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## SHOULD JUVENILE ADJUDICATIONS COUNT AS CONVICTIONS FOR *APPRENDI* PURPOSES?

### INTRODUCTION

The U.S. Supreme Court held in *Apprendi v. New Jersey*<sup>1</sup> that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”<sup>2</sup> The Court made an exception for prior convictions because the necessary procedural safeguards, (1) a trial by jury and (2) proof beyond a reasonable doubt, were presumably observed in the trial leading up to the conviction.<sup>3</sup> Thus, a judge has the discretion to increase a defendant’s sentence beyond the statutory maximum based on the defendant’s prior convictions.<sup>4</sup>

However, whether the Court specifically addressed the differences between adult convictions and juvenile adjudications, which usually occur without juries, is unclear in regard to what constitutes a conviction for *Apprendi* purposes.<sup>5</sup> In a pre-*Apprendi* case, *United States v. Williams*,<sup>6</sup> the Ninth Circuit held that using juvenile adjudications for sentence enhancement within the United States Sentencing Guidelines (“Guidelines”) did not violate due process.<sup>7</sup> However, *Williams* is not dispositive because it only addressed sentencing within the statutory range.<sup>8</sup> In *Williams v. New York*,<sup>9</sup> the Court noted that judges possess the discretion to enhance a defendant’s sentence within a statutory range.<sup>10</sup> The Court in *Apprendi* found that a judge must take different considerations into account when enhancing a defendant’s sentence beyond the statutory

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1. 530 U.S. 466 (2000).

2. *Id.* at 490.

3. *Id.* at 488.

4. *See id.* at 490.

5. Gary Young, *Does ‘Apprendi’ Allow Juvenile Add-Ons?*, 24 NAT’L L.J. 1, 2 (2002).

6. 891 F.2d 212 (9th Cir. 1989).

7. *Id.* at 215.

8. *Apprendi v. New Jersey*, 530 U.S. 466, 481 (2000).

9. *Williams v. New York*, 337 U.S. 241 (1949).

10. *Id.*

range.<sup>11</sup> *Apprendi* controls cases in which a court expands a sentence beyond the maximum statutory range.<sup>12</sup>

The Eighth and Ninth Circuits have issued conflicting decisions over whether juvenile adjudications count as convictions for sentencing purposes.<sup>13</sup> The Ninth Circuit held that the Court's explicit mention of the procedural safeguards in *Apprendi* means that no lesser protection will suffice; therefore, juvenile adjudications are not convictions because the adjudications are conducted without a jury.<sup>14</sup> Conversely, the Eighth Circuit held that the procedural safeguards mentioned in *Apprendi* are just examples and that other safeguards are sufficient to increase sentences beyond the statutory maximum.<sup>15</sup> Furthermore, the focus should be on whether the adjudication is reliable and in compliance with due process.<sup>16</sup> Juvenile defendants possess other procedural safeguards such as "the right to notice, the right to counsel, the right to . . . cross-examine witnesses, and the privilege against self-incrimination."<sup>17</sup> Judges must also find guilt beyond a reasonable doubt before they can convict juveniles.<sup>18</sup> While juvenile defendants lack the same access to a trial by jury that adult defendants have, this should not undermine the reliability of juvenile adjudications because the Constitution does not require jury trials.<sup>19</sup>

This Comment explores the fundamental difference between juvenile adjudications and adult proceedings and determines whether the Eleventh Circuit should use juvenile adjudications as convictions to increase sentences under *Apprendi* beyond statutorily defined maximums. Part I provides an overview of the development of juvenile proceedings.<sup>20</sup> Part II examines the use of juvenile

11. *Apprendi*, 530 U.S. at 482-84.

12. *Id.* at 476.

13. *Juvenile Adjudications Are 'Convictions' For Apprendi Purposes*, *Eighth Circuit Says*, U.S. LAW WK., July 23, 2002, at 1054-55 [hereinafter *Eighth Circuit Says*].

14. *United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir. 2001).

15. *United States v. Smalley*, 294 F.3d 1030, 1032-33 (8th Cir. 2002).

16. *Id.* at 1033.

17. *Id.*

18. *In re Winship*, 397 U.S. 358, 368 (1970).

19. *Smalley*, 294 F.3d at 1033; see also *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971) (noting that a jury is not necessary for accurate fact finding).

20. See discussion *infra* Part I.

adjudications as convictions in the Guidelines.<sup>21</sup> Part III analyzes the *Apprendi* case.<sup>22</sup> Part IV discusses the different opinions within the circuits regarding the use of juvenile adjudications for *Apprendi* purposes.<sup>23</sup> Part V discusses recent state decisions on the use of juvenile adjudications for *Apprendi* purposes,<sup>24</sup> and Part VI examines whether the Eleventh Circuit should use juvenile adjudications as convictions.<sup>25</sup> This Comment concludes that juvenile adjudications should not be used to enhance a defendant's sentence beyond the statutory maximum under *Apprendi*.<sup>26</sup>

## I. HISTORICAL CONTEXT: THE EVOLUTION OF JUVENILE PROCEEDINGS

### A. *The Progressive Movement*

Progressivism included ideologies on issues ranging from economic regulation to criminal justice.<sup>27</sup> The theme of the Progressive movement was to solve society's problems with solutions formulated by professionals and experts.<sup>28</sup> The Progressives relied on the state to enact these solutions.<sup>29</sup> They focused on reforming the offender rather than on punishing the offense.<sup>30</sup> The Progressives formulated the "Rehabilitative Ideal" that permeated all Progressive criminal justice reforms.<sup>31</sup> The Rehabilitative Ideal emphasized

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21. See discussion *infra* Part II.

