

21-5110. Effect of former prosecution. (a) A prosecution is barred if the defendant was formerly prosecuted for the same crime, based upon the same facts, if such former prosecution:

- (1) Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction;
- (2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or
- (3) was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:
 - (A) The illness or death of an indispensable party;
 - (B) the inability of the jury to agree; or
 - (C) the impossibility of the jury arriving at a verdict.

A conviction of an included crime is an acquittal of the offense charged.

(b) A prosecution is barred if the defendant was formerly prosecuted for a different crime, or for the same crime based upon different facts, if such former prosecution:

- (1) Resulted in either a conviction or an acquittal and the subsequent prosecution is for a crime or crimes of which evidence has been admitted in the former prosecution and which might have been included as other counts in the complaint, indictment or information filed in such former prosecution or upon which the state then might have elected to rely; or was for a crime which involves the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the crime was not consummated when the former trial began;
- (2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; or
- (3) was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:
 - (A) The illness or death of an indispensable party;
 - (B) the inability of the jury to agree; or
 - (C) the impossibility of the jury arriving at a verdict, and the subsequent prosecution is for an offense of which the defendant could have been convicted if the former prosecution had not been terminated improperly.

(c) A prosecution is barred if the defendant was formerly prosecuted in a district court of the United States or in a state court of general jurisdiction of another state or in the municipal court of any city of this state for a crime which is within the concurrent jurisdiction of this state, if such former prosecution:

- (1) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began; or
- (2) was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the prosecution in this state.

(d) A prosecution is not barred under this section:

- (1) By a former prosecution before a court which lacked jurisdiction over the defendant or the offense;
- (2) by a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed; or
- (3) if subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty.

(e) In no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which such defendant was originally convicted.

(f) A defendant is in jeopardy when such defendant is put on trial in a court of competent jurisdiction upon an indictment, information or complaint sufficient in form and substance to sustain a conviction, and in the case of trial by jury, when the jury has been impaneled and sworn, or where the case is tried to the court without a jury, when the court has begun to hear evidence.

History: L. 2010, ch. 136, § 10; July 1, 2011.