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Notes

INVOLUNTARY MANSLAUGHTER IN KENTUCKY—PAST, PRESENT AND FUTURE

One of the most complex and demanding social problems which confronts the public today involves the proper approach to be taken in the field of criminal legislation. The opinions in this area are as varied as the types of crimes with new theories being constantly advocated in an effort to reach the proper method of handling the problem.

Out of the range of proposals which extends from extreme leniency to extreme severity, lawmakers are faced with extracting a solution which will serve to strike an equitable balance between all the pertinent factors. There must be provisions for protecting the public from criminals, and yet leave room for the rehabilatation of those who can later be returned safely to society. There must also be wisdom in the act so that it will be sufficient to deter the criminal and yet not be so harsh that it is unjust.

After the legislature expresses their intent and desire in the form of a statute, they generally leave the task of enforcement and administration of the criminal law to the courts and the bar. Therefore, in order that the courts and bar adequately carry out the task which is incumbent on them, it is mandatory that judges and prosecutors understand the legislative intent of the statute.

The crimes which are classified under the general category of homicide have been given considerable attention in recent years, and this trend is evident today in Kentucky where a controversy is currently raging over abolishing the death penalty. Reforms in criminal law are constantly before a legislature, and due to the public reaction in this area of homicide, legislatures must be diligent in enacting only those measures which are truly reforms.

Negligent homicide has recently been the object of legislation in Kentucky with the passage, in 1962, of a new involuntary manslaughter statute.[1] Negligent homicide seems to pose a real problem

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[1] Ky. Rev. Stat. 435.022 [hereinafter cited as KRS]—Involuntary Manslaughter:

(1) Any person who causes the death of a human being by an act creating such extreme risk of death or great bodily injury as to manifest a wanton indifference to the value of human life according to the standard of conduct of a reasonable man under the circum-

(Continued on next page)

for lawmakers when they attempt to enact adequate legislation on the subject since the term "negligence" eludes simple definition. The difficulty of finding a simple, precise definition for negligence also brings up the problem of enacting a statute which is specific enough to allow for the prosecution of those who are, in fact, criminally negligent, and yet, not be such as to subject to criminal prosecution those who should only be civilly liable.

The statute passed by the Kentucky Legislature in 1962 appears to be an adequate measure, provided the courts and bar conform to the intent and purpose of the statute. In order that the intent and purpose can be determined, an attempt will be made to point out the status of involuntary manslaughter before 1962, then the change which resulted with passage of the new law, and finally a summary in respect to what the statute accomplishes and what improvements need to be made.

I. THE PAST

In order to properly understand the impact of the new statute, a discussion of the background of homicide in Kentucky is essential. A factual and historical foundation will first be established on which to base the remainder of the propositions that are set out herein.[2]

Prior to passage of KRS 435.022, Kentucky did not have a statute dealing specifically with involuntary manslaughter, and anyone con-

(Footnote continued from preceding page)

stances shall be guilty of manslaughter in the first degree and shall be confined in the penitentiary for not less than one nor more than fifteen years.

(2) Any person who causes the death of a human being by reckless conduct according to the standard of conduct of a reasonably [*sic*] man under the circumstances shall be guilty of involuntary manslaughter in the second degree and shall be imprisoned in the county jail for a term not exceeding twelve months or fined a sum not exceeding $5,000 or both. (1962, c. 90, §§ 1, 2)

[2] For obvious reasons, the discussion here cannot be as complete and comprehensive on history and background as would be desired. But in order for one to be able to fully appreciate the importance and effect of the new statute, a portion must be devoted to this area. Unless one has some basic understanding in this field, it is very possible that what follows may appear to be meaningless. Therefore, it is highly recommended that the reader refer to an article by Professor Roy Moreland, *Kentucky Homicide Law with Recommendations,* 51 KY. L.J. 59 (1962), in which he discusses, in more detail, the background and transition of Kentucky homicide law and the cases bearing on it. Professor Moreland, whom the court refers to in the first case interpreting KRS 435.022, Lambert v. Commonwealth, 377 S.W.2d 76 (Ky. 1964), was a member of the study committee which formulated the revision of Kentucky homicide laws and presented the new statute to the Legislative Research Commission [hereinafter cited as LRC]. He relates the ideas and purposes, as well as the intent, which the committee had in proposing the revision. The applicable portions of the information set out in Professor Moreland's article are used to reinforce the contentions as to the intent and purposes of the new statute, and to furnish a basic outline for the brief discussion on homicide history in this jurisdiction.

