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Criminal Jurisdiction of the Kentucky Courts: A Tentative Codification

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The criminal jurisdiction of the Kentucky courts is considerably confused. This is occasioned partly, if not largely, by the fact that it is derived from three sources, the Kentucky Constitution, Kentucky Revised Statutes, and the Kentucky Criminal Code. Undoubtedly the situation should be clarified and simplified and this paper is a tentative step in that direction. No attempt is made to change the existing law but rather the transposition of procedural rules from the Kentucky Revised Statutes to the Code and then a tentative consolidation and clarified statement for the Code of the criminal jurisdiction of the various courts.

The system of courts in Kentucky is provided for in the Constitution itself which establishes the court of appeals, circuit courts, county courts, quarterly courts, justice of the peace courts, and police courts. It is possible to group county, quarterly, justice and police courts in one jurisdictional category it is believed, and this has been done. Code sections naturally grow by legislative accretion and periodically some pruning becomes necessary. Almost all of sections 13-25 of the Criminal Code seem of value and have been incorporated in the tentative codification. A few have been omitted. Should some of these also be included?

There are various ways in which the criminal jurisdiction of the courts could be stated. For example, it could be categorized

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H. Wendell Cherry, Research Assistant, aided materially in the preparation of this tentative codification. A Note, *The Original Criminal Jurisdiction Of Courts In Kentucky*, prepared by Mr. Cherry and Linza B. Inabnit and published in 47 Ky. L. J., will be found helpful.

according to the punishment prescribed for felonies and misdemeanors, reserving specific categories for certain offenses which constitute exceptions and this method has been used in a chart which appears in 47 Kentucky Law Journal at page 114, to which the reader is referred. The writer, however, has found it more expedient, and perhaps more wise, to follow the method employed in the present Code, which codifies jurisdiction according to the *courts* which exercise it.

One purpose of this tentative codification and its publication is to get suggestions from Kentucky readers and practitioners as to possible errors or omissions in the draft, and so communications to the writer relative to such are requested and will be appreciated. The tentative suggested provisions are as follows: Rule 1. (sec. 13, present Code) Jurisdiction of various courts. The jurisdiction of the courts of this commonwealth, for the trial of offenses, shall be as follows:

(1) Senate of Kentucky. The Senate of Kentucky shall have exclusive jurisdiction of impeachments. (Constitution, sec. 67).

(2) Court of Appeals. The Court of Appeals shall have appellate jurisdiction only. However, said court shall have power to issue such writs as may be necessary to give it a general control of inferior jurisdictions. Said court shall have exclusive jurisdiction of proceedings for the removal of clerks of courts from office. (Constitution, secs. 110, 124).

Comment:

Rule 1. (1) The Constitution provides in sec. 67 that all impeachments shall be tried by the Senate. This is the only jurisdiction which the Senate has over actions criminal in nature and it extends over the Governor and all civil officers who are liable to impeachment for any misdemeanor in office. The judgment in such cases shall not exceed removal from office and disqualification to hold any office of honor, trust or profit. However, the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law. Ky. Const. sec. 68.

(2) The jurisdiction of the Court of Appeals embraces the whole Commonwealth. Const. sec. 110. According to the Constitution, "the Court of Appeals shall have appellate jurisdiction only." Const. sec. 110. The Court has control over state courts of inferior jurisdiction and can issue writs to enforce it. Const. sec. 110. The clerks of the Court

of Appeals, Circuit and County Courts shall be removed from office by the Court of Appeals. Ky. Const. sec. 124.

(3) The circuit courts shall have general jurisdiction for the trial of all prosecutions and penal actions, unless exclusive jurisdiction be given to other courts. Except as provided in sec. 14 (or equivalent) of this code, or in other instances where jurisdiction is given by legal authority, circuit courts shall have no jurisdiction in penal and misdemeanor cases where the punishment is limited to a fine of not more than twenty dollars. The circuit courts shall have exclusive jurisdiction to try violations of KRS secs. 183.530 to 183.620.¹ Except as provided in KRS secs. 26.010,² 167.990,³ 199.990,⁴ 208.170,⁵ House Bill 49 (1958),⁶ and 242.990,⁷ the circuit courts shall have concurrent jurisdiction with county, quarterly, justice and police courts of all penal and misdemeanor cases where punishment is limited to a fine of not more than five hundred dollars, or imprisonment for not more than twelve months, or both.⁸

Comment: An attempt has been made in this revised section to make the statement of the jurisdiction of circuit courts more definitive while retaining the statement of residual jurisdiction contained in the existing section, Ky. Crim. Code sec. 13.3. In the revised section an

¹ KRS 183.990(3). KRS Ch. 183 relates to the regulation of air transportation.

