

CRIMINAL LAW:
PUBLIC HEALTH AND
WELFARE:

Untried information referred to in Section 222.080 V.A.M.S. embraces (1) informations by prosecuting attorneys in misdemeanor cases filed under Supreme Court. Rules 21.03 and 21.04, and (2) informations filed by prosecuting attorneys in circuit court in felony cases after preliminary hearing has been accorded as required by Supreme Court Rule 23.02, but does not include an original "complaint" in felony cases made by a prosecuting attorney or other person, under authority found in Supreme Court Rule 21.08, preceding a preliminary hearing.

A Probate court or magistrate court is within descriptive term "court of record" as same is used in subparagraph (2) of Section 202.595 V.A.M.S. authorizing application for institutionalization in Missouri's "state schools" for mentally deficient but either court must have acquired proper jurisdiction of the persons in the premises.

October 14, 1960

Honorable Charles H. Sloan
Prosecuting Attorney
Ray County
Richmond, Missouri



Dear Mr. Sloan:

This opinion is rendered in answer to your recent request reading, in part, as follows:

"I respectfully ask that your office render an opinion for me on two sections of the Laws of 1959.

The first question is concerning the Uniform Mandatory Disposition of Detainers Law. Under section 222.080 it states that any person who is imprisoned in a correctional institution may request a final disposition of any untried indictment or information pending against him. I have received a request for final disposition of a matter which is untried and pending, but it is based only on a Affidavit of Complaint. The information would not be filed until said cause is certified to the Circuit Court for trial. The question is whether the person has a right to demand final disposition of this case prior to the time of his arraignment and preliminary hearing.

The second question involves section 202.595 of the Laws of 1959. This section involves admission of patients to the State School. Referring specifically to sub-section 2, can the Magistrate Court and the Probate Court both make the application for institutionalization as they are both Courts of Record?"

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Your first question is so worded as to lead us to conclude that the affidavit of complaint referred to charges the commission of a felony rather than a misdemeanor. However, the wording of Missouri's new Uniform Mandatory Disposition of Detainers Law embodied in House Bill No. 259, passed by the 70th General Assembly of Missouri, and found at Sections 222.080 to 222.150, inclusive, V.A.M.S. makes it necessary for us to dispose of your inquiry as it may relate to both felonies and misdemeanors.

For the purpose of this opinion it is only necessary to quote paragraph 1 of Section 222.080 V.A.M.S. as follows:

"1. Any person imprisoned in a correctional institution of this state may request a final disposition of any untried indictment or information pending in this state against him while so imprisoned. The request shall be in writing addressed to the court in which the indictment or information is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment."

Article I, Section 17, Missouri's Constitution of 1945 provides:

"That no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information, which shall be concurrent remedies, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor to prevent arrests and preliminary examination in any criminal case."

Supreme Court Rule 21.01 provides:

"All felonies and misdemeanors shall be prosecuted by indictment or information. The court in which the prosecution shall be first commenced by the filing of the indictment or information, and the issuance of a warrant or summons thereon, shall retain jurisdiction and control of the cause to the exclusion of any other court so long as the same shall be pending."

Supreme Court Rule 21.02 provides, in part, as follows:

"Prosecutions before magistrates for misdemeanors shall be by information only * * *"

Supreme Court Rule 21.03 provides:

"The prosecuting attorney of a county or city in which an offense may be prosecuted may make

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an information charging the commission of a misdemeanor either upon his own knowledge, information and belief or upon the basis of a verified complaint previously submitted to him. Such information shall be filed in any court having jurisdiction to try the offense charged."

Supreme Court Rule 21.04 provides:

"A complaint of the commission of a misdemeanor, verified by oath or affirmation, may be filed with the magistrate having jurisdiction of the offense and if the magistrate is satisfied that the accused is about to escape, or has no known place of permanent residence or property in the county likely to restrain him from leaving for the offense charged, he shall immediately issue a warrant and have the accused arrested and held until the prosecuting attorney shall have time to file an information. Such complaint shall be transmitted forthwith to the prosecuting attorney whether or not a warrant has been issued thereon. After an investigation, if the prosecuting attorney is satisfied that there are reasonable grounds to believe that an offense has been committed and that a case against the accused can be made, he shall file an information with the magistrate founded upon or accompanied by such complaint."

We conclude, from language appearing in Article I, Section 17, Missouri's Constitution of 1945, and in Supreme Court Rules 21.01 to 21.04, inclusive, quoted supra, that criminal prosecutions for misdemeanors are in every instance based either upon an indictment found by a grand jury, or upon an information filed by the prosecuting attorney. When we find in paragraph 1 of Section 222.080 V.A.M.S. quoted supra, language referring to "any untried indictment or information", no language is found there, or in any other portion of said law, which would limit application of the law to informations charging only felonies.

Attention is now given to initiating of felony charges and their ultimate disposition through indictment or information.

Supreme Court Rule 21.08 provides:

"Whenever complaint shall be made in writing, verified by oath or affirmation (including an oath or affirmation on information and belief by a prosecuting attorney) and filed in any court having original jurisdiction to try criminal offenses, charging that a felony has been committed by a

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named accused, or if his name is unknown, by any name or description from which he can be identified with reasonable certainty, it shall be the duty of the judge or magistrate thereof, and, upon complaint made by the prosecuting attorney, it shall also be the duty of the clerk thereof to issue a warrant reciting the accusations and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such judge or magistrate to be dealt with according to law. If such warrant is issued under the hand of the judge or magistrate, it need not be sealed but if it is issued under the hand of the clerk of the court, the seal of the court shall be attached thereto."