22. See discussion *infra* Part III.

23. See discussion *infra* Part IV.

24. See discussion *infra* Part V.

25. See discussion *infra* Part VI.

26. See discussion *infra* Conclusion.

27. Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 145 (1984). As a result of the invention of the railroad, America changed into an industrial society which led to mass numbers of people in cities; however, cities were not equipped to provide basic needs, and thus new levels of crime and poverty developed as a part of urban industrial life. *Id.* at 142-43.

28. *Id.* at 142-47.

29. Eric K. Klein, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 376 (1998); see also Feld, *supra* note 27, at 145 ("Progressive reliance on the [s]tate reflected a fundamental belief that state action could be benevolent, that government could rectify social problems, and that Progressive values could be inculcated in others.").

30. Klein, *supra* note 29, at 376.

31. Feld, *supra* note 27, at 147.

informal and flexible policies that a court could apply on a case-by-case basis.<sup>32</sup> The juvenile court emerged from the Rehabilitative Ideal.<sup>33</sup> “The juvenile court professionals were to make discretionary, individualized treatment decisions to achieve benevolent goals and social uplift by substituting a scientific and preventive approach for the traditional punitive philosophy of the criminal law.”<sup>34</sup> The professionals achieved these results by the state acting as *parens patriae*,<sup>35</sup> instead of treating the proceedings as adversarial;<sup>36</sup> consequently, the reformers did not apply the same procedural rights to juvenile defendants that are applied to adult criminal defendants.<sup>37</sup> The *parens patriae* doctrine drew no distinction between criminal and non-criminal youth conduct, a view that supported the Progressive position that juvenile court proceedings were civil rather than criminal in nature.<sup>38</sup>

### B. Supreme Court Changes to the Juvenile Court

The Court’s decisions in the 1960s changed the juvenile court from a social welfare agency into a legal institution.<sup>39</sup> The informal method of the Progressive system had not solved the problem of juvenile delinquency.<sup>40</sup> Abuse and habitual offenders plagued the juvenile system.<sup>41</sup> The Court brought a legal structure to the juvenile court by granting juveniles due process rights.<sup>42</sup>

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32. *Id.*

33. *Id.* at 148 (noting that the juvenile system “was conceived as a specialized, bureaucratic agency, staffed by experts and designed to serve the needs of a specific category of client: the ‘child at risk,’ whether offender, dependent, or neglected”).

34. *Id.*

35. *Id.* (describing *parens patriae* as “the right and responsibility of the state to substitute its own control over children for that of the natural parents when the latter were unable or unwilling to meet their responsibilities or when the child posed a community crime problem”); see also BLACK’S LAW DICTIONARY 1003 (5th ed. 1979) (defining *parens patriae* as: “role of state as sovereign”).

36. *In re Gault*, 387 U.S. 1, 16 (1967).

37. Christine A. Sullivan, *Statutory Reform in the Georgia Juvenile Court System: Juvenile Competency Issues Finally Addressed*, 15 GA. ST. U. L. REV. 879, 881 (1999).

38. Klein, *supra* note 29, at 376-77. “Additionally, a euphemistic language was adopted to protect children from the stigma of adult prosecutions—attorneys for the government did not charge a child, but filed a petition; children were not sentenced, but committed.” *Id.* at 377.

39. Sullivan, *supra* note 37, at 882.

40. Steven Friedland, *The Rhetoric of Juvenile Rights*, 6 STAN. L. & POL’Y REV. 137, 140 (1995).

41. *Id.*

42. Sullivan, *supra* note 37, at 882; see also *In re Gault*, 387 U.S. 1, 20-21 (1967) (“Failure to observe the fundamental requirements of due process has resulted in instances, which might have been

In *In re Gault*, the Court held that juveniles should be afforded fundamental procedural rights.<sup>43</sup> *Gault* involved a 15-year-old juvenile taken into custody for allegedly making obscene phone calls.<sup>44</sup> The juvenile court did not promptly notify Gault's parents of the custody or of the offense.<sup>45</sup> Furthermore, the complaining witness did not appear, the juvenile court did not record any portion of the proceeding, and it did not advise Gault of a right to counsel.<sup>46</sup> The juvenile court subsequently found Gault delinquent and sentenced him to a state industrial school for the remainder of his minority.<sup>47</sup>

The Supreme Court reasoned, contrary to the Progressives' ideals, that juvenile commitment was incarceration and that juveniles should be afforded certain procedural rights, regardless of whether their proceedings were labeled criminal or civil.<sup>48</sup> Due process is the foundation of individual freedom.<sup>49</sup> The Court concluded that the Constitution requires that children be afforded due process rights in proceedings against them.<sup>50</sup>

The Court further reasoned that due process rights are also necessary in establishing the truth where opposing facts and data exist, as is common in juvenile proceedings.<sup>51</sup> Thus, the implementation of procedural due process standards will enhance the juvenile process because the states will not have to give up any "substantive benefits of the juvenile process" and its rehabilitative nature.<sup>52</sup> The procedural safeguards afforded to juveniles through

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avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.").

43. *Gault*, 387 U.S. at 30-31.

44. *Id.* at 4.

45. *See id.* at 5.

46. *Id.* at 5, 8. Gault also made incriminating statements at the proceedings. *Id.* at 6.

47. *Id.* at 7-8.

