

Held in Room 519 S, at the Statehouse at 11:00 a.m./p.m., on March 24, 19 78.

All members were present except: Senators Gaar, Gaines and Hein

The next meeting of the Committee will be held at 1:30 a.m./p.m., on March 24, 19 78.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxxxx, 1978 were considered, corrected and approved.~~

Clarence Hambrick

Chairman

The conferees appearing before the Committee were:

Staff present:

- Art Griggs - Revisor of Statutes
- Jim Wilson - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

House Bill 2717 - Sub. for HB 2717; Liens on residential property, warning statements. Following committee discussion, Senator Hess moved to amend the bill to reduce the penalty to a class C misdemeanor; Senator Parrish seconded the motion, and the motion carried. Senator Parrish moved to strike the house floor amendments relating to dairy and agricultural improvements; Senator Hess seconded the motion, and the motion carried. Senator Hess moved to amend the bill in line 54 to provide for a written request; Senator Parrish seconded the motion, and the motion carried. Following further committee discussion, Senator Parrish moved to strike the criminal penalties; Senator Steineger seconded the motion, and the motion carried. Senator Steineger moved to provide for better correlation between sections 1 and 2; Senator Parrish seconded the motion, and the motion carried. Senator Steineger moved to report the bill favorably as amended; Senator Parrish seconded the motion, and the motion carried, on a vote of five to three.

House Bill 3203 - Garnishment to enforce support orders. Following committee discussion, Senator Parrish moved to report the bill unfavorably; Senator Steineger seconded the motion. Following further committee discussion, the motion was withdrawn. Senator Parrish moved to amend the contents of SB 932 into this bill; Senator Simpson seconded the motion, and the motion carried. Senator Parrish moved to strike section 1 of the bill; Senator Simpson seconded the motion, and the motion carried. Senator Parrish moved to report the bill favorably as amended; Senator Simpson seconded the motion, and the motion carried.

continued -

House Bill 2787 - Open public meetings, notice. Following committee discussion, Senator Burke moved to report the bill favorably; Senator Hess seconded the motion, and the motion carried.

House Bill 2712 - Sub. for HB 2712; crimes and criminal procedure, presentence reports, sentencing, probation conditions, parole eligibility, transfer of probation and parole functions, DOC and KAA regulations. Mr. Griggs reported that portions of the original bill that were deleted were inserted into a separate bill, and that separate bill did not pass out of the House Judiciary Committee. The chairman pointed out conflicts that exist between this bill and four other bills. It was again pointed out that this substitute bill is a merger of six different bills recommended by interim committees. Mr. Griggs explained that part of the bill that deals with sentencing. Mr. Jim Wilson explained the portions of the bill relating to corrections.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-24-78.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Antonio Ramos	3424 Westwood Dr.	Dept. of Corrections
John Hurka	1830 H. E. 31 st	Dept. of Corr.
B. Ramcharan	29 Rutgers Poplar	Dept of Corr.
Wayne K.	3110 W. 30th, Topeka	Dept. of Corrections
Morris C. Umbholtz	Lawrence	KCU
Charles V. Hamm	State Office Bldg.	SRS

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 enacts 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;

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 modifies 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

0156 proceeding concerning the custody of the child was pending in a
0157 court of another state exercising jurisdiction substantially in
0158 conformity with this act, unless the proceeding is stayed by the
0159 court of the other state because this state is a more appropriate
0160 forum or for other reasons.

0161 (b) Before hearing the petition in a custody proceeding the
0162 court shall examine the pleadings and other information supplied
0163 by the parties under section 9 and shall consult the child custody
0164 registry established under section 16 concerning the pendency of
0165 proceedings with respect to the child in other states. If the court
0166 has reason to believe that proceedings may be pending in another
0167 state it shall direct an inquiry to the state court administrator or
0168 other appropriate official of the other state.