victed of this common-law crime had his punishment set by KRS 431.075.[3] As a result of the lack of a specific statute embracing involuntary manslaughter and the leniency of the punishment under KRS 431.075, various problems arose, particularly concerning the elements involved in constituting and distinguishing the offense.

Kentucky has long had statutes which cover the offenses of willful murder[4] and voluntary manslaughter,[5] and in a substantial percentage of the cases involving a homicide, before 1962, the offense was prosecuted under one of these statutes even where the death occurred as a result of negligence.[6] This procedure led to many legal and logical inaccuracies since a defendant could be convicted of a crime when his act lacked one of the elements necessary to constitute the offense, e.g., specific intent in a negligent death prosecuted as voluntary manslaughter or willful murder. To get around this missing element, the courts made use of the old common-law concept of "implied intent" with the result that a defendant was convicted of an intentional crime when there was, in fact, *no actual intent to cause death.*[7]

The Kentucky Legislature, recognizing the need for a change in the area of homicide law, passed a resolution in 1960 referring the

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[3] KRS 431.075—Common-law Offenses, Penalties for:

> Any person convicted of a common-law offense the penalty for which is not otherwise provided by statute shall be imprisoned in the county jail for a term not exceeding twelve months or fined a sum not exceeding $5,000 or both. (1950, c. 169)

See Eads v. Commonwealth, 296 S.W.2d 449 (Ky. 1956); Marye v .Commonwealth, 240 S.W.2d 852 (Ky. 1951).

[4] KRS 435.010—Murder: "Any person who commits willful murder shall be punished by confinement in the penitentiary for life, or by death."

[5] KRS 435.020—Voluntary Manslaughter: "Any person who commits voluntary manslaughter shall be confined in the penitentiary for not less than two nor more than twenty-one years."

[6] See Pelfrey v. Commonwealth, 247 Ky. 484, 57 S.W.2d 474 (1933); Davis v. Commonwealth, 193 Ky. 597, 237 S.W. 24 (1922), 23 A.L.R. 1557. See generally Moreland, *supra* note 2, 71-83, 97-100, 114-17.

[7] See Davidson v. Commonwealth, 340 S.W.2d 243 (Ky. 1960); Ewing v. Commonwealth, 129 Ky. 237, 111 S.W. 352 (1908); Montgomery v. Commonwealth, 26 Ky. L. Rep. 356, 81 S.W. 264 (1904); York v. Commonwealth, 82 Ky. 360 (1884); Sparks v. Commonwealth, 66 Ky. L. Rep. (3 Bush) 111 (1867), 96 Am. Dec. 196. One concept to be kept in mind is whether it is correct to say that death is the natural and probable consequence of a felony where the death is a pure accident. The idea underlies some of the theories which have been pursued, and this writer contends that to advocate such is a fallacy. A defendant is punished, under this concept, because of his intent to perpetrate a felony and not because of his intent, or absence of it, to cause a death. If it is apparent that such is the natural and probable consequence of any felony, then there would be no need for the elaborate discussions on "implied intent." Can one logically, and reasonably, say that where the defendant was committing burglary and, in the course of so doing, left a cigarette behind which started a fire that burned the house down, killing the occupant, he *intended* this death as the natural and probable consequence of an act of burglary? By use of the concept of "implied intent," it would appear that such a result would be possible.