48. *Gault*, 387 U.S. at 30-31. The Progressives believed that a child, unlike an adult, has a right "not to liberty but to custody." *Id.* at 17. Therefore, *parens patriae* does not deprive the child of any rights because a child has none. *Id.* The state assumes the custody role that the parent has neglected. *Id.* Thus, the state is "not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty." *Id.*

49. *Id.* at 20.

50. *Id.* at 30-31.

51. *Id.* at 21.

52. *Id.* Some benefits of juvenile proceedings are that juveniles are labeled as delinquents instead of criminals and that adjudication of a child as delinquent will "not operate as a civil disability or disqualify him for civil service appointment." *Id.* at 23-24.

*Gault* are: advance notice of charges, the right to counsel, the opportunity to confront and cross-examine witnesses, and a privilege against self-incrimination.<sup>53</sup>

The Court further defined the rights afforded to juveniles in *In re Winship*<sup>54</sup> and in *McKeiver v. Pennsylvania*.<sup>55</sup> In *Winship*, the Court held that proof beyond a reasonable doubt is required to adjudge a juvenile delinquent for an act that would be considered a crime if the juvenile were an adult.<sup>56</sup> The Court reasoned that the reasonable doubt standard is an important concept in criminal procedure.<sup>57</sup> It reduces “the risk of convictions resting on factual error.”<sup>58</sup> The same reasons that require reasonable doubt to protect the fact finding process for innocent adults also hold true for innocent children.<sup>59</sup> Therefore, the Court held that the prosecution must establish proof of delinquency beyond a reasonable doubt, rather than by a civil proceeding standard such as preponderance of the evidence.<sup>60</sup>

The Court in *McKeiver* held that a jury is not required in a juvenile proceeding because the only requirement for fundamental fairness in these proceedings is accurate fact finding, a requirement that a judge or a jury can easily satisfy.<sup>61</sup> The Court reasoned that a jury trial would not strengthen the fact finding function and could create a conflict in the character of juvenile proceedings.<sup>62</sup>

*Gault*, *Winship*, and *McKeiver* created a procedural revolution for juvenile proceedings that transformed the initial Progressive conception.<sup>63</sup> “By emphasizing criminal procedural regularity in the determination of delinquency, the Supreme Court shifted the focus of

53. *Id.* at 33-56.

54. 397 U.S. 358 (1970).

55. 403 U.S. 528 (1971).

56. *Winship*, 397 U.S. at 368.

57. *Id.* at 363.

58. *Id.*

59. *Id.* at 365.

60. *Id.* at 368 (“[T]he constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*.”); see also Feld, *supra* note 27, at 157.

61. *McKeiver*, 403 U.S. at 543.

62. *Id.* at 545 (“There is a possibility, at least, that the jury trial, if required as matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.”).

63. Feld, *supra* note 27, at 161.

the juvenile court from the Progressive emphasis on the 'real needs' of the child to proof of the commission of criminal acts, thereby effectively transforming juvenile proceedings into criminal prosecutions."<sup>64</sup>

## II. THE USE OF JUVENILE ADJUDICATIONS UNDER THE UNITED STATES SENTENCING GUIDELINES

When a federal court convicts a defendant, the judge must use the Guidelines to impose a sentence.<sup>65</sup> The Guidelines do not take into consideration factors such as race and economic status.<sup>66</sup> Instead, judges uniformly apply mandatory sentences for offenses.<sup>67</sup> The defendant receives a total criminal history score "based on their present offense and prior criminal record."<sup>68</sup> The judge then applies the sentence that corresponds with that classification.<sup>69</sup> The court is allowed to consider juvenile adjudications in calculating the criminal history score.<sup>70</sup> Some federal courts have addressed whether

64. *Id.*

65. David Dormont, *For the Good of the Adult: An Examination of the Constitutionality of Using Prior Juvenile Adjudications to Enhance Adult Sentences*, 75 MINN. L. REV. 1769, 1771 (1991).

66. See UNITED STATES SENTENCING COMMISSION, FEDERAL SENTENCING GUIDELINES MANUAL § 4A1 (2000) [hereinafter GUIDELINES].

67. Dormont, *supra* note 65, at 1772.

68. *Id.*; see GUIDELINES, *supra* note 66, § 4A1.

General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

GUIDELINES, *supra* note 66, § 4A1.

69. Dormont, *supra* note 65, at 1772.

70. *Id.* at 1773; GUIDELINES, *supra* note 66, § 4A1.2(d).

(d) Offenses Committed Prior to Age Eighteen

(1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under [section] 4A1.1(a) for each such sentence.

(2) In any other case,

(A) add 2 points under [section] 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) add 1 point under [section] 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).



enhancing adult sentences with juvenile adjudications is constitutional because the proceedings are procedurally different.<sup>71</sup>

In *United States v. Williams*, the Ninth Circuit addressed the constitutionality of using juvenile adjudications to enhance adult sentences.<sup>72</sup> Williams argued that while bench trials are constitutional for juvenile proceedings, using those proceedings to enhance an adult's sentence is unconstitutional.<sup>73</sup> Williams relied on the Court's decision in *Baldasar v. Illinois*<sup>74</sup> to support his contention.<sup>75</sup> The court in *Baldasar* held that a judge cannot use an uncounseled conviction to enhance a sentence in a proceeding in which counsel is constitutionally required.<sup>76</sup>

The court in *Williams* found that *Baldasar* was not analogous because "[t]he right to counsel is more fundamental than the right to a jury trial."<sup>77</sup> Furthermore, "it is not unconstitutional to deprive a juvenile of liberty without a jury trial."<sup>78</sup> The court reasoned that using juvenile proceedings to enhance adult sentences is constitutionally permissible because a juvenile's due process rights are not violated when he is found to be delinquent without a jury trial.<sup>79</sup> The court in *Williams* chose to limit the *Baldasar* holding to prevent subsequent use of a conviction to enhance a defendant's sentence only in cases involving a right to counsel, instead of extending the holding to include any deprivation of a constitutional right.<sup>80</sup>

The Third Circuit in *United States v. Bucaro*<sup>81</sup> considered whether using juvenile adjudications to enhance a defendant's sentence under the Guidelines violated due process and the constitutional prohibition

GUIDELINES, *supra* note 66, § 4A1.2(d).