Supreme Court Rule 23.01 provides:

"The term 'magistrate' as used in Rules 23.01-23.12 shall mean any judge or magistrate of a court having original jurisdiction to try criminal offenses."

Supreme Court Rule 23.02 provides:

"No information charging the commission of a felony shall be filed against any person unless the accused shall first have been accorded the right of a preliminary examination before a magistrate in the county where the offense is alleged to have been committed. The accused may waive a preliminary examination after consultation, or after being accorded the right of consultation, with his counsel. A record entry of such waiver shall be made and the magistrate shall hold the accused to answer in the court having jurisdiction of the offense of which he stands accused. If the offense is bailable and the accused has not previously been admitted to bail, he shall be admitted to bail as provided in these Rules. No preliminary examination shall be required where an information has been substituted for an indictment."

We need only to refer to Section 543.010 RSMo 1949, and state that magistrate courts in Missouri have "concurrent original jurisdiction" with circuit courts to try misdemeanors. Jurisdiction to try felony cases is reserved to the circuit courts by Article V, Section 14, Missouri's Constitution of 1945, and Section 541.020 RSMo 1949. While magistrate courts lack jurisdiction to try and finally dispose of a felony case, we find

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Supreme Court Rule 23.02, supra, laying down the requirement that a felony prosecution by information in the circuit court may not be initiated until the accused has first been accorded the right of a preliminary examination. Under Supreme Court Rule 21.08, supra, we find that any person may make a complaint in writing, verified by oath or affirmation (including an oath or affirmation on information and belief by a prosecuting attorney) charging that a felony has been committed, file the same in any court having original jurisdiction to try criminal offenses, obtain a warrant for arrest of the accused, and have him dealt with "according to law". In the case of a person, other than a prosecuting attorney, making a complaint under Supreme Court Rule 21.08, supra, such complaint must be by "oath or affirmation". Only a prosecuting attorney may make a complaint under Supreme Court Rule 21.08 "on oath or affirmation on information and belief". Such "complaint" in the magistrate court in felony cases is a requisite preliminary step to be taken before prosecution of a felony charge can be had in the circuit court, as witness the following language from State ex rel. Lamar v. Impey, 365 Mo. 437, 1.c. 441, 283 S.W.(2d) 480:

"In this State, prosecutions of felonies are by indictment or information. If by information, it is necessary to commence the prosecution by a complaint in a magistrate court where the defendant is given the right to have a preliminary hearing."

In view of the foregoing it must be concluded that the word "information", found in paragraph 1 of Section 222.080 V.A.M.S. of Missouri's Uniform Mandatory Disposition of Detainers Law can only embrace informations filed by prosecuting attorneys in misdemeanor cases under authority found in Supreme Court Rules 21.03 and 21.04 and informations filed by prosecuting attorneys in the circuit court in felony cases after preliminary hearing has been accorded the accused as required by Supreme Court Rule 23.02. The "complaint" in felony cases which may be made by a prosecuting attorney under Supreme Court Rule 21.08 is not to be characterized as an "untried * * information" as such language is used in paragraph 1 of Section 222.080 V.A.M.S. of Missouri's Uniform Mandatory Disposition of Detainers Law.

The second question posed in your request for this opinion involves Section 202.595 V.A.M.S. reading as follows:

"The division of mental diseases, subject to the availability of suitable accommodations, shall receive for diagnosis, care, training and treatment in a state school and hospital any mentally deficient person whose admission is applied for under any of the following procedures:

- (1) Institutionalization on medical certification.
- (2) Institutionalization on application of a court of record; or
- (3) Institutionalization on court order as provided in Section 211.201."

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You have referred specifically to the method of institutionalization found at subparagraph (2) in the foregoing statute, and ask if Probate Courts and Magistrate Courts may both make application for admission of a patient to the state school by reason of the fact that both of said courts are courts of record.

The statute being construed does not designate by name any particular "court of record" to which it refers. In view of the fact that Article V, Sec. 17, Missouri's Constitution of 1945, designates probate courts as courts of record, and Sections 476.010 and 517.050, RSMo 1949, designate magistrate courts as courts of record, we conclude that both courts fit the descriptive language found at subparagraph (2) of Section 202.595 V.A.M.S. when referring to "courts of record", and consequently either court may make the application for institutionalization mentioned in subparagraph (2) of the statute; provided, however, that either of said courts must have acquired proper jurisdiction of the person in the premises.

CONCLUSION

It is the opinion of this office that an "untried information", as such language is used in paragraph 1 of Section 222.080 V.A.M.S., of Missouri's Uniform Mandatory Disposition of Detainers Law, embraces (1) informations filed by prosecuting attorneys in misdemeanor cases under authority found in Supreme Court Rules 21.03 and 21.04 and (2) informations filed by prosecuting attorneys in the circuit court in felony cases after preliminary hearing has been accorded the accused as required by Supreme Court Rule 23.02; but an original "complaint" in felony cases which may be made by a prosecuting attorney or other person under authority found in Supreme Court Rule 21.08 preceding a preliminary hearing is not an "untried information" referred to in Section 222.080 V.A.M.S.

It is the further opinion of this office that a probate court or a magistrate court is within the descriptive term "court of record" as the same is used in subparagraph (2) of Section 202.595 V.A.M.S. authorizing application for institutionalization of persons in Missouri's "state schools" for mentally deficient; provided, however, that either of said courts must have acquired proper jurisdiction of the persons in the premises.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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