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Double Jeopardy; Juvenile Courts; Transfer to Criminal Court; Adjudicatory Proceedings; Breed v. Jones

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Lumber Co.,⁵⁷ the Supreme Court put an end to what it sees as unjustifiable awarding of fees to plaintiffs by the lower courts. The message of *Alyeska* is clear: He who would litigate for the benefit of the public must neither expect that the courts will encourage him, nor the public will repay him, for his efforts.

JAMES LOCKHART

⁵⁷ 417 U.S. 116 (1974), holding that where plaintiff's cause of action is based upon a federal statute, a court may not justify fee assessment by reference to the customary state practice under a corresponding state law.

CONSTITUTIONAL LAW

Double Jeopardy • Juvenile Courts • Transfer to Criminal Court • Adjudicatory Proceedings Breed v. Jones, 95 S. Ct. 1779 (1975)

THE FIFTH AMENDMENT prohibition against double jeopardy¹ is designed to protect both federal and state² defendants from the embarrassment, expense and ordeal of successive criminal trials, which not only create anxiety and uncertainty in an accused, but also increase the danger that an innocent person may be convicted.³ However, as a result of the "juvenile court's assumed ability to function in a unique manner"⁴ a juvenile is not extended the protection of the panoply of constitutional rights afforded an adult in a criminal proceeding.⁵ Accordingly, the Supreme Court, in *Breed v. Jones*,⁶ was called upon to determine the applicability and impact of the double jeopardy clause on juvenile proceedings.

In February, 1971, a petition was filed by Breed, the Director of the California Youth Authority, in the Superior Court of California, County of Los Angeles Juvenile Court, alleging that respondent Jones, then 17 years old, had committed acts which, if committed by an adult, would constitute the

¹ U.S. CONST. amend. V, which states in relevant part: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

² *Benton v. Maryland*, 395 U.S. 784 (1969). This case held the double jeopardy clause applicable to state criminal proceedings through the due process clause of the fourteenth amendment.

³ *Green v. United States*, 355 U.S. 184, 187-88 (1957).

⁴ *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1971).

⁵ *Id.*

⁶ 95 S. Ct. 1779 (1975).

crime of robbery.⁷ In a subsequent jurisdictional or adjudicatory hearing⁸ the juvenile court found that the allegations of the petition were true and continued the proceedings for a dispositional hearing.⁹

In March, 1971, after the dispositional hearing was held, the juvenile court declared that the youth was unfit for treatment as a juvenile and ordered that he be prosecuted as an adult.¹⁰ Jones then filed a writ of habeas corpus in the juvenile court alleging that he would be placed in double jeopardy if transferred. After a denial of this plea, and a subsequent unsuccessful appeal to the state court of appeals,¹¹ Jones was tried in the criminal court and convicted of the same offense for which he had previously been adjudicated delinquent. No appeal was taken from this judgment. Respondent next petitioned the federal district court for a writ of habeas corpus, alleging that his transfer to adult court and his subsequent trial had subjected him to double jeopardy in violation of his fifth amendment rights. The district court denied his petition;¹² however, on appeal,¹³ the United States Court of Appeals for the Ninth Circuit reversed and held that the double jeopardy clause was "fully

⁷ CAL. WELF. & INST'N CODE § 602 (West 1972), which reads in part:

Any person under the age of 18 years who violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

Jones had allegedly violated CAL. PENAL CODE § 211 (West 1972).

⁸ CAL. WELF. & INST'N CODE § 701 (West 1972), which reads in pertinent part:

At the hearing the court shall first consider only the question whether the minor is a person described by Section 600, 601 or 602, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him within the jurisdiction of the juvenile court is admissible and may be received in evidence; however, proof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described in Section 602. . . .

The jurisdictional hearing, pursuant to Section 701, is the time at which the juvenile court judge determines whether the defendant comes within the jurisdiction of the court to treat him as a delinquent under Section 602. In order to make this jurisdictional finding the judge must determine that the facts alleged in the petition are true; *i.e.*, that the minor has committed the offense charged. Jurisdiction, as determined in a Section 701 hearing, refers therefore to jurisdiction to sentence the juvenile for treatment. In this context the term jurisdiction is not limited to its usual meaning of the court's power to adjudicate the merits of the case. The finding of jurisdiction is, in fact, an adjudication on the merits. *But cf. In re Mikkelsen*, 226 Cal. App. 2d 467, 38 Cal. Rptr. 106 (1964).