0169 (c) If the court is informed during the course of the proceed-
0170 ing that a proceeding concerning the custody of the child was
0171 pending in another state before the court assumed jurisdiction it
0172 shall stay the proceeding and communicate with the court in
0173 which the other proceeding is pending to the end that the issue
0174 may be litigated in the more appropriate forum and that infor-
0175 mation be exchanged in accordance with sections 19 through 22.
0176 If a court of this state has made a custody decree before being
0177 informed of a pending proceeding in a court of another state it
0178 shall immediately inform that court of the fact. If the court is
0179 informed that a proceeding was commenced in another state after
0180 it assumed jurisdiction it shall likewise inform the other court to
0181 the end that the issues may be litigated in the more appropriate
0182 forum.

0183 New Sec. 7. (a) A court which has jurisdiction under this act
0184 to make an initial or modification decree may decline to exercise
0185 its jurisdiction any time before making a decree if it finds that it is
0186 an inconvenient forum to make a custody determination under
0187 the circumstances of the case and that a court of another state is a
0188 more appropriate forum.

0189 (b) A finding of inconvenient forum may be made upon the
0190 court's own motion or upon motion of a party or a guardian *ad*
0191 *litem* or other representative of the child.

0192 (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 (c) 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.

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.

No. 48,125

In the Matter of the Application of Nancy E. Jolly for a Writ of Habeas Corpus. NANCY E. JOLLY, Appellee, v. LYNDELL L. AVERY, Appellant.

(558 P. 2d 449)

SYLLABUS BY THE COURT

1. PARENT AND CHILD—*Bringing Child into Kansas under Visitation Order—Continuing Jurisdiction in Michigan Court—Full Faith and Credit.* 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, then in the interest of comity a Kansas court may, and in most instances should, give full faith and credit to the decree of our sister state and decline to hear on its merits an application to change custody made here under such circumstances.
2. HABEAS CORPUS—*Child Custody Proceedings—Refusing to Transfer to Another Division—Accepting Allegations of Petition—Refusing to Hear Evidence of Changed Conditions.* In a habeas corpus proceeding for the custody of a child, it is held that the trial court did not err (1) in refusing to transfer the matter to another division of the same court where another action between the parties was pending, and in proceeding to hear and determine the matter with dispatch; (2) in accepting the allegations of the verified petition as true, in the absence of a good faith denial thereof; (3) in refusing to hear evidence of changed circumstances, in the exercise of its discretion; and (4) in granting the petition.

Appeal from Johnson district court, division No. 6; LEWIS C. SMITH, judge. Opinion filed November 6, 1976. Affirmed.

Bruce F. Landeck, of Lowe, Terry & Roberts, of Olathe, argued the cause and was on the brief for the appellant.

No appearance or brief was filed on behalf of the appellee.

The opinion of the court was delivered by

MILLER, J.: This habeas corpus proceeding involves the custody of eleven-year-old Michael Lynn Avery. His mother, Nancy E. Jolly, is the petitioner-appellee; his father, Lyndell L. Avery, is respondent and appellant. The matter was heard and the petition granted in Division 6 of the District Court of Johnson County, Kansas. The respondent raises several points on appeal, most of which involve the exercise of discretion by the trial court.

The background facts are not remarkable. Nancy and Lyndell were married in Kansas in 1957. They then moved to Michigan, where Michael was born in 1964. Four years later the parents separated. Nancy remained in Michigan; Lyndell returned to Kansas and has resided in Johnson County since 1968. Nancy filed

for divorce, and a default of the Circuit Court of Oakland County, Michigan, for breach of marriage contract and grant of custody of Michael to Nancy. Michael. The court also granted Nancy, including the right to have Michael up to one month each summer until he is remarried.

Michael came to visit his mother in Kansas. Nancy says that Michael called her and Lyndell agreed to return him to Michigan. Instead, Lyndell telephoned Nancy and told her that Michael would not be returning to him that Michael would not be returning to him. Lyndell acknowledges that Michael is in Michigan pursuant to the visitation order of the Circuit Court of Oakland County, Michigan, until the petition for writ of habeas corpus is granted.