71. *E.g.*, *United States v. Bucaro*, 898 F.2d 368 (3d Cir. 1990); *United States v. Williams*, 891 F.2d 212 (9th Cir. 1989).

72. *Williams*, 891 F.2d at 212.

73. *Id.* at 214.

74. 446 U.S. 222 (1980).

75. *Williams*, 891 F.2d at 214.

76. *Id.* (noting that an uncounseled conviction can be constitutionally permitted to impose a nonprison sentence but will be invalid to enhance a sentence of imprisonment).

77. *Id.* at 215.

78. *Id.*

79. *Id.*

80. *Id.*; *see also* Dormont, *supra* note 65, at 1775-76.

81. 898 F.2d 368 (3d Cir. 1990).

against ex post facto laws.<sup>82</sup> The defendant argued in *Bucaro* that section 4A1.2(d)(2) of the Guidelines was an ex post facto law because it considered juvenile adjudications when, at the time of those adjudications, juveniles understood that juvenile records would not be used against them in other proceedings.<sup>83</sup> The court rejected the defendant's ex post facto argument and found that his punishment was for the criminal acts he committed "and the guideline that took his prior conduct into account was in effect when he committed the criminal offenses for which [he was being punished]."<sup>84</sup>

The defendant also argued that the Guidelines violated his due process rights because they were inconsistent with Pennsylvania law.<sup>85</sup> He was not provided with notice that a court could use his juvenile adjudications against him in later criminal proceedings because the Pennsylvania Model Juvenile Court Act provided that a court could not use his juvenile adjudications against him.<sup>86</sup> However, the court found that the state juvenile statute did give notice; the Act contained an exception that would allow a court to use his adjudication for sentencing after conviction of a felony.<sup>87</sup> Therefore, the defendant did have notice and the court's use of his juvenile adjudications in sentencing did not violate his rights.<sup>88</sup>

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82. *Id.* at 370. An ex post facto law is: "[a] law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." BLACK'S LAW DICTIONARY 520 (5th ed. 1979).

83. *Bucaro*, 898 F.2d at 370. The defendant argued that the juvenile system was rehabilitative and "a necessary corollary to rehabilitation is a prohibition against the use or consideration of juvenile adjudications during any later criminal proceedings." *Id.* Furthermore, the juvenile court takes the rehabilitative purpose into account when sentencing. *Id.*

84. *Id.* at 370 (stating that an ex post facto law "is a law that punishes for conduct that was not criminal at the time it occurred or that increases the punishment for an act after the act is done"). The court found that when the defendant committed the crimes that produced his sentence, the Guidelines were already enacted and provided that juvenile adjudications would be taken into account when sentencing. *Id.*

85. *Id.* at 371-72. Pennsylvania juvenile law provides that juvenile proceedings will not be used against defendants in criminal proceedings. *Id.* at 372. Furthermore, the Pennsylvania Juvenile Act and the Guidelines are so inconsistent that "his consent to those adjudications was not knowingly given." *Id.*

86. *Id.* at 372 ("[T]he [G]uidelines were not in effect during the juvenile proceedings, [so he did not have] notice that the adjudications could later be used against him in criminal proceedings.").

87. *Id.* "[Section] 6354(b)(1) states that a juvenile adjudication can be used 'in dispositional proceedings after conviction of a felony for the purposes of a presentence investigation and report.'" *Id.*

88. *Id.* at 370.

III. *APPRENDI V. NEW JERSEY*

On December 22, 1994, Charles C. Apprendi, Jr. fired shots into the home of an African American family who had recently moved into his all-white neighborhood.<sup>89</sup> The police arrested Apprendi, who admitted he was the shooter.<sup>90</sup> After further questioning, he said that “because [the home owners were] black in color he [did] not want them in the neighborhood.”<sup>91</sup> Apprendi later retracted this statement.<sup>92</sup> He entered into a plea agreement in which he plead guilty to “two counts . . . of second-degree possession of a firearm for an unlawful purpose . . . and one count of the third-degree offense of unlawful possession of an antipersonnel bomb.”<sup>93</sup> A New Jersey statute classified the possession of a firearm for unlawful purposes as a second-degree offense punishable with a sentence of five to ten years.<sup>94</sup> However, the state reserved the right to impose an enhanced sentence based on a hate crime statute if the trial judge found that Apprendi committed the acts with a biased purpose.<sup>95</sup> Taking into consideration Apprendi’s retracted statement, the trial judge (1) found that Apprendi violated the hate crime statute and (2) enhanced his sentence.<sup>96</sup> Apprendi challenged the enhancement on the grounds that it violated the Constitution.<sup>97</sup> The question presented to the Court was “whether the Due Process Clause of the Fourteenth Amendment requires that a factual determination authorizing an increase in the maximum prison sentence for an offense from 10 to 20 years be made by a jury on the basis of proof beyond a reasonable doubt.”<sup>98</sup> The Court first noted that judges have historically used discretion in

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89. *Apprendi v. New Jersey*, 530 U.S. 466, 469 (2000).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 469-70.