⁹ CAL. WELF. & INST'N CODE § 702 (West 1972).

¹⁰ CAL. WELF. & INST'N CODE § 707 (West 1972), which provides that, if, at any time during the proceedings, the juvenile court finds that the minor is 16 or older and not amenable to treatment through the court's facilities, it shall direct the district attorney either to prosecute the case under the applicable criminal statute or to dismiss the complaint.

¹¹ *In re Gary Steven J.*, 17 Cal. App. 3d 704, 95 Cal. Rptr. 185 (1971).

¹² *Breed v. Jones*, 343 F. Supp. 690 (C.D. Cal. 1972).

¹³ *Breed v. Jones*, 497 F.2d 1160 (9th Cir. 1974).

applicable to juvenile court proceedings.”¹⁴

The United States Supreme Court¹⁵ granted certiorari, and in a unanimous opinion held that the prosecution of respondent in superior court, after an adjudicatory proceeding in juvenile court, did violate the double jeopardy clause of the fifth amendment.¹⁶

In reaching its decision, the Supreme Court drew upon a line of recent cases that have all dealt with the constitutional rights to be afforded the juvenile during a juvenile court proceeding. Traditionally, when confronted with the contention of a juvenile's immunity from double jeopardy, most courts had denied the juvenile this protection for two reasons. First, most jurisdictions labelled a juvenile proceeding as civil in nature rather than criminal, thus finding the constitutional rights granted an accused in criminal cases would not apply.¹⁷ Second, these jurisdictions reasoned that the function of the juvenile court was viewed as being rehabilitative rather than punitive.¹⁸

The constitutional rights of juveniles were greatly expanded by the landmark case of *In re Gault*,¹⁹ in which the Supreme Court held that at a hearing conducted to determine whether a child is delinquent, the child is entitled to certain constitutional rights. These rights include the right to be given timely written notice of the hearing and the specific facts upon which the petition alleging delinquency is based;²⁰ the right to be represented by counsel;²¹ the right against self-incrimination;²² and the right to confront and cross-examine the witnesses against him.²³ The Supreme Court stated in *Gault* that “neither the 14th Amendment nor the Bill of Rights is for adults alone,”²⁴ which suggested that many other constitutional rights guaranteed to adults in criminal cases, but not specifically mentioned by the court in *Gault*, might be granted to juveniles in delinquency proceedings.

¹⁴ *Id.* at 1165.

¹⁵ *Breed v. Jones*, 95 S. Ct. 1779 (1975).

¹⁶ *Id.* at 1791.

¹⁷ *In re Acuna*, 245 Cal. App. 2d 388, 53 Cal. Rptr. 884 (1964); *People v. Silverstein*, 121 Cal. App. 2d 140, 262 P.2d 656 (1953); *Matter of McDonald*, 153 A.2d 651 (D.C. Mun. Ct. App. 1959); *Moguin v. State*, 216 Md. 524, 140 A.2d 914 (Md. Ct. App. 1958); *Dearing v. State*, 204 S.W.2d 983 (Tex. Crim. App. 1947). *But see* *United States v. Dickerson*, 168 F. Supp. 899 (D.D.C. 1958), *rev'd*, 271 F.2d 487 (D.C. Cir. 1959); *Von Hatten v. State*, 97 Tex. Crim. 123, 260 S.W. 581 (1924).

¹⁸ *People v. Silverstein*, 121 Cal. App. 2d 140, 262 P.2d 656 (1953); *In re Smith*, 114 N.Y.S.2d 673 (N.Y. City Dom. Rel. Ct. 1952).

¹⁹ 387 U.S. 1 (1967).

²⁰ *Id.* at 33-34.

²¹ *Id.* at 41.

²² *Id.* at 55-57.

²³ *Id.* at 57-58.

²⁴ *Id.* at 13.