matter for study to the Legislative Research Commission. This Commission was given the task of reviewing and evaluating the existing homicide laws and making recommendations to the legislature. The members of the Commission's study committee were well aware of the existing situation and recommended reforms which would attempt to eliminate, or greatly reduce, as many of the problems as could be reached. Both the willful murder and voluntary manslaughter statutes were revised, and statutory embodiment was given by the study committee to the common-law crime of involuntary manslaughter. By so doing, involuntary manslaughter was removed from under KRS 431.075. Furthermore, the proposed revision of the voluntary manslaughter statute attempted to define this offense more precisely with the intention that this would also aid in removing prosecutions for unintentional homicides from under KRS 435.020.[8]

Under KRS 431.075, involuntary manslaughter was a misdemeanor, and even the maximum penalty, twelve months imprisonment and a 5,000 dollar fine, was comparatively lenient in cases where the offense was of a serious nature, *e.g.*, felony murder. But by all rights, such a crime should have been punished under KRS 431.075 since punishment was not otherwise provided by statute. Due partly to the leniency in punishment, prosecutors were prone to try negligent homicide cases which involved a degree of negligence higher than that required for civil liability under the willful murder or voluntary manslaughter statute, depending primarily on how the crime was committed. The Kentucky Court of Appeals approved the majority of such convictions under the old, fallacious concept of "implied intent."

As a consequence of this practice, there was created what has been termed "hybrid offenses" or "impossible crimes":[9] "felony willful decision-made offenses concerned acts which lacked the specific intent that should be present to warrant a conviction under either the willful murder or voluntary manslaughter statute. The court of appeals was,

[8] The reader may find it helpful to look at the entire proposed act which is contained in Moreland, *supra* note 2, 127-32.

[9] See Moreland, *supra* note 2, 73, 83, 97, 114.

murder"[10] and "negligent voluntary manslaughter."[11] Both of these

[10] See Bentley v. Commonwealth, 354 S.W.2d 495 (Ky. 1962); Simpson v. Commonwealth, 293 Ky. 631, 170 S.W.2d 869 (1943); Jackson v. Commonwealth, 100 Ky. 239, 18 Ky. L. Rep. 795, 38 S.W. 422 (1896); Brown v. Commonwealth, 13 Ky. L. Rep. 372, 17 S.W. 220 (1891); Tarrance v. Commonwealth, 265 S.W.2d 40 (Ky. 1953) (dictum).

[11] See Mullins v. Commonwealth, 269 S.W.2d 713 (Ky. 1954); Hill v. Commonwealth, 239 Ky. 646, 40 S.W.2d 261 (1931); Jones v. Commonwealth, 200 Ky. 65, 252 S.W. 130 (1923); Davis v. Commonwealth, 193 Ky. 597, 237 S.W. 24 (1922), 23 A.L.R. 1557.

therefore, forced to engage in the use of the "implied intent" concept in order to supply some scintilla of logic in upholding the convictions of such crimes. It must suffice here to merely point out that both offenses are contradictions in terms because one cannot be simultaneously negligent and intentional (willful; voluntary) while performing the act which resulted in death.[12]

Therefore, prior to the passage of KRS 435.022, it appears that, generally, only those homicides where the degree of negligence resulting in death was very slight[13] were punished as involuntary manslaughter, with the remainder made to fit under either willful murder or voluntary manslaughter.

In order to aid in accomplishing the purposes of the LRC's study committee, the decision was made to propose that the new involuntary manslaughter statute be divided into two parts: involuntary manslaughter, first degree and second degree. Such a division would result in more definiteness as to what constitutes the offense, and would provide a clearer distinction between this crime and voluntary manslaughter. The new statute also would incorporate a standard which allows the degree of negligence to bear upon the punishment.

II. THE PRESENT

The 1962 Kentucky General Assembly, seeing the desirability of such a revision, enacted the proposed involuntary manslaughter statute. KRS 435.022 makes involuntary manslaughter punishable either as a felony or a misdemeanor, depending on whether it is of the first or second degree, and thereby cures the objectionable leniency of KRS 431.075.[14] The new statute defines the first degree by use of the words "wanton indifference" and the second degree by the words

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[12] For a discussion of other common-law crimes which should have been prosecuted under KRS 431.075, but which were in a state of confusion, and a more detailed analysis of the logical contradiction involved, see generally Moreland, *supra* note 2, 70-72, 76-77, 83-99, 113-18.