94. *Id.* at 470.

95. *Apprendi*, 530 U.S. at 470.

96. *Id.* at 471.

97. *Id.* (“Apprendi appealed, arguing, *inter alia*, that the Due Process Clause of the United States Constitution requires that the finding of bias upon which his hate crime sentence was based must be proved to a jury beyond a reasonable doubt.”).

98. *Id.* at 469.

enhancing sentences within a statutory range.<sup>99</sup> However, Apprendi's contention posed a different legal question because the statute provided the judge discretion to double the maximum statutory range.<sup>100</sup> The Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."<sup>101</sup> The Court examined precedent to explain the constitutional use of prior convictions for sentence enhancement.<sup>102</sup>

In a pre-*Apprendi* case, *Almendarez-Torres v. United States*,<sup>103</sup> the Court considered whether earlier convictions were elements of the crime and thus should be charged in the indictment or if the earlier convictions were sentencing factors and not required in the indictment.<sup>104</sup> The Court held that "[a]n indictment . . . need not set forth factors relevant only to sentencing of an offender found guilty of the charged crime."<sup>105</sup> The Court admitted the earlier convictions, which were found pursuant to proceedings with substantial procedural safeguards.<sup>106</sup> Thus, the Court held that the procedural safeguards attached to prior convictions, allowing the constitutional use of prior convictions by later courts in enhancing a defendant's sentence beyond the statutory maximum.<sup>107</sup>

Similarly, in *Jones v. United States*<sup>108</sup> the Court held that

under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any factor (other than prior conviction) that increases the maximum

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99. *Id.* at 481.

100. *Id.* at 474.

101. *Apprendi*, 530 U.S. at 490.

102. *Id.* at 476-82.

103. 523 U.S. 224 (1998).

104. *Id.* at 226.

105. *Id.* at 228.

106. *Apprendi*, 530 U.S. at 488 (noting that no "question concerning the right to a jury trial or the standard of proof that would apply to a contested issue of fact was before the Court").

107. *Id.*

108. 526 U.S. 227 (1999).

penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.<sup>109</sup>

After reexamining the precedent, the Court in *Apprendi* adopted the holding in *Jones*, confirming the use of prior convictions for sentence enhancement beyond the statutory range.<sup>110</sup>

#### IV. THE CIRCUIT SPLIT

In *Apprendi*, the Court did not address whether juvenile adjudications should count as convictions.<sup>111</sup> However, the Court listed a right to a jury trial and proof beyond a reasonable doubt as procedural safeguards that should attach to the prior conviction.<sup>112</sup> Because juvenile adjudications usually occur without a jury trial, circuits have struggled over whether the listed rights in *Apprendi* are the only adequate rights for use of a prior conviction or if they are merely examples of adequate procedural safeguards.<sup>113</sup> A circuit court split has developed over whether juvenile adjudications count as convictions.<sup>114</sup>

##### A. *The Ninth Circuit View: Juvenile Adjudications Should Not Be Used as Convictions for Apprendi Purposes*

The Ninth Circuit held in *United States v. Tighe*<sup>115</sup> that juvenile adjudications should not enhance a defendant's sentence beyond the statutory maximum under *Apprendi*.<sup>116</sup> While the Ninth Circuit

109. *Id.* at 243 n.6.

110. *Apprendi*, 530 U.S. at 490. The Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Id.* Aside from the exception stated above, “[i]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.” *Id.* (quoting *Jones*, 526 U.S. at 252-53 (Stevens, J., concurring)).

111. *See Young*, *supra* note 5, at 2.

112. *Id.* at 1.

113. *Id.*

114. *Eighth Circuit Says*, *supra* note 13, at 1054-55.

115. 266 F.3d 1187 (9th Cir. 2001).

116. *Id.* at 1189-90.

decided in *Williams* that using a juvenile adjudication to enhance a defendant's sentence under the Guidelines was constitutional, *Williams* is not dispositive of the issue in *Tighe*.<sup>117</sup> In *Williams*, the sentence enhancement was within the statutory range; in *Tighe*, the enhancement would be outside the range, resulting in a potential constitutional violation.<sup>118</sup> When a court enhances a defendant's sentence beyond the statutory range based on juvenile adjudications, the differences between adult convictions and juvenile adjudications become important.<sup>119</sup> To determine the constitutionality of using juvenile adjudications for enhancements, the Ninth Circuit analyzed the scope of the term "conviction" as used in *Apprendi* and in cases leading up to *Apprendi*.<sup>120</sup>

In *Almendarez-Torres* the Court held that a prior conviction was "a sentencing factor, and not a separate element of the crime to be charged in the indictment."<sup>121</sup> In *Jones*, the Court further explained that prior convictions can enhance a defendant's sentence if they had been "established through procedures satisfying the fair notice, reasonable doubt and jury trial guarantees."<sup>122</sup> Relying on precedent, the Court in *Apprendi* stated that prior convictions could be used to enhance sentences beyond the statutory maximum because of the "certainty that procedural safeguards attached" to that prior conviction.<sup>123</sup>

While in *Apprendi* the Court relied on the *Almendarez-Torres* holding for use of a prior conviction as a sentencing factor, the Court

117. *Id.* at 1192.

118. *Id.*

119. *Id.* at 1192-94.