Thus, *Gault* had expressly rejected the traditional notion that, since the state in a delinquency proceeding acts in a position of *parens patriae* and the proceeding is labelled "civil" rather than "criminal," a juvenile is not entitled to the procedural safeguards of due process.²⁵ The reasoning behind the Court's decision to grant these procedural rights to juveniles has been viewed as a balancing of four factors.²⁶ These factors are: (1) the underlying basis of the right; (2) the effect that the right would have on the beneficial aspects of the juvenile court system; (3) recommendations of various studies and model acts dealing with the juvenile court system; and (4) the extent to which the right was already applicable to delinquency proceedings in various states, either by statute or by court decision.²⁷

In granting constitutional safeguards to juveniles the Supreme Court in *Gault* questioned whether these rights were essential to fundamental fairness²⁸ in the juvenile court system, and whether a balancing of the factors above would render the right advantageous or disadvantageous within the juvenile court system. Thus, the court set out two general guidelines that were to be followed in determining whether other constitutional rights²⁹ would be provided for a delinquent during a juvenile court case. These guidelines were applied by the Court in the case of *In re Winship*,³⁰ which held that the standard of proof of beyond a reasonable doubt was constitutionally required in a delinquency proceeding.³¹

One question raised by these cases was whether *all* constitutional rights afforded adults in criminal trials should be granted to juveniles accused of delinquent offenses.³² This question was subsequently answered in the case of *McKeiver v. Pennsylvania*,³³ which denied the juvenile the sixth amendment

²⁵ See notes 17 and 18 *supra*.

²⁶ See Rudstein, *Double Jeopardy in Juvenile Proceedings*, 14 WM. & MARY L. REV. 266 (1972), for an analysis of *Gault* and similar cases.

²⁷ *Id.* at 275.

²⁸ 387 U.S. at 30.

²⁹ The *Gault* case confined itself to the granting of only those constitutional rights mentioned. Double jeopardy was not included.

³⁰ 397 U.S. 358 (1970).

³¹ At the time of the delinquency hearing in *Jones*, CAL. WELF. & INST'N CODE § 701 (West 1966) provided that there must be a "preponderance of evidence." As a result of *In re Winship* the California statute was amended in 1971 to read "beyond a reasonable doubt." See CAL. WELF. & INST'N CODE § 701 (West 1972).

³² Following *Gault* many commentators speculated on what additional constitutional safeguards would be available to juveniles. See Carver and White, *Constitutional Safeguards for the Juvenile Offender—Implications of Recent Supreme Court Decisions*, 14 CRIME & DELIN. 63 (1968); Gardner, *Gault and California*, 19 HASTINGS L.J. 527 (1968); Comment, *Juvenile Court Proceedings Beyond Gault*, 32 ALBANY L. REV. 126 (1967); Note, *Extending Constitutional Rights of Juveniles—Gault in Indiana*, 43 IND. L.J. 661 (1968).

³³ 403 U.S. 528 (1971).

right to a jury trial. *McKiever* added a new element into the determination of a juvenile's constitutional rights, that being the effect of the right on the fact-finding process.³⁴ The Court concluded that a jury trial "would not strengthen greatly, if at all, the fact-finding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner."³⁵

Once again, in *Breed v. Jones*, the Court was called upon to determine whether a constitutional right afforded adults in a criminal proceeding—the protection against being twice put in jeopardy—should be extended to the juvenile in a proceeding to determine delinquency. In making this determination the *Jones* court first had to decide whether the clause applied at all in such a proceeding and, second, if it did apply, whether the transfer of a delinquent to a criminal court,³⁶ after a hearing in juvenile court,³⁷ violated any of the principles of the double jeopardy clause.

In respect to the determination of the first issue the Court failed to make any substantial attempt to engage in the balancing analysis as prescribed by *Gault*, *Winship* and *McKeiver*.³⁸ Instead of weighing those factors that the Supreme Court had set out to determine whether the constitutional right claimed by *Jones* was essential to "fundamental fairness" in the juvenile court system, the *Jones* Court attempted to base its decision upon a finding that in reality there is no distinction between a juvenile proceeding and a trial held in a criminal court.³⁹

The Court applied the overall rationale of *Gault* and *Winship* in a different manner, stating that:

[I]t is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires the courts eschew "the 'civil' label-of-convenience which has been attached to juvenile proceedings" . . . and that "the juvenile process . . . be candidly appraised."⁴⁰

³⁴ *Id.* at 543: "As the standard [of fundamental fairness] was applied [in *Gault* and *Winship*], we have an emphasis on fact-finding procedures. The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flow from this emphasis."