[13] See Marye v. Commonwealth, 240 S.W.2d 852 (Ky. 1951). The reader is informed that no discussion of cases which now fall under the provisions of KRS 435.025 will be attempted although some cases of death by negligent operation of an automobile are cited in this work as reference. These cases, for the most part, occurred prior to the enactment of the negligent operation statute and since this offense now has statutory embodiment, it will be eliminated.

[14] Study of this statute will reveal that there is no longer a need to use the voluntary manslaughter statute for adequate punishment because if the defendant's act was of sufficient gravity to be wanton, he can get as much as fifteen years in the penitentiary, a very substantial sentence. And yet, it is possible for the defendant to get by with only a fine if the jury believes that he was just reckless in his conduct. This statute gives considerable latitude in fixing a sentence, and prosecutors need no longer engage in the use of old concepts to provide an adequate punishment where a deficit once existed.

"reckless conduct," both terms used to define various degrees of *negligence,* not intentional conduct.

In 1964, the Kentucky Court of Appeals first interpreted the new statute in the case of *Lambert v. Commonwealth,* 377 S.W.2d 76 (Ky. 1964). The facts of this case state that the appellant-defendant was arrested for drunkenness and incarcerated in the city jail at Lexington, Kentucky. He became involved in a fracas with a fellow prisoner, the deceased, over cigarettes. During the course of the encounter, the deceased severely wounded the appellant by cutting him on th neck with a knife, where appellant became dizzy and bled profusely. Believing the deceased had apparently done all that he intended, appellant walked passed him to try and obtain medical aid from the authorities. Whereupon, the deceased advanced toward appellant stating that he was "going to finish cutting his head off."[15] Appellant responded to this threat by knocking the deceased to the floor and then kicked and "stomped" him in such a manner that the injuries resulted in death.

The appellant was indicted for murder, convicted of voluntary manslaughter, and given the maximum sentence. The trial court instructed on murder, voluntary manslaughter, self-defense and reasonable doubt as to guilt and as to the degree of the offense.

Lambert appealed on the contention that he was entitled to an instruction on involuntary manslaughter under KRS 435.022 which became effective only a few days before the alleged offense occurred. The court of appeals reversed the conviction and stated that the appellant was entitled to an instruction on involuntary manslaughter in view of the facts and the intent of KRS 435.022.[16]

The court reversed the conviction for voluntary manslaughter in the *Lambert* case even though they would have had ample precedent to sustain it if they had desired to continue the application of previously used concepts. By so doing, the court added the impetus and strength of judicial decision to the intent of the legislature which is concluded to be the same as that of the LRC stated above.

One of the inaccuracies which existed prior to KRS 435.022 and the *Lambert* decision was created by the court's joining of the terms of "reckless and wanton" in reviewing convictions where the death resulted from defendant's negligence. They used these terms jointly to describe the negligence which was necessary to sustain convictions,

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[15] 377 S.W.2d 76 at 77.

[16] Mr. Gene Lewter assisted the Commonwealth in the preparation of its brief for this case. He has written a case comment which states the Commonwealth's theory as presented to the court of appeals. This discussion is contained in 53 Ky. L.J. 201 (1964).

under the voluntary manslaughter statute, for crimes which actually should have been involuntary manslaughter, but which constituted the "impossible crime" of "negligent voluntary manslaughter."[17] The court makes a distinction, in the *Lambert* case, between the two terms and attempts to define each in a new perspective and in accord with their logical connotation under the new statute. The proposed definitions are accurate, as far as they go, but it would have been much more constructive if the court had used this opportunity to make a more comprehensive definition in order to give courts and prosecutors a more definite guide in instructing juries and wording indictments.[18]

A more accurate definition could be obtained for this jurisdiction by setting out several definitions found in various other decisions, worded differently, but conveying the same fundamental meaning. This would enable those parties who must be guided by this opinion to make a comparison between the old definition used in prior decisions and the one advanced in this decision.[19] After so doing, and if the court felt it was beneficial, they might then take the most pertinent and important points from each and combine them into a single definition of the greatest depth. One should be able to ascertain from the *Lambert* case the correct standard to be used in applying the terms, but it is always helpful to be able to compare ideas on such points. The suggestion made here would allow for less possible ambiguity and concerned parties would be afforded an opportunity to view the definitions in more than just the abstract. Conceding that perfection is, at best, difficult, and absolutely precise definitions are virtually impossible among individuals, the use of this method for defining would bring closer to a common point the practical application of the terms.

