, shall transmit the informa-
0235 tion to the court administrator or other appropriate official for
0236 forwarding to the appropriate court.

0237 (i) Any communication received from another state informing
0238 this state of a finding of inconvenient forum because a court of
0239 this state is the more appropriate forum shall be filed in the
0240 custody registry of the appropriate court. Upon assuming juris-
0241 diction the court of this state shall inform the original court of
0242 this fact.

0243 New Sec. 8. (a) If the petitioner for an initial decree has
0244 wrongfully taken the child from another state or has engaged in
0245 similar reprehensible conduct the court may decline to exercise
0246 jurisdiction if this is just and proper under the circumstances.

0247 (b) Unless required in the interest of the child, the court shall
0248 not exercise its jurisdiction to modify a custody decree of another
0249 state if the petitioner, without consent of the person entitled to
0250 custody, has improperly removed the child from the physical
0251 custody of the person entitled to custody or has improperly
0252 retained the child after a visit or other temporary relinquishment
0253 of physical custody. If the petitioner has violated any other
0254 provision of a custody decree of another state the court may
0255 decline to exercise its jurisdiction if this is just and proper under
0256 the circumstances.

0257 (c) In appropriate cases a court dismissing a petition under
0258 this section may charge the petitioner with necessary travel and
0259 other expenses, including attorneys' fees, incurred by other par-
0260 ties or their witnesses.

0261 New Sec. 9. (a) Every party in a custody proceeding in the
0262 party's first pleading or in an affidavit attached to that pleading
0263 shall give information under oath as to the child's present ad-
0264 dress, the places where the child has lived within the last five
0265 years, and the names and present addresses of the persons with
0266 whom the child has lived during that period. In this pleading or

0267 affidavit every party shall further declare under oath whether:

0268 (1) The party has participated (as a party, witness, or in any
0269 other capacity) in any other litigation concerning the custody of
0270 the same child in this or any other state;

0271 (2) the party has information of any custody proceeding con-
0272 cerning the child pending in a court of this or any other state; and

0273 (3) the party knows of any person not a party to the proceed-
0274 ings who has physical custody of the child or claims to have
0275 custody or visitation rights with respect to the child.

0276 (b) If the declaration as to any of the above items is in the
0277 affirmative the declarant shall give additional information under
0278 oath as required by the court. The court may examine the parties
0279 under oath as to details of the information furnished and as to
0280 other matters pertinent to the court's jurisdiction and the dispo-
0281 sition of the case.

0282 (c) Each party has a continuing duty to inform the court of
0283 any custody proceeding concerning the child in this or any other
0284 state of which the party obtained information during this pro-
0285 ceeding.

0286 (d) Any party who submits information pursuant to this sec-
0287 tion knowing the same to be false shall, upon conviction, be
0288 deemed guilty of a class C misdemeanor.

0289 New Sec. 10. If the court learns from information furnished
0290 by the parties pursuant to section 9 or from other sources that a
0291 person not a party to the custody proceeding has physical custody
0292 of the child or claims to have custody or visitation rights with
0293 respect to the child, it shall order that person to be joined as a
0294 party and to be duly notified of the pendency of the proceeding
0295 and of such person's joinder as a party. If the person joined as a
0296 party is outside this state the person shall be served with process
0297 or otherwise notified in accordance with section 5.

0298 New Sec. 11. (a) The court may order any party to the pro-
0299 ceeding who is in this state to appear personally before the court.
0300 If that party has physical custody of the child the court may order
0301 that the party appear personally with the child.

0302 (b) If a party to the proceeding whose presence is desired by
0303 the court is outside this state with or without the child, the court

0304 may order that the notice given under section 5 include a state-
0305 ment directing that party to appear personally with or without the
0306 child and declaring that failure to appear may result in a decision
0307 adverse to that party.

0308 (c) If a party to the proceeding who is outside this state is
0309 directed to appear under subsection (b) or desires to appear
0310 personally before the court with or without the child, the court
0311 may require another party to pay to the clerk of the court travel
0312 and other necessary expenses of the party so appearing and of the
0313 child if this is just and proper under the circumstances.

0314 New Sec. 12. A custody decree rendered by a court of this
0315 state which had jurisdiction under section 3 binds all parties who
0316 have been served in this state or notified in accordance with
0317 section 5 or who have submitted to the jurisdiction of the court,
0318 and who have been given an opportunity to be heard. As to these
0319 parties the custody decree is conclusive as to all issues of law and
0320 fact decided and as to the custody determination made unless and
0321 until that determination is modified pursuant to law, including
0322 the provisions of this act.