³⁵ *Id.* at 547. The Court reasoned that because juries are not required in many other types of proceedings, they would not be a necessary component of accurate fact-finding.

³⁶ CAL. WELF. & INST'N CODE § 707 (West 1972). See note 10 *supra*.

³⁷ CAL. WELF. & INST'N CODE § 701 (West 1972). See note 8 *supra*.

³⁸ See notes 19-35 *supra*.

³⁹ 95 S. Ct. at 1786. The Court stated: "Under our decisions we can find no persuasive distinction in that regard between the proceeding conducted in this case pursuant to California Welfare and Institutional Code Section 701 and a criminal prosecution each of which is designed to vindicate [the] very vital interest in enforcement of criminal laws." *Contra, In re Acuna*, 245 Cal. App. 2d 388, 53 Cal. Rptr. 884 (1964); *In re Steiner*, 134 Cal. App. 2d 391, 285 P.2d 972 (1955). These cases make a definite distinction between criminal and juvenile proceedings.

⁴⁰ 95 S. Ct. at 1785 (footnotes omitted).

Burger's "candid appraisal" referred to the risks involved in a juvenile hearing and a realization that such a proceeding imposes the same pressures and burdens upon the individual charged with a delinquent act as does a full criminal trial.⁴¹

Although *McKeiver* determined that not all constitutional guarantees associated with traditional criminal prosecutions were to be applied in juvenile proceedings, the *Jones* Court distinguished *McKeiver* in that that case dealt with "the formalities of the criminal adjudicative process"⁴² and not with the risk to which the constitutional right of double jeopardy referred.⁴³

The issue of attachment of jeopardy is resolved by simply adopting principles developed in adult cases.⁴⁴ Thus, jeopardy applied in juvenile proceedings and attached when the "Juvenile Court, as the trier of facts, began to hear evidence."⁴⁵

Assuming that the double jeopardy clause does apply to a juvenile proceeding, petitioner Breed still argued that a transfer under California's Welfare and Institutional Code Section 707⁴⁶ would not violate the double jeopardy clause.⁴⁷ The argument advanced was twofold: (1) a transfer does not violate any of the policies of the double jeopardy clause; and, (2) if a transfer was found to violate the double jeopardy clause, it "would diminish the flexibility and informality of juvenile court proceedings without conferring

⁴¹ *Id.* at 1786. The Court stated: "such a proceeding imposes heavy pressures and burdens—psychological, physical and financial—on a person charged. The purpose of the Double Jeopardy Clause is to require that he be subject to the experience only once 'for the same offense.'"

⁴² *Id.* at 1786.

⁴³ *Id.*

⁴⁴ In *United States v. Dickerson*, 168 F. Supp. 899 (D.D.C. 1958), *rev'd*, 271 F.2d 487 (D.C. Cir. 1959), the court described a test for determining when jeopardy attaches in an adult proceeding. Although reversed the court of appeals impliedly accepted the district court's statement concerning attachment of jeopardy. *Accord*, *United States v. Jorn*, 400 U.S. 470 (1971); *Richard M. v. Superior Court of Shasta County*, 4 Cal. 3d 370, 482 P.2d 664, 93 Cal. Rptr. 752 (1971).

⁴⁵ 95 S. Ct. at 1787.

⁴⁶ See note 10 *supra*.

⁴⁷ See Carr, *The Effect of the Double Jeopardy Clause on Juvenile Proceedings*, 6 U. Tol. L. Rev. 1, 23 (1974). Carr points out that:

[T]he "precise impact" of the double jeopardy clause on the transfer proceeding appears to be clear for two of the three points in time at which the transfer decision can occur. If the decision precedes a delinquency adjudicatory hearing, jeopardy does not attach. If the transfer decision follows a final dispositional order which retains the child in the juvenile system, the clause will and should apply to deprive the state of an opportunity to try the juvenile as an adult. But where the transfer order is entered after an adjudicatory hearing is entered upon and before entry of any other dispositional order, the impact of the double jeopardy clause on the implementation of the order by a subsequent adult prosecution is considerably less clear.