² KRS sec. 26.010 has a provision providing that police courts shall have exclusive jurisdiction of violations of city ordinances occurring within the city limits.

³ KRS sec. 167.990 relates to age and compulsory school attendance of deaf children.

⁴ KRS sec. 199.990, contributing to delinquency of a minor.

⁵ KRS sec. 208.170 provides that juveniles may be transferred to circuit court from county court by waiver in case of certain criminal offenses.

⁶ HB 49 (1958) provides that in any prosecution of a moving motor vehicle offense involving a child 16 years of age or older the Juvenile offender shall be treated as any adult offender.

⁷ KRS sec. 242.990 relates to violation of Alcoholic Beverages—Local Option laws.

⁸ See also, KRS secs. 178.990 and 179.990 as to prosecutions for failure to perform duties relating to roads.

In certain cases the Franklin Circuit Court has exclusive or concurrent jurisdiction to try violations of statutes relating to state and local officials, railroads, banks and trust companies, and insurance companies. See, for example, KRS secs. 41.990(2); 42.990(1); 43.990(1), (3), (5); 45.990(1); 46.080; 46.990(3), (4); 118.990(2); 134.990(7); 135.990(2); 136.990(13); and 304.990(1)(c).

In the following instances, for example, the Franklin Circuit Court or the Circuit Court of the County in which the offense is committed has jurisdiction to try violations: KRS secs. 277.990(2) and 287.990(12). A Note, 47 Ky. L. J. 107, fn. 21 (1958), attempts to enumerate the instances in which the Franklin Circuit Court has exclusive or concurrent jurisdiction to try specific offenses.

attempt has been made to clarify the criminal jurisdiction of the circuit courts by consolidating KRS secs. 25.010 and 26.010 and setting them out positively in the revised section. Further, the section is made more clear by including in the text of the revised section the express statutory exceptions to the broad statements of jurisdiction. Footnotes to the individual statutory exceptions are designed to inform the researcher of the general subject matter of the statute creating the exception. An attempt has also been made in a footnote to collect the instances where the Franklin Circuit Court has been given exclusive or concurrent jurisdiction by statute to try specific offenses.

The revised section also removes the inconsistency formerly existing between sec. 13.4 of the Criminal Code and KRS secs. 25.010 and 26.010. This inconsistency and the explanation for its removal has been discussed as follows in a Note in the Kentucky Law Journal:

At first blush there appears to be an inconsistency between sec. 13(4) of the Code which gives 'City and police courts . . . concurrent jurisdiction with the circuit courts and justices' courts, of prosecutions for misdemeanors committed in the town or city, the punishment of which is a fine not exceeding *one hundred* dollars . . .' and the provision of KRS 26.010 which, with enumerated exceptions gives 'police courts . . . jurisdiction concurrent with the circuit courts of all penal and misdemeanor cases when the punishment is limited to a fine of not more than *five hundred* dollars, or imprisonment not exceeding twelve months, or both.' However, *Baldwin v. Commonwealth*, 314 Ky. 369, 235 S.W. 2d 771 (1951), held that Ky. Rev. Stat. sec. 26.010 impliedly amends sec. 13(4) so that the five hundred dollar provision controls. The same applies to Ky. Rev. Stat. sec. 25.010 and Code sec. 13(5) regarding jurisdiction of quarterly and circuit courts. Ky. Rev. Stat. sec. 25.010 impliedly amends the Code in that the jurisdiction extends to cases in which the fine is not more than five hundred dollars, or imprisonment for twelve months, or both, instead of the one hundred dollar and fifty day provision of Code sec. 13(5). Note, 47 Ky. L. J. 106, fn. 13 (1958).

(4) City and police courts. Except as provided in KRS secs. 167.990,⁹ 183.990,¹⁰ 199.990,¹¹ 242.990,¹² and H.B. 49 (1958),¹³

⁹ *Supra*, note 3.

¹¹ *Supra*, note 4.

¹³ *Supra*, note 6.

¹⁰ *Supra*, note 1.

¹² *Supra*, note 7.

police courts in cities of every class have jurisdiction exclusive of circuit courts, but concurrent with county, quarterly and justice's courts, in all penal and misdemeanor cases where the punishment is limited to a fine of not more than twenty dollars, jurisdiction concurrent with circuit, county, quarterly, and justice courts of all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars, or imprisonment not exceeding twelve months, or both, and exclusive jurisdiction of all violations of city ordinances, occurring within the city limits. A judge of a city or police court has concurrent jurisdiction with a judge of a county court to issue a writ of habeas corpus in the absence of all circuit, criminal, chancery or common pleas judges from the county but jurisdiction of such city, police or county judge shall extend only to the limits of his respective town, city or county.