Next in the chain of events was a temporary emergency order on August 29, 1976, granting Michael to his home in Michigan from the custody of Nancy on September 17 at 9 a. m. Lyndell was punished for contempt. The writ was granted on September 5.

Lyndell, on September 2, 1976, filed a petition in the Court of Johnson County, Kansas, for a writ of habeas corpus and permanent custody of Michael to Lyndell. On the change of circumstances since the divorce in 1969, and the unfitness of Nancy as a custodian, Nancy was served with summons and assigned to division 5.

Nancy filed her verified petition in the District Court of Johnson County, Kansas. She pleaded the 1969 decree granting Michael's custody and the court's order requiring Lyndell to return Michael to Michigan. In standing these orders, Lyndell refused to return Michael to Nancy and is in violation of the writ of habeas corpus granted on September 10. The record does not show when Michael was served.

Lyndell answered the ha

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for divorce, and a default decree was entered in April, 1969, by the Circuit Court of Oakland County, Michigan, dissolving the marriage contract and granting to Nancy the care and custody of Michael. The court also granted visitation privileges to Lyndell, including the right to have Michael come to Kansas for a visit of up to one month each summer. Both Nancy and Lyndell have remarried.

Michael came to visit his father during the summer of 1975. Nancy says that Michael came to Kansas on August 8, and that Lyndell agreed to return him to Michigan on August 28, but instead, Lyndell telephoned Nancy's attorney on that date advising him that Michael would not be returned to Michigan. Lyndell acknowledges that Michael came to Kansas to visit him under and pursuant to the visitation orders entered by the Circuit Court of Oakland County, Michigan, and that Michael remained in Kansas until the petition for writ of habeas corpus was heard.

Next in the chain of events, the circuit court entered an emergency order on August 29, directing Lyndell to return Michael to his home in Michigan immediately, or to appear before that court on September 17 at 9 a. m. to show cause why he should not be punished for contempt. This order was served upon Lyndell on September 5.

Lyndell, on September 2, commenced an action in the District Court of Johnson County, Kansas wherein he sought the temporary and permanent custody of Michael. He alleged in his petition a change of circumstances since the granting of the Michigan decree in 1969, and the unfitness of both Nancy and her present husband. Nancy was served with summons on September 9. This case was assigned to division 5.

Nancy filed her verified application for a writ of habeas corpus in the District Court of Johnson County, Kansas on September 8. She pleaded the 1969 decree of the Michigan court granting her Michael's custody and the emergency order of August 29 requiring Lyndell to return Michael to Michigan. She alleged that notwithstanding these orders, Lyndell was unlawfully restraining and holding Michael in his custody. This action was assigned to division 6, and a writ of habeas corpus was issued, returnable on September 10. The record does not reflect the date on which the writ was served.

Lyndell answered the habeas petition and a hearing was held

before division 6 of the Johnson County District Court on September 10, both parties appearing in person and by counsel, and Michael being out of the courtroom but within the building. The court refused to hear evidence as to changed circumstances or fitness of the parents, and limited its consideration to (1) whether there was a valid and effective order of the Michigan court awarding custody, and (2) whether there was a violation of that order. It found in the affirmative on both questions, determined that in the interest of comity it should give full faith and credit to the Michigan court order, and granted Nancy immediate custody of Michael.

Simply stated, respondent here complains that the court erred in not holding an evidentiary hearing; in failing to transfer the matter to division 5 under local rule 3; and in refusing to grant respondent a stay pursuant to K. S. A. 60-1505. We will consider these points in the order stated.