It is the third situation to which the court, in *Breed v. Jones*, addresses itself in holding that jeopardy attaches at the adjudication hearing and prevents the transfer to the adult criminal court.

any additional due process benefits.”⁴⁸ As noted by Chief Justice Burger, these arguments tend to overlap,⁴⁹ and may be condensed, for purposes of this analysis, to a discussion of the principles and applications of the doctrine of continuing jeopardy.⁵⁰ In the final analysis this becomes the thrust of petitioner’s argument in *Jones*.

The theory of one continuous jeopardy originated in Justice Holmes’s dissent in *Kepner v. United States*.⁵¹ But as an exception to a fundamental constitutional right it has had limited application, occasionally being applied in support of the principle upon which a retrial may follow a successful appeal.⁵² As the court noted in *Jones*, Holmes’s view has never been adopted by a majority of the court.⁵³

The doctrine of single or continuing jeopardy had been invoked by the California courts to support transfer orders which were entered after a finding of delinquency.⁵⁴ This did put a delinquent through two separate hearings or trials, but since the courts had recognized the continuing jeopardy theory none of the principles of the double jeopardy clause were viewed as being violated. However, this position was rejected by the Ninth Circuit Court of Appeals in *Breed v. Jones*⁵⁵ and once again by the United States Supreme Court.⁵⁶

⁴⁸ 95 S. Ct. at 1787.

⁴⁹ *Id.*

⁵⁰ Petitioner argues that Jones’ prosecution in both juvenile court and adult court is one continuous proceeding and thus does not in any way violate the double jeopardy clause.

⁵¹ 195 U.S. 100, 134-37 (1904) (Holmes, J., dissenting). Holmes stated: “[I]t seems to me that logically and rationally a man cannot be said to be more than once in jeopardy in the same cause, however often he may be tried. The jeopardy is one continuing jeopardy from its beginnings to the end of the cause.”

⁵² The authorities for this principle are collected in *State v. Schmeier*, 28 Wis. 2d 126, 135 N.W.2d 842 (1965). Petitioner in *Breed v. Jones* employs the continuing jeopardy argument in this respect, pointing out that by analogy double jeopardy should not apply when a transfer occurs because it is a procedure that is similar, in many respects, to the retrial of an accused who has obtained reversal of a conviction on appeal.

⁵³ 95 S. Ct. at 1788. See Note, *Double Jeopardy and the Waiver of Jurisdiction in California’s Juvenile Courts*, 24 STAN. L. REV. 888 (1972), in which the author points out that:

Continuing jeopardy has not prevailed in criminal courts and should not prevail in criminal courts through certification. . . . Continuing jeopardy relies on the assumption that the several trials are all based on the same original complaint. In the certification situation this underlying premise is lacking. When the juvenile court judge enters a finding of nonamenability, the juvenile petition is dismissed; subsequent criminal action is based on a new complaint alleging the same facts. Even under Holmes’s formulation this would not be continuing jeopardy since each new prosecution proceeds under the authority of a different complaint.

⁵⁴ *In re Gary Steven J.*, 17 Cal. App. 3d 704, 95 Cal. Rptr. 185 (1971), *habeas corpus denied sub. nom.*, *Jones v. Breed*, 343 F. Supp. 690 (C.D. Cal. 1972), *rev’d*, 497 F.2d 1160 (9th Cir. 1974), *cert. granted*, 419 U.S. 894 (1974); *People v. McFarland*, 17 Cal. App. 3d 807, 95 Cal. Rptr. 369 (1971); *People v. Brown*, 13 Cal. App. 3d 876, 91 Cal. Rptr. 904 (1970).

⁵⁵ 497 F.2d 1160 (9th Cir. 1974).

⁵⁶ 95 S. Ct. 1779 (1975).

The court of appeals rejected the continuing jeopardy argument since to allow the state to initiate a retrial after it had already obtained a conviction in a juvenile court would violate those principles enunciated in *Price v. Georgia*,⁵⁷ *Green v. United States*,⁵⁸ and *Waller v. Florida*.⁵⁹ Unlike the court of appeals, the Supreme Court did not thoroughly examine petitioner's continuing jeopardy argument. It dismissed the argument summarily, simply stating that the doctrine of continuing jeopardy would not "satisfactorily explain why respondent should be deprived of the constitutional protection against a second trial."⁶⁰

The Court reasoned that absent the continuing jeopardy argument "if there is to be an exception" to the constitutional right to be protected against double jeopardy, "it must be justified by interests of society, reflected in that unique institution, or of juveniles themselves."⁶¹ The Court found no such exception in *Jones*,⁶² the conclusion being that once a hearing begins on the merits of a delinquency petition, jeopardy attaches and a subsequent criminal prosecution is barred by the guarantee to be protected against double jeopardy.