Neither *Apprendi*, nor *Almendarez-Torres*—the case upon which *Apprendi* relied to create the "prior conviction" exception to its general rule—specifically addressed the unique issues that distinguish juvenile adjudications from adult convictions, such as the lack of a right to a jury trial in most juvenile adjudications. Thus, neither case squarely tackles the question . . . : do prior juvenile adjudications, which do not afford the right to a jury trial, fall within the "prior conviction" exception to *Apprendi*'s general rule that a fact used to increase a defendant's maximum penalty must be submitted to a jury and proved beyond a reasonable doubt?

*Id.* at 1193.

120. *Id.* at 1193.

121. *Tighe*, 266 F.3d at 1193.

122. *Id.* (quoting *Jones v. United States*, 526 U.S. 227, 249 (1999)).

123. *Id.* (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000)).

noted that the exception to the general rule should be narrow.<sup>124</sup> The Court in *Apprendi* also specifically identified a jury trial as one of the required procedural safeguards.<sup>125</sup> Therefore, the Ninth Circuit ruled that convictions under *Apprendi* must be limited to those in which the defendant had a right to a jury trial.<sup>126</sup>

*B. The Eighth Circuit View: Juvenile Adjudications Should Be Used as Convictions for Apprendi Purposes*

The Eighth Circuit in *United States v. Smalley*<sup>127</sup> held that juvenile adjudications can be used as prior convictions under *Apprendi*.<sup>128</sup> The court reasoned that a conviction affording the “fundamental triumvirate of procedural protections” is not the only type of conviction that can qualify for an *Apprendi* exception.<sup>129</sup> To support this reasoning, the Eighth Circuit relied on the fact that the Court in *Apprendi* did not quote the specific language in *Jones* that referred to the fundamental triumvirate as being necessary to use a prior conviction.<sup>130</sup> The Court in *Apprendi* only referred to a right to a jury trial and proof beyond reasonable doubt in explaining the exception for prior convictions.<sup>131</sup> Therefore, the procedural safeguards listed in *Jones* and *Apprendi* were sufficient to allow the use of prior convictions, but other procedural safeguards can also be constitutionally sufficient.<sup>132</sup>

Disagreeing with the Ninth Circuit, the Eighth Circuit determined that whether juvenile adjudications count as convictions “should not turn on the narrow parsing of words, but on an examination of

124. *Id.* at 1194.

125. *Id.*

126. *Id.* (finding that convictions are also limited to those using a standard of proof beyond a reasonable doubt but that juveniles are already afforded that right through *Winship*).

127. 294 F.3d 1030 (8th Cir. 2002).

128. *Id.* at 1033.

129. *Id.* at 1032 (quoting *Tighe*, 266 F.3d at 1193). The court in *Tighe* identified the fundamental triumvirate as fair notice, reasonable doubt, and jury trial guarantees. *Tighe*, 266 F.3d at 1193.

130. *Smalley*, 294 F.3d at 1032.

131. *Id.* (finding that since the Court in *Apprendi* did not refer to the third prong of the triumvirate, all three are not needed to be constitutional).

132. *Id.* (“[W]hile the Court [in *Apprendi*] established what constitutes sufficient procedural safeguards (a right to jury trial and proof beyond a reasonable doubt), and what does not (judge-made findings under a lesser standard of proof), the Court did not take a position on possibilities that lie in between these two poles.”).

whether juvenile adjudications, like adult convictions, are so reliable that due process of law is not offended by such an exemption.”<sup>133</sup> The Eighth Circuit found that juvenile adjudications are reliable.<sup>134</sup> A juvenile cannot be convicted without proof beyond a reasonable doubt.<sup>135</sup> A juvenile also has “the right to notice, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination.”<sup>136</sup> Moreover, a jury trial is not necessary to add to the reliability of a juvenile adjudication.<sup>137</sup> Therefore, the “safeguards [afforded to juveniles] are more than sufficient to ensure the reliability that *Apprendi* requires.”<sup>138</sup>

#### V. STATE DECISIONS ON JUVENILE ADJUDICATIONS AND *APPRENDI*

The Supreme Court of Kansas in *State v. Hitt*<sup>139</sup> agreed with the Eighth Circuit in holding that juvenile adjudications qualify for the conviction exception under *Apprendi*.<sup>140</sup> In addition to focusing on the role of recidivism in sentencing, the court noted that *Apprendi* did not specifically list all the necessary procedures required to meet the conviction exception.<sup>141</sup> Therefore, the court held that the procedural safeguards attached to juvenile proceedings were sufficient to qualify as a conviction under *Apprendi*.<sup>142</sup>

In *People v. Bowden*,<sup>143</sup> the Court of Appeal for the Second District of California disagreed with the Ninth Circuit in *Tighe*, even though the court held that *Tighe* and *Apprendi* were not relevant to *Bowden*.<sup>144</sup> The California court reasoned that a judge can consider

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133. *Id.*

134. *Id.* at 1033.

135. *Id.*

136. *Smalley*, 294 F.3d at 1033.

137. *Id.*

138. *Id.*

139. 42 P.3d 732 (Kan. 2002).

140. *Id.* at 740.

141. *Id.*

142. *Id.* at 738 (holding that if the juvenile receives all of the processes due to him at the juvenile stage, then there is no constitutional issue when those adjudications are used to enhance adult sentences).

143. 125 Cal. Rptr. 2d 513 (Cal. Ct. App. 2002).