0323 New Sec. 13. The courts of this state shall recognize and
0324 enforce an initial or modification decree of a court of another
0325 state which had assumed jurisdiction under statutory provisions
0326 substantially in accordance with this act or which was made
0327 under factual circumstances meeting the jurisdictional standards
0328 of the act, so long as this decree has not been modified in
0329 accordance with jurisdictional standards substantially similar to
0330 those of this act.

0331 New Sec. 14. (a) If a court of another state has made a custody
0332 decree, a court of this state shall not modify that decree unless (1)
0333 it appears to the court of this state that the court which rendered
0334 the decree does not now have jurisdiction under jurisdictional
0335 prerequisites substantially in accordance with this act or has
0336 declined to assume jurisdiction to modify the decree and (2) the
0337 court of this state has jurisdiction.

0338 (b) If a court of this state is authorized under subsection (a)
0339 and section 8 to modify a custody decree of another state it shall
0340 give due consideration to the transcript of the record and other

0341 documents of all previous proceedings submitted to it in accord-
0342 ance with section 22.

0343 New Sec. 15. (a) A certified copy of a custody decree of
0344 another state may be filed in the office of the clerk of any district
0345 court of this state. The clerk shall treat the decree in the same
0346 manner as a custody decree of the district court of this state. A
0347 custody decree so filed has the same effect and shall be enforced
0348 in like manner as a custody decree rendered by a court of this
0349 state.

0350 (b) A person violating a custody decree of another state which
0351 makes it necessary to enforce the decree in this state may be
0352 required to pay necessary travel and other expenses, including
0353 attorneys' fees, incurred by the party entitled to the custody or
0354 such party's witnesses.

0355 New Sec. 16. The clerk of each district court shall maintain a
0356 registry in which the clerk shall enter the following:

0357 (a) Certified copies of custody decrees of other states received
0358 for filing;

0359 (b) communications as to the pendency of custody proceed-
0360 ings in other states;

0361 (c) communications concerning a finding of inconvenient
0362 forum by a court of another state; and

0363 (d) other communications or documents concerning custody
0364 proceedings in another state which may affect the jurisdiction of
0365 a court of this state or the disposition to be made by it in a custody
0366 proceeding.

0367 New Sec. 17. The clerk of the district court of this state, at the
0368 request of the court of another state or at the request of any person
0369 who is affected by or has a legitimate interest in a custody decree,
0370 shall certify and forward a copy of the decree to that court or
0371 person.

0372 New Sec. 18. In addition to other procedural devices avail-
0373 able to a party, any party to the proceeding or a guardian *ad litem*
0374 or other representative of the child may adduce testimony of
0375 witnesses, including parties and the child, by deposition or
0376 otherwise, in another state. The court on its own motion may
0377 direct that the testimony of a person be taken in another state and

0378 may prescribe the manner in which and the terms upon which the
0379 testimony shall be taken.

0380 New Sec. 19. (a) A court of this state may request the appro-
0381 priate court of another state to hold a hearing to adduce evidence,
0382 to order a party to produce or give evidence under other pro-
0383 cedures of that state, or to have social studies made with respect
0384 to the custody of a child involved in proceedings pending in the
0385 court of this state; and to forward to the court of this state
0386 certified copies of the transcript of the record of the hearing, the
0387 evidence otherwise adduced, or any social studies prepared in
0388 compliance with the request. The cost of the services may be
0389 assessed against the parties or, if necessary, ordered paid by the
0390 county.

0391 (b) A court of this state may request the appropriate court of
0392 another state to order a party to custody proceedings pending in
0393 the court of this state to appear in the proceedings, and if that
0394 party has physical custody of the child, to appear with the child.
0395 The request may state that travel and other necessary expenses of
0396 the party and of the child whose appearance is desired will be
0397 assessed against another party or will otherwise be paid.

0398 New Sec. 20. (a) Upon request of the court of another state
0399 the courts of this state which are competent to hear custody
0400 matters may order a person in this state to appear at a hearing to
0401 adduce evidence or to produce or give evidence under other
0402 procedures available in this state or may order social studies to be
0403 made for use in a custody proceeding in another state. A certified
0404 copy of the transcript of the record of the hearing or the evidence
0405 otherwise adduced and any social studies prepared shall be
0406 forwarded by the clerk of the court to the requesting court.