The court was first faced with a determination of whether to hold a full evidentiary hearing on the issue of change of custody as urged by the respondent. Lyndell's answer denied all of the allegations of the petition except the identities of the parties and their residences, and that they are the natural parents of Michael. However, attached as an exhibit to the answer was a copy of the verified petition for change of custody filed by Lyndell a few days previously in the same court. By that verified document Lyndell pleaded facts which he chose to deny in the habeas action—that the parties were divorced by decree of a Michigan court, which decree awarded custody of Michael to Nancy and visitation privileges to him; and that Michael was physically present in Johnson County pursuant to the visitation granted Lyndell by the court in Michigan. He challenged the copies of the orders of the Michigan court appended to the habeas petition because they were certified and not authenticated. The trial court specifically inquired if respondent denied or in any way challenged the validity of those orders, and no challenge except as to lack of certification was forthcoming. The long and short of respondent's argument then and now is that he wanted the trial court to hold an evidentiary hearing not on the validity of the Michigan court orders but upon his request for a change of custody.

Here we have a parent who brings a child into Kansas temporarily under a summer visitation order entered by a court of our

sister state, and then seeks to have the courts to avoid compliance with the custody of the minor and continuing jurisdiction in the state and may upon proper application for custody or otherwise alter the custody for the care, custody or support of *Rybinski v. Rybinski*, 30 Kan. App. 395, 164 N. W. 2d 811; *Sperti*, 326 Mich. 620, 49 N. W. 2d 395.

At the time of the hearing in this matter, the Michigan court order of August 29, and the trial court recognized the hearing, but declined to issue its memorandum, the trial court

“ . . . The Court is of the opinion that an evidentiary hearing on change of custody is not required if full faith and credit . . . [is] given to the Michigan court order.”

The trial court also indicated that the doctrine in exercising its jurisdiction

The problem facing the court (now Chief Justice) Fahey was discussed in *Perrenoud*, 206 Kan. 559.

“Frequently courts have refused to give full faith and credit” or “comity” to the orders of its merits, or to exercise the jurisdiction over children within their jurisdiction. A decree of a court of one state over minor children, is, under the doctrine of comity, entitled to recognition in the other state. A limited application to child custody is such a decree that it is not entitled to such a decree that it is not entitled to the parties to show a change of custody.

“It is apparent that . . . the doctrine of comity is being applied in a shopping” . . . Some courts have been prevented by the imposition of the doctrine from invoking the court's jurisdiction. If such decree, or has made no application for custody of the children, or is not entitled to the doctrine seems to be making a distinction upon in some jurisdictions with respect to cases of this character, the c

sister state, and then seeks to invoke the equity jurisdiction of our courts to avoid compliance with the order under which temporary custody of the minor was secured. The Michigan court has continuing jurisdiction in child custody matters under MSA 25.97, and may upon proper application and showing, change the custody or otherwise alter or revise the decree insofar as it provides for the care, custody or support of minor children of the marriage. *Rybinski v. Rybinski*, 333 Mich. 592, 53 N. W. 2d 386; *Sperti v. Sperti*, 326 Mich. 620, 40 N. W. 2d 746; *Young v. Young*, 13 Mich. App. 395, 164 N. W. 2d 585.

At the time of the hearing on September 10 before the trial court in this matter, the Michigan court had already issued its emergency order of August 29, and had scheduled a hearing for September 17. The trial court recognized its jurisdiction to hold an evidentiary hearing, but declined to do so in the exercise of its discretion. In its memorandum, the trial court said:

“ . . . The Court is aware that it could have jurisdiction to have an evidentiary hearing on change of custody but feels that it should give full faith and credit . . . [to the Michigan court proceedings].”

The trial court also indicated that it was invoking the “clean hands” doctrine in exercising its discretion.

The problem facing the trial court is a recurring one. Justice (now Chief Justice) Fatzer discussed it in detail in *Perrenoud v. Perrenoud*, 206 Kan. 559, 576-578, 480 P. 2d 749, where he said:

“Frequently courts have been faced with the problem whether to give ‘full faith and credit’ or ‘comity’ to a sister state’s decree and refuse to reexamine its merits, or to exercise their own discretion and protect the welfare of minor children within their jurisdiction. . . . This court has recognized that a decree of a court of one state having jurisdiction relating to the custody of minor children, is, under the doctrine of ‘comity’ prevailing among sister states, entitled to recognition in this state. However, full faith and credit has only limited application to child custody decrees; it is inherent in the nature of such a decree that it is not final and conclusive, but is subject to the right of the parties to show a change of circumstances and conditions. . . .