CONCLUSION

The impact that the Supreme Court's decision will have upon juvenile court proceedings can only be judged in light of the various types of transfer statutes that have been enacted throughout the United States. As one author has pointed out, at least 44 jurisdictions have provisions in their juvenile statutes which permit waiver of jurisdiction in juvenile proceedings to criminal courts.⁶³ But under *Jones*, the exact timing of the transfer becomes of the utmost importance for it will ultimately determine whether one's constitutional right to be protected against double jeopardy has been violated.

This new Supreme Court dictate will require some state statutory procedures to be amended in order to comply with the new constitutional protection afforded juveniles. Those states that require a finding of delinquency

⁵⁷ *Price v. Georgia*, 398 U.S. 323 (1970), where the Supreme Court held that if one has been acquitted either implicitly or expressly, of any charge, he cannot be retried on that charge.

⁵⁸ *Green v. United States*, 355 U.S. 184 (1957), where the Supreme Court held that a person may not be retried on any charges of an indictment to which he has, upon appeal initiated by him, had that conviction reversed.

⁵⁹ *Waller v. Florida*, 397 U.S. 387 (1970). The Court held that a person may not be tried for a single offense growing out of a single occurrence, criminal episode, or transaction by two courts created under the authority of one state. *Accord*, *Ashe v. Swenson*, 397 U.S. 436 (1970). Under the California system once a youth is transferred his case comes up in a new court and under a new charging document. Thus he is tried in both courts.

⁶⁰ 95 S. Ct. at 1788.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Rudstein, *Double Jeopardy in Juvenile Proceedings*, 14 WM. & MARY L. REV. 267, 297 (1972).

prior to the entering of a transfer order⁶⁴ and those states that permit transfer to occur at any time prior to the entry of a dispositional order,⁶⁵ will have to amend their statutes to conform with the decision of *Breed v. Jones*. It is evident that in these two situations jeopardy would attach at the delinquency hearing and would bar a subsequent transfer to a criminal court. Only those state statutes which require that the court determine amenability before adjudication of delinquency,⁶⁶ and thus either try the juvenile in a juvenile court or in a criminal court, will remain unaffected by the *Jones* case.⁶⁷

Some would view the Court's decision with distaste, having pointed out that the application of the double jeopardy clause in juvenile proceedings would destroy the unique dispositional approach enjoyed by the courts previously and increase the spiralling caseload already facing most courts today.⁶⁸ However, viewing the case from the juvenile's point of view, who otherwise might have to go through the burdens of two trials, the constitutional guarantee to be protected against double jeopardy is one of the rights that must be afforded since the fourteenth amendment is not applicable to adults alone.⁶⁹

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⁶⁴ See, e.g., MASS. GEN. LAW ANN. ch. 119, §§ 61, 75 (1969); W. VA. CODE ANN. § 49-5-14 (1966).

⁶⁵ See, e.g., ALA. CODE ANN. tit. 13, § 364 (1959); CAL. WELF. & INST'N CODE § 707 (West 1972); KAN. STAT. ANN. § 38-808 (1973); OHIO REV. CODE ANN. § 2151.26 (Page Supp. 1974).

⁶⁶ See, e.g., D.C. CODE ANN. § 16-2307 (Supp. V 1972); GA. CODE ANN. § 24(A)-2501 (Supp. 1974); MD. ANN. CODE art. 26, § 70.16(a) (1973); N.H. REV. STAT. ANN. § 169:21 (1964); N.M. STAT. ANN. § 13-14-27(A) (Supp. 1974); TENN. CODE ANN. § 37-234 (Supp. 1974).

⁶⁷ 95 S. Ct. at 1789.

⁶⁸ Carr, *The Effect of the Double Jeopardy Clause on Juvenile Proceedings*, 6 U. TOL. L. REV. 1, 39-61 (1974). This article was written just prior to the *Jones* decision and takes a position directly contrary to the opinion of the court.