144. *Id.* at 517 (noting that *Apprendi* and *Tighe* are not applicable because “[u]nder the Three Strikes law a qualifying prior conviction must . . . be pleaded and proved . . . beyond a reasonable doubt . . . and



prior convictions when sentencing because of the procedural safeguards the court previously attached to the convictions.<sup>145</sup> In adult criminal trials, this includes the right to a jury trial and in juvenile adjudications the procedural rights afforded to juvenile defendants.<sup>146</sup>

## VI. SHOULD THE ELEVENTH CIRCUIT USE JUVENILE ADJUDICATIONS AS CONVICTIONS FOR *APPRENDI* PURPOSES?

The Eleventh Circuit should not use juvenile adjudications as convictions for *Apprendi* purposes.<sup>147</sup> When the Court changed the juvenile system by adding procedural safeguards, it did so because the procedures would enhance the system.<sup>148</sup> The Court wanted to keep intact some of the fundamental principles of the juvenile system.<sup>149</sup> One of the main fundamental principles the Court wanted to preserve was the rehabilitative nature of the juvenile process.<sup>150</sup> The Court did not want juveniles to suffer as adults for the delinquency of their youth.<sup>151</sup> Therefore, the Court kept certain distinctions in place between the rehabilitative nature of juvenile adjudications and the punitive nature of criminal proceedings.<sup>152</sup> Given the rehabilitative nature of the juvenile process, the Eleventh Circuit should not count juvenile adjudications against adult criminal defendants.<sup>153</sup> Using the adjudications as convictions poses problems for juveniles and for adults.<sup>154</sup>

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the defendant has a statutory right to a jury trial, at least on the issue whether the defendant suffered the prior conviction”).

145. *Id.* at 518.

146. *Id.* (“Since a juvenile constitutionally—and reliably . . . —can be adjudicated a delinquent without being afforded a jury trial, there is no constitutional impediment to using that juvenile adjudication to increase a defendant’s sentence following a later adult conviction.” (quoting *People v. Fowler*, 84 Cal. Rptr. 2d 874 (Cal. Ct. App. 1999))).

147. *See United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir. 2001).

148. *Feld*, *supra* note 27, at 153-54.

149. *See id.* at 153-54 & n.44.

150. *See id.* at 161; *see also* *Dormont*, *supra* note 65, at 1790.

151. *Feld*, *supra* note 27, at 159.

152. *Dormont*, *supra* note 65, at 1782-83.

153. *See id.* at 1797.

154. *See id.* at 1798.

Juvenile courts may hesitate to prescribe therapeutic incarceration for juveniles for fear that a court may use the adjudication against the juvenile as an adult, thereby releasing some juveniles who need the court's help back into society.<sup>155</sup> Therapeutic sentences are necessary to the rehabilitative theme of juvenile justice as an effort to help reform juveniles.<sup>156</sup> When courts use adjudications as convictions, the juvenile system loses its distinction from criminal proceedings.<sup>157</sup> The adult also suffers because his sentence is enhanced by a proceeding in which he was not afforded all of his constitutional rights.<sup>158</sup>

The Court did not guarantee juveniles the right to a jury trial because the Court reasoned that it would not add anything to the juvenile process, although it would simultaneously disrupt some of the process' fundamental principles.<sup>159</sup> When the Court in *McKeiver* decided that juveniles did not possess a right to jury trials, it did so with the assumption that the juvenile system was a rehabilitative process and that courts would not use juvenile proceedings against the juvenile when he becomes an adult.<sup>160</sup> Furthermore, if a court convicted an adult without a jury trial, the court could not use that conviction to enhance a later sentence.<sup>161</sup> Adults with juvenile convictions should receive the same procedural protection.<sup>162</sup>

The Eleventh Circuit should adopt the reasoning of the Ninth Circuit in *Tighe* and deny the use of juvenile adjudications as prior convictions.<sup>163</sup> The Supreme Court in *Apprendi* relied on *Jones*, which stated that a court must attach fair notice, reasonable doubt, and jury trial guarantees to a prior conviction before using it to enhance a defendant's sentence.<sup>164</sup> To strengthen the adoption of the holding in *Jones*, the Court in *Apprendi* reiterated that a jury trial and

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155. *Id.*

156. Feld, *supra* note 27, at 149 n.25.

157. Dormont, *supra* note 65, at 1797.

158. *Id.*

159. Feld, *supra* note 27, at 158 & n.58, 160 & n.66 (discussing the Supreme Court's fear that a jury trial would affect the informality, confidentiality, and flexibility of the juvenile proceeding).

160. Dormont, *supra* note 65, at 1790.

161. *Id.* at 1795.

162. *Id.*

163. See *United States v. Tighe*, 266 F.3d 1187, 1192-95 (9th Cir. 2001).

164. *Id.* at 1193-94; see also *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000).

proof beyond a reasonable doubt are necessary procedural safeguards for facts supporting sentence enhancements.<sup>165</sup>

Contrary to the Ninth Circuit, the Eighth Circuit reasoned that because the Court in *Apprendi* did not list all three safeguards cited in *Jones*, the two safeguards listed are mere examples, and other safeguards are constitutionally adequate.<sup>166</sup> However, the Eighth Circuit's reasoning is not convincing.<sup>167</sup> Because the Court explicitly listed a jury trial and proof beyond a reasonable doubt, these two safeguards are absolutely necessary and are even more important than notice.<sup>168</sup> The Court further supported the contention that a jury trial and proof beyond a reasonable doubt are necessary by holding that using other facts for sentence enhancement without these safeguards would be unconstitutional.<sup>169</sup>

The Court in *Apprendi* also relied on *Almendarez-Torres*, which held that prior convictions are sentencing factors and not separate elements of a crime.<sup>170</sup> The Court cautioned that the exception of a prior conviction for sentence enhancement should be narrowly construed.<sup>171</sup> Because the Court found that the exception should be narrowly construed and specifically listed a jury trial and proof beyond a reasonable doubt as required procedural safeguards, prior convictions for *Apprendi* purposes should be limited to those in which a defendant had a right to a jury trial and was found guilty by proof beyond a reasonable doubt.<sup>172</sup>

The state court reasons for allowing juvenile adjudications to count as convictions under *Apprendi* are also unpersuasive.<sup>173</sup> The Court of Appeal for the Second District of California reasoned that a judge can

165. *Apprendi*, 530 U.S. at 490.