0407 (b) A person within this state may voluntarily give testimony
0408 or statement in this state for use in a custody proceeding outside
0409 this state.

0410 (c) Upon request of the court of another state a competent
0411 court of this state may order a person in this state to appear alone
0412 or with the child in a custody proceeding in another state. The
0413 court may condition compliance with the request upon assurance
0414 by the other state that travel and other necessary expenses will be

0415 advanced or reimbursed.

0416 New Sec. 21. In any custody proceeding in this state the
0417 court shall preserve the pleadings, orders and decrees, any record
0418 that has been made of its hearings, social studies, and other
0419 pertinent documents until the child reaches eighteen (18) years of
0420 age. Upon appropriate request of the court of another state the
0421 court shall forward to the other court certified copies of any or all
0422 of such documents.

0423 New Sec. 22. If a custody decree has been rendered in an-
0424 other state concerning a child involved in a custody proceeding
0425 pending in a court of this state, the court of this state upon taking
0426 jurisdiction of the case shall request of the court of the other state
0427 a certified copy of the transcript of any court record and other
0428 documents mentioned in section 21.

0429 New Sec. 23. The general policies of this act extend to the
0430 international area. The provisions of this act relating to the
0431 recognition and enforcement of custody decrees of other states
0432 apply to custody decrees and decrees involving legal institutions
0433 similar in nature to custody institutions rendered by appropriate
0434 authorities of other nations if reasonable notice and opportunity
0435 to be heard were given to all affected persons.

0436 New Sec. 24. If any provision of this act or the application
0437 thereof to any person or circumstances is held invalid, its inva-
0438 lidity does not affect other provisions or applications of the act
0439 which can be given effect without the invalid provision or appli-
0440 cation, and to this end the provisions of this act are severable.

0441 New Sec. 25. Sections 1 to 25 of this act may be cited as the
0442 uniform child custody jurisdiction act.

0443 Sec. 26. K.S.A. 1977 Supp. 38-820 is hereby amended to read
0444 as follows: 38-820. No order or decree permanently depriving a
0445 parent of his or her parental rights in a dependent and neglected
0446 child under subsection (c) of K.S.A. ~~1976~~ 1977 Supp. 38-824,
0447 shall be made unless *the court has jurisdiction to enter a child*
0448 *custody determination in accordance with section 3 and* such
0449 parent is present in district court or has been served with sum-
0450 mons as provided by K.S.A. ~~1976~~ 1977 Supp. 38-810. The judge of
0451 the district court shall assign an attorney to any such parent who

0452 is unable to employ counsel and may award a reasonable fee to
0453 said counsel to be paid from the general fund of the county.

0454 Sec. 27. K.S.A. 1977 Supp. 60-1604 is hereby amended to
0455 read as follows: 60-1604. (a) *Verification of petition.* The truth of
0456 the allegations of any petition under this article must be verified
0457 by the plaintiff in person.

0458 (b) *Contents of petition.* The grounds for divorce, annulment,
0459 or separate maintenance shall be alleged as nearly as possible in
0460 the general language of the statute, without detailed statement of
0461 facts. The petition shall state the names and ages of any minor
0462 children of the marriage. *When there are minor children of the*
0463 *marriage, the petition shall contain, or shall be accompanied by*
0464 *an affidavit which contains, the information required by section 9.*

0465 (c) *Bill of particulars.* The opposing party may demand a
0466 statement of the facts which shall be furnished in the form of a
0467 bill of particulars and the facts stated therein shall be the specific
0468 facts upon which the action shall be tried but if interrogatories
0469 have been served on or a deposition taken of the party from whom
0470 the bill of particulars is demanded the court may in its discretion
0471 refuse to grant the demand for a bill of particulars. A copy shall
0472 be delivered to the judge. The bill of particulars shall not be filed
0473 with the clerk of the court or become a part of the record except on
0474 appeal, and then only when the issue to be reviewed relates to
0475 such facts.

0476 (d) *Service of process.* Service of process shall be made in the
0477 manner provided in article 3 of this chapter.