Nevertheless, the definitions which are given are basically accurate and do a commendable job in the way of statutory interpretation and

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[17] See Jones v. Commonwealth, 213 Ky. 356, 281 S.W. 164 (1925).

[18] It is absolutely essential that prosecuting attorneys and judges understand the effects of this decision and read it in the proper perspective. Unless this occurs, the court is going to be faced with more prosecutions for "impossible crimes" which is one of the things that the new statute attempts to eliminate. There is no longer a need for these "hybrids" and every effort should be made, by those engaged in trials which involve a homicide, to refrain from resorting to the use of them.

[19] See Commonwealth v. Welansky, 316 Mass. 383, 55 N.E.2d 902, 909 (1944); Davis v. Wyatt, 359 Mo. App. 963, 224 S.W.2d 972, 976-77 (1949); Huffman v. Gray, 32 Tenn. App. 610, 225 S.W.2d 87, 90 (1949); Moreland, *supra* note 2, 118-19 (wanton). See Russell v. Turner, 148 F.2d 562, 566 (8th Cir. 1945); Phillips v. Briggs, 215 Iowa 461, 245 N.W. 720, 721 (1932); Stout v. Gallemore, 138 Kan. 385, 26 P.2d 573, 577 (1933); Moreland, *supra* note 2, 130-31 (reckless conduct). The reader will observe that most of these cases are civil ones, but they provide very good definitions of the negligent conduct which is under consideration here.

clarification, and should eliminate a considerable amount of the needless confusion which has been present heretofore.

Another point which can be derived from the *Lambert* case and later decisions is that the court intends to eliminate the decision-made "hybrid offenses" and prosecute an offender under the statute which logically and accurately applies to his alleged crime.[20] This contention is based on the position taken by the court in two later decisions involving negligent homicide. One case involved a conviction of voluntary manslaughter, *Hemphill v. Commonwealth,* 379 S.W.2d 223 (Ky. 1964),[21] and the other a conviction of murder, *Combs v. Commonwealth,* 378 S.W.2d 626 (Ky. 1964). In both cases, the court reaffirmed the *Lambert* decision and, in the *Hemphill* case, stated:

> It is our view that KRS 435.022 specifically removes from the framework of voluntary manslaughter those homicides resulting from negligence; therefore, the new statute makes inapplicable the cases equating negligent homicide with voluntary manslaughter, no matter how gross the negligence.[22]

As pointed out by a member of the proposing study committee, the intention is that the old common-law crimes of felony murder and negligent murder, and the decision-made offense of "negligent voluntary manslaughter," be punished under involuntary manslaughter, first degree; and the common-law offenses of negligent manslaughter and misdemeanor manslaughter fall under the second degree.[23] This concept would also embody the theory of punishing the offender in relation to the danger and risk manifested by his act and not by a rigid standard that imposes a harsh and unjust punishment solely because the defendant committed a homicide.[24]

Another point that should be mentioned concerns the court's definition of the knowledge required by the defendant to warrant a conviction under KRS 435.022. The court states that "the actor must

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[20] As stated in note 7 *supra,* there is a tremendous fallacy involved in the use of these "impossible crimes," and even though it may have formerly been an "evil" born of necessity, there is no longer a need because the new statute corrects the deficits which previously existed.

[21] The court, in the *Hemphill* case, sets out the proper form for instructing the jury under KRS 435.022. These instructions also contain the court's definition for "wanton indifference" and "reckless conduct" and it is highly recommended that these be used as guidelines in future cases.

