

**505.040 Effects of former prosecution for different offenses.**

Although a prosecution is for a violation of a different statutory provision from a former prosecution or for a violation of the same provision but based on different facts, it is barred by the former prosecution under the following circumstances:

- (1) The former prosecution resulted in an acquittal, a conviction which has not subsequently been set aside, or a determination that there was insufficient evidence to warrant a conviction, and the subsequent prosecution is for:
  - (a) An offense of which the defendant could have been convicted at the first prosecution; or
  - (b) An offense involving the same conduct as the first prosecution, unless each prosecution requires proof of a fact not required in the other prosecution or unless the offense was not consummated when the former prosecution began; or
- (2) The former prosecution was terminated by a final order or judgment which has not subsequently been set aside and which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; or
- (3) The former prosecution was improperly terminated, as that term is used in subsection (4) of KRS 505.030, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

**Effective:** January 1, 1975

**History:** Created 1974 Ky. Acts ch. 406, sec. 46, effective January 1, 1975.