0478 Sec. 28. K.S.A. 60-1605 is hereby amended to read as follows:
0479 60-1605. The defendant may answer and may also file a cross
0480 petition for divorce, annulment, or separate maintenance regard-
0481 less of the residence of the defendant if the plaintiff qualifies
0482 under subsection (a) or (b) of K.S.A. 60-1603. If new matter is set
0483 up in the answer, it shall be verified by the defendant in person.
0484 If a cross petition is filed, it shall be subject to the provisions of
0485 subsections (a), (b) and (c) of K.S.A. 1977 Supp. 60-1604. *When*
0486 *there are minor children of the marriage, the answer shall contain,*
0487 *or be accompanied by an affidavit which contains, the informa-*
0488 *tion required by section 9.*

0489 Sec. 29. K.S.A. 60-1610 is hereby amended to read as follows:
0490 60-1610. A decree in an action under this article may include
0491 orders on the following matters:

0492 (a) *Care of minor children.* The court shall make provisions
0493 for the ~~custody~~, support and education of the minor children, and
0494 may modify or change any order in connection therewith at any
0495 time, and shall always have jurisdiction to make any such order to
0496 advance the welfare of a minor child if (i) the child is physically
0497 present in the county, or (ii) domicile of the child is in the state, or
0498 (iii) the court has previously exercised jurisdiction to determine
0499 the custody or care of a child who was at such time domiciled in
0500 the state. *The court shall make provision for the custody of the*
0501 *minor children only when the court has jurisdiction to make a*
0502 *child custody decree under the provisions of the uniform child*
0503 *custody jurisdiction act.* In connection with any decree under this
0504 article, the court may set apart such portion of the property of
0505 either the husband or the wife, or both of them, as may seem
0506 necessary and proper for the support of all of the minor children
0507 of the parties, or of either of them. Any order requiring either
0508 parent or both parents to pay for the support of any child until the
0509 age of majority shall terminate when such child attains the age of
0510 eighteen (18) years, unless by prior written agreement approved
0511 by the court such parent or parents specifically agreed to pay such
0512 support beyond the time such child attains the age of eighteen
0513 (18). If the court finds that both parties are unfit to have the
0514 custody of such minor children, their parental rights may be
0515 terminated and the custody of such children placed with an
0516 appropriate person, agency, or association, in or out of the state of
0517 Kansas. If such an order remains in effect for one year or more,
0518 the person, agency, or association having such custody may be
0519 given by the court the power to consent to the adoption of any
0520 such minor child under the adoption laws of this state under the
0521 following conditions:

0522 (1) *Application.* Application shall be made to the district court
0523 in which the decree was granted for permission to consent to such
0524 adoption.

0525 (2) *Notice.* At least thirty (30) days written notice of such

0526 application shall be given to the parents, if their whereabouts are
0527 known, and to their attorneys of record, if any, by restricted mail
0528 prior to the hearing of the application.

0529 (3) *Restoration of parental rights.* If the court permits such
0530 consent to be given, the court in which the adoption proceedings
0531 are commenced shall have exclusive jurisdiction over the custody
0532 of the minor child. If the adoption proceedings do not result in
0533 final adoption, the jurisdiction of the district court shall be
0534 immediately restored, and parental rights which have been ter-
0535 minated under the provisions of this subsection may be restored
0536 on the application of either party by order of the court in which
0537 they were terminated and on such reasonable notice to all parties
0538 affected as the court may require.

0539 (b) *Child custody where parental rights not terminated.* In all
0540 cases involving the custody of any minor children, the court shall
0541 consider the best interests of such children to be paramount.
0542 Where parental rights have not been terminated, neither parent
0543 shall be considered to have a vested interest in the custody of any
0544 such child as against the other parent, regardless of the age of the
0545 child.

0546 (c) *Division of property.* The decree shall divide the real and
0547 personal property of the parties, whether owned by either spouse
0548 prior to marriage, acquired by either spouse in his or her own
0549 right after marriage, or acquired by their joint efforts, in a just and
0550 reasonable manner, either by a division of the property in kind, or
0551 by setting the same or a part thereof over to one of the spouses and
0552 requiring either to pay such sum as may be just and proper, or by
0553 ordering a sale of the same under such conditions as the court
0554 may prescribe and dividing the proceeds of such sale.

0555 (d) *Maintenance.* The decree may award to either party an
0556 allowance for future support denominated as alimony, in such
0557 amount as the court shall find to be fair, just and equitable under
0558 all of the circumstances. The decree may make the future pay-
0559 ments conditional or terminable under circumstances prescribed
0560 therein. The allowance may be in a lump sum or in periodic
0561 payments or on a percentage of earnings or on any other basis. At
0562 any time, on a hearing with reasonable notice to the party af-

0563 fected, the court may modify the amounts or other conditions for
0564 the payment of any portion of the alimony originally awarded
0565 that have not already become due, but no modification shall be
0566 made, without the consent of the party liable for the alimony, if it
0567 has the effect of increasing or accelerating the liability for the
0568 unpaid alimony beyond what was prescribed in the original
0569 decree.