[22] 379 S.W.2d 223 at 226.

[23] See Moreland, *supra* note 2, 68, 74-75, 83-85, 113, 117-19, 123-26, 130.

[24] See Regina v. Serné (1887), 16 Cox, C.C. 31; 3 STEPHENS, HISTORY OF THE CRIMINAL LAW OF ENGLAND 76 (1883). Under this theory, the offender is punished for what he actually intended to do, and the punishment can be very substantial if his act was of a sufficiently dangerous nature. It is believed that under this theory and KRS 435.022, the punishment will be sufficient to deter most possible offenders. This concept is another step away from the harsh rule that prevailed at one time which made any homicide punishable by death,

have *conscious knowledge* of the probable consequences. . . . Recklessness involves thoughtlessness while wanton conduct involves *actual knowledge* of the probable results. . . ." (Emphasis added.)[25]

It is submitted that the court of appeals intends objective knowledge as the type required rather than subjective knowledge, but an inference that the latter standard should apply might be concluded from a first-blush reading. The proper test of the requisite knowledge should be that it is based on the standard of a reasonable man acting under the same circumstances. Therefore, if the jury finds that a reasonable man should have known that the act which produced death was dangerous, either wantonly or recklessly so, the defendant should also have known, and the fact that he did not will not excuse his conduct.[26]

As concerns the *Lambert* case, even with the criticisms, the result of this decision is correct and basically sound. On retrial, the jury might reasonably find, under the proper instructions, that the defendant lacked the specific intent which should be proved for voluntary manslaughter, and that Lambert's act was a wanton or reckless one.[27] This would also apply to the *Hemphill* and *Combs* decisions.

III. THE FUTURE

Having taken a look at negligent homicide before 1962, and then examining the present situation with a view toward ascertaining its current status, an attempt will now be made to chart a future course in this area with some recommendations for improvements.

First, it should be made clear that it is the contention of this writer that Kentucky has made a significant advancement and reform by

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[25] Lambert v. Commonwealth, 377 S.W.2d 76 at 79.

[26] A slight qualification on this subject is in order since this writer is not concluding that the court uses a subjective standard of knowledge in such cases, particularly in view of the express language concerning the standard in KRS 435.022, *supra* note 1. It is mentioned merely to point out that the court's statement leads to some ambiguity, and it would be helpful to have a better statement of the court's policy. The court apparently used this statement to try and convey the idea that the negligence required must be of a higher degree than that necessary for civil liability, but it could be stated in more precise terms.

[27] It is not meant to imply that the appellant might not be found guilty of voluntary manslaughter on retrial. But, the jury should render its verdict under the proper instructions, and it can only be proper, in such a case as this, if an instruction on involuntary manslaughter is included. If, on retrial, the prosecution can show that the appellant intended to kill, then it would not be involuntary manslaughter, but if the prosecution is unable to prove intent, then it would be unjust to punish the appellant for an intentional crime. Even if the prosecution can only prove negligence, the appellant still faces a maximum penalty of fifteen years which is only six years short of the sentence he received at the first trial. If the jury believes that his conduct was only reckless, then it would be unjust to put the defendant in confinement for a great length of time. Therefore, it should be evident that the proper instructions in this type of case prove to be more equitable to all parties concerned.

enacting KRS 435.022.[28] An examination of the other eighteen states which have a specific statutory provision embodying involuntary manslaughter will reveal that, for the most part, they all still use the "implied intent" concept which was prevalent in Kentucky prior to 1962.[29]

In the states which have no specific statute embodying the offense, the approach that is used varies, but for the most part, the concept of "implied intent" appears to be very much alive. However, there are indications of a trend away from this idea, even in those states which have no specific statute, as evidenced by a New York decision. The New York Court of Appeals has restricted felony murder by holding that this offense does not embrace *any* homicide coincident with a felony, but only those committed in order to bring about the primary unlawful endeavor. The New York Court went on to state that the act which results in death must be in furtherance of the common criminal design, although the homicide itself need not be such.[30] Under this holding, it would seem that the New York Court requires specific intent before one can be convicted of felony murder; a requirement which is not necessary in the majority of states.

