

## 2.6 Right to Be Free from Double Jeopardy

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Juveniles have the right to be free from double jeopardy. *Breed v. Jones*, 421 U.S. 519, 541 (1975). Jeopardy attaches in juvenile cases when the trial court begins to hear evidence. *In re Hunt and In re Dowd*, 46 N.C. App. 732, 735 (1980). Based on double jeopardy principles, a court may not adjudicate the juvenile delinquent for an offense and then transfer the juvenile to adult court for prosecution of the same offense. *Breed*, 421 U.S. at 541; *In re J.L.W.*, 136 N.C. App. 596, 598 (2000). Additionally, if the court dismisses a petition based on the lack of sufficient evidence, the State may not prosecute the juvenile based on a new petition for the same offense or a greater or lesser offense. *See also In re Drakeford*, 32 N.C. App. 113, 119 (1977) (vacating adjudication for affray because the trial court had previously dismissed a petition for assault, which arose out of the same incident as the affray, and jeopardy had attached on the assault petition before it was dismissed).

A juvenile's right to double jeopardy is ordinarily not violated when the trial court continues an adjudication hearing for the State to subpoena witnesses. *See Hunt and Dowd*, 46 N.C. App. at 735 (in two related appeals, trial court did not violate the respondents' right to be free from double jeopardy by continuing the cases so the State could present the testimony of additional witnesses). But, a mid-adjudication continuance may violate double jeopardy in limited circumstances, such as when the adjudication begins anew. *See State v. Coats*, 17 N.C. App. 407 (1973); *see also* 1 NORTH CAROLINA DEFENDER MANUAL § 10.8D, Extending Session to Compete Trial (2d ed. 2013) (discussing other circumstances in which double jeopardy may be violated by mid-trial continuance).