0570 (e) *Separation agreement.* If the parties have entered into a
0571 separation agreement which the court finds to be valid, just, and
0572 equitable, it shall be incorporated in the decree; and the provi-
0573 sions thereof on all matters settled thereby shall be confirmed in
0574 the decree except that any provisions for the custody, support, or
0575 education of the minor children shall be subject to the control of
0576 the court in accordance with all other provisions of this article.
0577 Matters, settled by such an agreement, other than matters per-
0578 taining to the custody, support, or education of the minor chil-
0579 dren, shall not be subject to subsequent modification by the court
0580 except as the agreement itself may prescribe or the parties may
0581 subsequently consent.

0582 (f) *Restoration of name.* Upon the request of the wife, the
0583 court shall order the restoration of her maiden or former name.

0584 (g) *Costs and fees.* Costs and attorneys' fees may be awarded
0585 to either party as justice and equity may require.

0586 (h) *Effective date.* Every decree of divorce shall contain a
0587 provision to the effect that the parties are prohibited from con-
0588 tracting marriage with any other persons until thirty (30) days
0589 after the entry of the decree, unless an appeal is taken, and then
0590 until the receipt of the mandate issued in accordance with sub-
0591 section (c) of K.S.A. 60-2106. Any marriage contracted before the
0592 expiration of that period shall be null and void, and any agree-
0593 ment to waive the right of appeal shall not be effective to shorten
0594 such period of time.

0595 Sec. 30. K.S.A. 60-1611 is hereby amended to read as follows:
0596 60-1611. A judgment or decree of divorce rendered in any other
0597 state or territory of the United States, in conformity with the laws
0598 thereof, shall be given full faith and credit in this state; except,
0599 that in the event the defendant in such action, at the time of such

0600 judgment or decree, was a resident of this state and did not
0601 personally appear or defend the action in the court of such state or
0602 territory, and such court did not have jurisdiction over his or her
0603 person, all matters relating to alimony, ~~and to the~~ property rights
0604 of the parties; and ~~to the custody and~~ maintenance of the minor
0605 children of the parties, shall be subject to inquiry and determi-
0606 nation in any proper action or proceeding brought in the courts of
0607 this state within two (2) years after the date of the foreign
0608 judgment or decree, to the same extent as though the foreign
0609 judgment or decree had not been rendered. *Nothing herein shall*
0610 *authorize a court of this state to enter a custody decree, as defined*
0611 *in section 2, contrary to the provisions of the uniform child*
0612 *custody jurisdiction act.*

0613 Sec. 31. K.S.A. 60-1605, 60-1610 and 60-1611 and K.S.A.
0614 1977 Supp. 38-820 and 60-1604 are hereby repealed.

0615 Sec. 32. This act shall take effect and be in force from and
0616 after its publication in the statute book.

Session of 1978

HOUSE BILL No. 2714

By Special Committee on Judiciary—B

Re Proposal No. 43

12-7

0017 AN ACT defining and classifying the crime of aggravated inter-
0018 ference with parental custody; supplementing the Kansas
0019 criminal code.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. (1) Aggravated interference with parental
0022 custody is hiring someone to commit the crime of interference
0023 with parental custody, as defined by K.S.A. 21-3422, or commit-
0024 ting interference with parental custody, as defined by K.S.A.
0025 21-3422, when:

0026 (a) Done by a person who has previously been convicted of
0027 interference with parental custody, as defined by K.S.A. 21-3422;
0028 or

0029 (b) committed by a person who is armed with a dangerous
0030 weapon;

0031 (c) committed by a person for hire; or

0032 (d) the child is taken outside the state or the defendant, after
0033 lawfully taking the child outside the state while exercising visi-
0034 tation rights, refuses to return the child to this state to a parent
0035 entitled to custody of the child.

0036 Aggravated interference with parental custody is a class E
0037 felony.

0038 (2) This section shall be a part of and supplemental to the
0039 Kansas criminal code.

0040 Sec. 2. This act shall take effect and be in force from and after
0041 its publication in the statute book.

□