Kentucky would appear to be leading the way in attempting to reform homicide on the negligence level by the enactment of a statute which provides for punishment that is commensurate with the severity of the offense. KRS 435.022 also cures many of the logical and legal inaccuracies which once existed and removes some of the harshness which formally accompanied homicide cases.

Prosecutors should appreciate this new statute since it will provide them a means for prosecuting criminal negligence cases under a statute which clearly pertains to such offenses. They will no longer be forced to engage in fictions in order to obtain a conviction.

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[28] It is conceded that this new statute is somewhat of an innovation on the manslaughter level, but it appears to be a very equitable answer to an extremely vexing problem. Because it is new and not in complete accord with older concepts, it will probably be subjected to considerable criticism, but in the final analysis, it will prove its value and be looked upon as another step in the modern conception of criminal justice.

[29] The eighteen states and their involuntary manslaughter statutes are: Arizona Revised Statutes § 13-456; Arkansas Statutes, 1947, § 41-2209; California Penal Code Annotated § 192; Colorado Revised Statutes of 1953, § 40-2-7; Georgia Code Annotated § 26-1009; Idaho Code § 18-4006; Illinois Annotated Statues, ch. 38, § 9-3; Kansas General Statues, 1949, § 21-414 (also called manslaughter, 3d degree); Revised Codes of Montana, 1947, Annotated § 94-2507; Nevada Revised Statutes § 200.070; New Mexico Statutes of 1953 § 40A-2-3(B); General Statutes of North Carolina § 14-18; 18 Pennsylvania Statutes Annotated § 4703; Code of Laws of South Carolina, 1952, § 16-55; Tennessee Code Annotated § 39-2409; Utah Code Annotated § 76-30-5; Code of Virginia § 18.1-25; and, West Virginia Code of 1961 § 5920.

[30] People v. Wood, 8 N.Y.2d 48, 167 N.E.2d 736, 201 N.Y.S.2d 328 (1960).

Another strong point of the statute which should be favored by prosecutors is that it will enable a jury which may be in favor of a conviction, if the sentence would not be too severe, to render such a verdict. Thus, a defendant will not escape justice because the jury feels that his act does not deserve the punishment. A jury that is confronted with the alternatives of either finding a negligent defendant guilty of murder or voluntary manslaughter or setting him free may be prone to choose the latter course. However, if they also have the alternative choice of finding the defendant guilty of one of the degrees of involuntary manslaughter, and setting his penalty at a period in the county jail, or fining him, or both, they may be more apt to render a guilty verdict on the basis that the punishment is more in line with the severity of the crime.

KRS 435.022 is also a benefit to the courts since it relieves them of having to instruct under the old concept of "implied intent" which posed a considerable logical problem. Furthermore, it provides the courts with a more clear-cut definition of what constitutes involuntary manslaughter and distinguishes it from those homicides which require specific intent.

Finally, the new statute serves the needs of both the defendant and society in a much more equitable way. The defendant is no longer subjected to harsh and unrealistic prosecutions, and yet, society is given the protection which it must have by providing for the punishment of those negligent offenders who might, under the old statutes, be allowed to escape any substantial punishment. After all, the public has a right to be protected against those members of society who are criminally negligent, but there is no right to subject these offenders to an "eye-for-an-eye" type of justice, nor is there any need for that system.

However, this advancement should not be the final chapter in reforming the homicide laws. Further steps are necessary at this time in order to culminate a commendable beginning. A great deal can be accomplished in this area by prosecutors accurately wording indictments to conform to the decisions and the language of KRS 435.022, and by the legislature enacting the remainder of the proposed act.[31] By so doing, we may well see Kentucky homicide law brought into the forefront of modern thinking in this field, and the progress will be enlightening and gratifying.

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[31] See note 8 *supra*. If the remaining parts were passed, particularly the portion on voluntary manslaughter, it would give a better definition of what constitutes each crime and thereby provide for clearer distinctions as to what crime the accused committed.