“It is apparent that . . . the door is open wide, so to speak, to ‘forum shopping’. . . . Some decisions point out that such abuse may be prevented by the imposition of the ‘clean hands’ doctrine which prevents a parent from invoking the court’s jurisdiction if he is a fugitive from the state issuing such decree, or has made misrepresentations in some way to obtain the custody of the children, or is flaunting a foreign proceeding or decree. The doctrine seems to be making advancement in family law and is being relied upon in some jurisdictions where the circumstances merit its application. In cases of this character, the court is dealing with a matter equitable in nature

where the child's welfare is the paramount consideration, and it is a familiar equitable maxim that [h]e who comes into equity must come in with clean hands."

"The 'clean hands' doctrine, as applied in child custody cases, is an equitable one, is not an absolute, and is to be applied or not applied at the court's discretion in each particular case."

Anderson v. Anderson, 214 Kan. 387, 520 P. 2d 1239, is factually similar to the case at hand. The Andersons were divorced in Minnesota. The trial court gave Mr. Anderson custody of the minor child, and granted Mrs. Anderson visitation privileges, including the right to bring the child to Kansas for four weeks during the summer. Mrs. Anderson brought the child here in the summer as authorized, and before the visit ended filed an action in the District Court of Sedgwick County alleging a change of circumstances and praying for a change of custody. While that action was pending and undetermined, Mr. Anderson, finding his child and former wife living in El Dorado, filed an action in habeas corpus in the District Court of Butler County. In his petition he set out the Minnesota decree and alleged that Mrs. Anderson was violating its provisions by retaining the child after her visitation rights expired. The trial court granted the writ. It gave full faith and credit to the Minnesota decree and, applying the "clean hands" doctrine, denied Mrs. Anderson's request to introduce evidence showing a change of circumstances. We affirmed, relying upon and citing extensively from *Perrenoud*, supra.

We think the trial court here was fully justified in taking like action. Plaintiff complains that there was no evidence before the trial court on which to render such a decision. He points out that his answer constituted a general denial, thus putting in issue all of the factual allegations of the habeas petition. His answer, however, includes a copy of his verified petition in the change of custody action he had commenced. A comparison of the denials in the answer with the averments in respondent's petition indicates that the general denial was not advanced in the utmost good faith.

Our rule, K. S. A. 60-208 (b) (since amended), provides in applicable part that a party:

" . . . [S]hall admit or deny the averments upon which the adverse party relies. . . . Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part . . . of an averment, he shall specify so much of it as is true . . . and shall deny only the remainder. . . ."

As Judge Gard notes the rule requires in erally, he must mean the parties were divorced in Oakland County, Michigan, the custody of Michael was given to him. In his petition for divorce filed in Michigan in April, 1969; that the child, Nancy, was in the custody of the defendant in Oakland County, Kansas, visitation orders entered in Michigan in its divorce decree. It was read and is readily apparent that the defendant controvert the material purpose would have offered evidence to establish those allegations were true with the conflicting custody, did not constitute a violation of the provisions of the petition.

Respondent's counsel argued before the trial court that the change of custody— the habeas petition. for the trial court to a

Respondent contended that he was not "for clean hands"; and that the court order since the child was vacated, modified or the minor child with the child to his mother in this state. The Michigan requiring respondent

