

## CHAPTER 816

### DOUBLE JEOPARDY

Referred to in [§801.1](#)

|       |                                       |       |                                 |
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| 816.1 | Conviction or acquittal — when a bar. | 816.3 | Exceptions — limitation.        |
| 816.2 | Prosecutions barred.                  | 816.4 | Trial of former jeopardy issue. |

#### **816.1 Conviction or acquittal — when a bar.**

A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place.

[R60, §4719; C73, §4364; C97, §5339; C24, 27, 31, 35, 39, §13807; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §777.20; C79, 81, §816.1]

#### **816.2 Prosecutions barred.**

When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the same offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein.

[R60, §4720; C73, §4365; C97, §5340; C24, 27, 31, 35, 39, §13808; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §777.21; C79, 81, §816.2]

#### **816.3 Exceptions — limitation.**

A prosecution is not barred:

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.

3. If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty; but 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 the defendant was originally convicted.

[C79, 81, §816.3]

[86 Acts, ch 1237, §45](#)

#### **816.4 Trial of former jeopardy issue.**

When the defendant's only plea to the indictment is a former conviction or acquittal, the order of trial prescribed in [rule of criminal procedure 2.19](#) shall be reversed, and the defendant shall first offer evidence in support of the defense.

[R60, §4787; C73, §4422; C97, §5374; C24, 27, 31, 35, 39, §13855; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §780.14; C79, 81, §816.4]