Comment: This section is based primarily on KRS sec. 26.010 but KRS 25.010 is incorporated insofar as the concurrence of county, quarterly, and justices' courts is concerned. The provision as to habeas corpus is taken from the Ky. Crim. Code secs. 399(2) and 399(3).

(5) County, quarterly and justices' courts. Except as provided in KRS secs. 167.990,¹⁴ 183.990,¹⁵ 199.990,¹⁶ 242.990,¹⁷ and H. B. 49 (1958),¹⁸ county, quarterly and justices' courts have jurisdiction exclusive of circuit courts but concurrent with police courts in all penal and misdemeanor cases where the punishment is limited to a fine of not more than twenty dollars, and jurisdiction concurrent with circuit and police courts of all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars, or imprisonment for not more than twelve months, or both.

The county court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county that has committed a public offense, except a moving motor vehicle offense involving a child 16 years of age or older. A judge of a county court has concurrent jurisdiction with a judge of a city or police court to issue a writ of habeas

¹⁴ Supra, note 3.

¹⁶ Supra, note 4.

¹⁸ Supra, note 6.

¹⁵ Supra, note 1.

¹⁷ Supra, note 7.

corpus in the absence of all circuit, criminal, chancery or common pleas judges from the county but jurisdiction of such county, city or police judge shall extend only to the limits of his respective county, city or town; a justice of the peace may issue such writ when all the judges mentioned prior herein are, at the time, absent from the county, his jurisdiction extending only to the limits of his county.

Comment: This section is based primarily on KRS sec. 25.010 but KRS sec. 26.010 is incorporated insofar as the concurrence of police courts is concerned.

The provision relating to the jurisdiction of the County (Juvenile) Court over children is taken from KRS sec. 208.020 (1). See, however, KRS sec. 208.020 (2). KRS sec. 208.170 provides that the Juvenile Court (KRS sec. 208.030) may waive jurisdiction over a juvenile under certain conditions. The exception as to jurisdiction of the Juvenile Court as to moving motor vehicle offenses involving a child 16 years of age or older is taken from H. B. 49 (1958).

The provisions as to jurisdiction of county, city and police judges and justices of the peace to issue writs of habeas corpus is taken from Ky. Crim. Code, secs. 399 (2) and 399 (3).

Roberts v. Noel, 296 S.W. 2d 745 (Ky. 1956) held that justices in counties having less than 25,000 population had no jurisdiction to try criminal cases since their compensation was dependent upon a conviction. However, on March 28, 1958, the governor signed a bill providing that justices in all counties upon authorization of the fiscal court may be paid salaries so that they can again try criminal cases. Therefore, at present, in counties having a population of less than 25,000, justices can try criminal cases *only* if the fiscal court has provided for compensation for them by straight salary.

The section omits "and in all cases of riots, routs, breaches of the peace, affrays and unlawful assembles" from Ky. Crim. Code sec. 13.5 and also found in KRS as noted in annotation to Ky. Crim. Code sec. 13.5. Should the phrase be continued? Rule 2. *Offenses; where tried*. Unless otherwise provided by law, every offense shall be tried in a court having jurisdiction of the

subject matter of the county or city in which the offense was committed.

Comment: Rule 2 is a transposition of KRS sec. 431.010 to the Criminal Code.

Rule 3. *Jurisdiction when doubt exists as to where offense was committed.* When it is a matter of doubt, in the opinion of the circuit court of the county in which an indictment is found, as to whether the offense was committed in that county or in some other county, the court of the county in which the indictment was found shall have jurisdiction of the offense.

Comment: Rule 3 is a transposition of KRS Sec. 431.020 to the Criminal Code.

Rule 4. *Local jurisdiction of circuit and justices' courts.* The local jurisdiction of circuit courts and justices' courts shall be of offenses committed within the respective counties in which they are held.

Comment: This is Sec. 18 of the present Criminal Code, unchanged. Rule 5. *Local jurisdiction of police or city courts.* The local jurisdiction of police or city courts shall be of offenses committed within the limits of the jurisdiction of such courts, as prescribed by the special statutes creating or regulating them.

Comment: This is Sec. 19 of the present Criminal Code, unchanged. Rule 6. *Indictment in circuit court; jurisdiction.* If an indictment be found in the circuit court for an offense within its jurisdiction, such court shall have jurisdiction in that prosecution of all the degrees of such offense, and of all offenses included in the one charged, although some of those degrees or included offenses are within the exclusive jurisdiction of an inferior or local court.