As Judge Gard notes in his Kansas Code of Civil Procedure, p. 33, the rule requires in substance that where a pleader denies generally, he must mean it. Respondent, in his answer, denied that the parties were divorced on April 9, 1969, in the Circuit Court of Oakland County, Michigan. He denied that that court granted the custody of Michael to Nancy and granted visitation privileges to him. In his petition, however, he alleged that the parties were divorced by decree of the Circuit Court of Oakland County in April, 1969; that the decree granted the custody of Michael to Nancy; and alleged that Michael was physically present in Johnson County, Kansas, visiting with respondent at his residence under the visitation orders entered by the Circuit Court of Oakland County, Michigan in its divorce decree. Further, he alleged that he remarried on May 10, 1969, the month following the entry of the decree. It was readily apparent to the trial court at the hearing, and is readily apparent to us, that respondent did not in good faith controvert the material allegations of the habeas petition. No useful purpose would have been served by requiring the petitioner to offer evidence to establish the allegations of her petition, when those allegations were not controverted. The answer, when read with the conflicting averments of the attached petition to change custody, did not constitute a specific denial of the material allegations of the petition.

Respondent's counsel orally indicated a desire to offer evidence before the trial court in support of respondent's application for a change of custody—not evidence challenging the allegations of the habeas petition. Under these circumstances it was not error for the trial court to accept the statements in the petition as true.

Respondent contends that the court erred in not holding an evidentiary hearing on his request to change custody. He contends that he was not "forum shopping"; that he came into court with "clean hands"; and that he was not in contempt under the Michigan court order since the show cause hearing had not yet been held. The court found that the Michigan custody order had not been vacated, modified or changed and that respondent received the minor child with the understanding that the child would be returned on August 28. Notwithstanding, respondent did not return the child to his mother in Michigan, but maintained him within this state. The Michigan court then entered its emergency order requiring respondent to immediately return the minor child to

Michigan or show cause why he should not be punished for contempt. These findings of the trial court are supported by the record.

We hold 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, then in the interest of comity a Kansas court may, and in most instances should, give full faith and credit to the decree from our sister state and decline to hear on its merits an application to change custody made here under such circumstances. To hold otherwise would create chaos in child custody proceedings, discourage the granting of visitation privileges to nonresidents, aggravate relationships between separated spouses, and, most importantly, would adversely affect the children involved. Here, it is clear that respondent was holding the child in violation of the orders of the Michigan court. That court had, prior to the Kansas hearing, set the matter down for hearing. Respondent had notice of that setting. Under the circumstances, petitioner did not come into the District Court of Johnson County with "clean hands," and the trial court did not abuse its discretion by declining to hear the application to change custody, and by giving full faith and credit to the Michigan proceedings, where the matter was already set and could be fully heard.

Petitioner also complains that the trial court erred in not transferring the habeas petition to division 5 of the District Court of Johnson County where his action to change custody was pending. Local rule 3 provides for the assignment of companion cases to the division having the lowest number. A similar question arose in *Anderson v. Anderson*, supra. There we noted that the habeas court might have deferred taking action until after final hearing on the pending change of custody action, but we held it was not required to give the earlier case priority. Similarly, we know of no legal impediment to the trial court's proceeding to hear the habeas petition here.

As the United States Supreme Court observed in *Fay v. Noia*, 372 U. S. 391, 399, 400, 9 L. Ed. 2d 837, 83 S. Ct. 822:

"We do well to bear in mind the extraordinary prestige of the Great Writ, *habeas corpus ad subjiciendum*, in Anglo-American jurisprudence: 'the most celebrated writ in the English law.' 3 Blackstone Commentaries 129. It is 'a writ antecedent to statute, and throwing its root deep into the genius of our common law. . . . It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. . . .'"

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Habeas corpus has been described as a high prerogative common law writ of ancient origin. Its function is to provide a speedy and efficacious remedy to illegal restraint. Clearly, by its very nature, a proceeding in habeas corpus is entitled to priority; the judge is directed by statute to "proceed in a summary way to hear and determine the cause. . . ." K. S. A. 60-1505 (a). We conclude that the trial court did not err in proceeding to hear the matter with dispatch on the return date of the writ, and in denying the requested transfer to division 5 under local rule 3.

Finally, respondent contends that the trial court committed reversible error in failing to grant a stay of its order pursuant to K. S. A. 60-1505 (d). Respondent, however, has sustained no prejudice and we therefore need not consider this point.

For the reasons stated, the judgment is affirmed.