Comment: This is Sec. 14 of the present Criminal Code, unchanged. Rule 7. *Concurrent jurisdiction. Removal of prosecutions from circuit to inferior courts.* When prosecutions have been commenced in the circuit court, of which a city, magistrate's or police court has concurrent jurisdiction, they may, by an order of the circuit court, be removed into such city, magistrate's or police court for trial. Upon such order being made, the clerk of the circuit court shall deliver to the clerk of the city, magistrate's or police court, all the papers relating to the prosecutions, and

a copy of the order of removal, and thereupon the defendant shall be bound to appear in said police, magistrate's or city court, and the prosecution be carried on to final judgment and execution, as if commenced in such court.

Comment: This is Sec. 15 of the present Criminal Code, unchanged. Rule 8. *Person in jail on misdemeanor charge; court not in session; trial by county judge.* When a person charged with a misdemeanor is imprisoned in default of bail and the court in which he was indicted or before which he was ordered to appear is not in session, the jailer shall at once notify the county judge and the county attorney. The county judge shall thereupon direct the circuit clerk to deliver to him a certified copy of the record in his possession by virtue of which the prisoner was arrested and detained. The judge shall, upon receiving the record, order the prisoner to be brought before him at the courthouse, and shall notify the county attorney, who shall prosecute. The judge shall give the accused notice of the charge against him, and proceed at once to try the case, or fix a day for its trial, and issue summons for any witnesses needed by either party. If the prisoner has no attorney, and is too poor to employ one, the court shall, at his request, appoint an attorney to defend him.

Comment: Rule 8 is a transposition of KRS Sec. 455.010 to the Criminal Code where, as a procedural rule, it belongs.

Rule 9. *Persons in jail on misdemeanor charges at end of circuit court term; transfer of indictments to county court.* If, at the end of any term of a circuit court, any persons are held in jail to answer misdemeanor charges in that court, the court shall make an order transferring all such indictments to the county court, and the circuit clerk shall, immediately upon the adjournment of the court, furnish a copy of the record in the cases to the county judge, who shall proceed to try such persons as provided in Rule 8.

Comment: Rule 9 is a transposition of KRS Sec. 455.020 to the Criminal Code where, as a procedural rule, it belongs.

Rule 10. *Jurisdiction on river between counties.* If a river be the boundary between two counties, the criminal jurisdiction of each county shall embrace offenses committed on the river, or on any island thereof.

Comment: This is Sec. 20 of the present Criminal Code, unchanged. Rule 11. *River or road dividing counties; concurrent jurisdiction.* Where any part of a river, watercourse, highway, road or street constitutes the boundary line between two counties, the courts and all circuit and county officers of both counties shall have concurrent jurisdiction in all cases over the whole extent of such part of the river, watercourse, highway, road or street.

Comment: This is a transposition of KRS Sec. 431.030 to the Criminal Code.

Rule 12. *Counties on rivers along state boundary; concurrent jurisdiction of circuit courts.* The circuit court of any county bordering on the Mississippi, Ohio, Big Sandy or Tennessee River shall have concurrent jurisdiction with the circuit courts of the other counties bordering on the same river of any felony committed on that river.

Comment: This is a transposition of KRS Sec. 431.040 to the Criminal Code.

Rule 13. *Injury in one county, death in another.* If a mortal wound or other violence or injury is inflicted, or poison administered, in one county, and death ensues in another, the offense may be prosecuted in either county.

Comment: This is a transposition of KRS Sec. 431.050 to the Criminal Code.

Rule 14. *Prosecution in either of several counties; libel.* If an offense be committed partly in one and partly in another county, or if acts and their effects constituting an offense occur in different counties, the jurisdiction is in either county. But all prosecutions against persons publishing a newspaper for any libelous matter contained therein shall be had in the county where the same is printed and issued, or in the county where the party complaining resides.

Comment: This is Sec. 21 of the present Criminal Code, unchanged.

Rule 15. *Importing property into State; jurisdiction.* If the offense consist of importing any property into the Commonwealth,

the jurisdiction shall be in any county into which the property may be imported.

Comment: This is Sec. 22 of the present Criminal Code, unchanged.

Rule 16. *Kidnaping; jurisdiction of offense.* If the offense consist of kidnaping, or seizing or confining a person without lawful authority, the jurisdiction shall be in the county in which the kidnaping, seizing or confining was committed, or in any county in which it was continued.

Comment: This is Sec. 23 of the present Criminal Code, unchanged.

Rule 17. *Trial in county of arrest; exception.* If the jurisdiction of an offense be in two or more counties, the defendant shall be tried in the county in which he is first arrested, unless an indictment for the offense be pending in another county.

Comment: This is Sec. 24 of the present Criminal Code, unchanged.

Rule 18. *Writs of prohibition from circuit courts.* The circuit court of any county may, by writ of prohibition, restrain all other courts of inferior jurisdiction in the limits of the county from exceeding their criminal jurisdiction.

Comment: This is Sec. 25 of the present Criminal Code, unchanged.