166. *United States v. Smalley*, 294 F.3d 1030, 1032 (8th Cir. 2002).

167. *See Tighe*, 266 F.3d at 1194.

168. *See Apprendi*, 530 U.S. at 490.

169. *Id.* The court held:

[w]ith that exception, we endorse the statement of the rule set forth in . . . [*Jones*]: "It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt."

*Id.* (quoting *Jones v. United States*, 526 U.S. 227, 252-53 (1999)).

170. *Almendarez-Torres v. United States*, 523 U.S. 224, 243 (1998).

171. *Apprendi*, 530 U.S. at 490.

172. *United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir. 2001).

173. *People v. Bowden*, 125 Cal. Rptr. 2d 513, 516 (Cal. Ct. App. 2002).

treat a juvenile adjudication as a prior conviction so long as the adjudication included all of the constitutional rights afforded to juveniles.<sup>174</sup> The Court agreed with the Eighth Circuit in finding that the safeguards constitutionally afforded to juveniles are more than sufficient “to ensure the reliability that *Apprendi* requires.”<sup>175</sup> However, the Court of Appeal for the Second District of California noted that *Apprendi* and *Tighe* were not relevant to its case.<sup>176</sup> Under California law, the prior conviction must be “proved . . . beyond a reasonable doubt . . . and the defendant has a statutory right to a jury trial, at least on the issue whether the defendant suffered a prior conviction.”<sup>177</sup> The California court’s agreement with the Eighth Circuit seems contrary to California law.<sup>178</sup> California law gives a defendant the right to a jury trial, which is the procedural safeguard at issue when determining whether juvenile adjudications should count as convictions.<sup>179</sup> Yet, the Court of Appeal for the Second District of California still follows the Eighth Circuit’s reasoning.<sup>180</sup>

The Eleventh Circuit should not be swayed by the use of juvenile adjudications as prior convictions in the Guidelines.<sup>181</sup> Sentences imposed by the Guidelines are within a statutory range and therefore do not address the issue presented in *Apprendi*, which enhances a defendant’s sentence outside of the statutory range.<sup>182</sup> While the Ninth Circuit in *Williams* held that use of juvenile adjudications as convictions was constitutional, *Williams* can be distinguished from *Apprendi*.<sup>183</sup> The defendant in *Williams* relied on *Baldasar*, which held that a court could not use an uncounseled conviction to enhance a sentence in a proceeding in which counsel is constitutionally required.<sup>184</sup> The court in *Williams* held that the right to counsel is

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174. *Id.* at 518.

175. *Id.* at 517 (quoting *United States v. Smalley*, 294 F.3d 1030, 1032-33 (8th Cir. 2002)); *see also Smalley*, 294 F.3d at 1033.

176. *Bowden*, 125 Cal. Rptr. 2d at 517.

177. *Id.*

178. *See id.*

179. *Id.*

180. *See id.* at 517-18.

181. GUIDELINES, *supra* note 66, § 4A1.2(d).

182. *Apprendi v. New Jersey*, 530 U.S. 466, 469 (2000).

183. *United States v. Williams*, 891 F.2d 212, 215 (9th Cir. 1989).

184. *Id.* at 214.

more fundamental than the right to a jury trial, and thus juvenile adjudications can count as convictions under the Guidelines.<sup>185</sup> However, the Court in *Apprendi* placed great importance on the procedural safeguard of jury trials determining facts to be used for sentence enhancement outside the statutory range.<sup>186</sup> Therefore, the right to a jury trial becomes important when a judge wants to enhance a defendant's sentence beyond the statutory range.<sup>187</sup>

The Third Circuit in *Bucaro* held that using juvenile adjudications to enhance a defendant's sentence under the Guidelines did not violate the constitutional prohibition against ex post facto laws.<sup>188</sup> The court limited this holding because the state statute at issue notified the juvenile that his adjudication might affect his sentencing as an adult.<sup>189</sup> However, each state has its own juvenile system, and thus each statute might not account for use of juvenile adjudications as adults.<sup>190</sup> Therefore, an ex post facto violation may exist depending on which state juvenile statute is in issue.<sup>191</sup>

### CONCLUSION

The juvenile system is fundamentally different from the criminal justice system.<sup>192</sup> Juveniles are not afforded the same rights as adults in criminal proceedings because juvenile adjudications have a rehabilitative purpose and criminal proceedings have a punitive purpose.<sup>193</sup> Another important difference is the lack of jury trials in juvenile proceedings.<sup>194</sup> While denying juveniles the right to a jury trial is constitutionally permissible, it poses a constitutional problem when juvenile adjudications are then used to enhance adult sentences

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185. *Id.* at 215 (noting it is not unconstitutional to adjudicate a juvenile delinquent without a jury trial).

186. *Apprendi*, 530 U.S. at 490.

187. *Id.*

188. 898 F.2d 368, 370 (3d Cir. 1990).

189. *Id.* at 372.

190. The National Center for Juvenile Justice, State Juvenile Justice Profiles, at <http://www.ncjj.org/stateprofiles> (last visited Oct. 4, 2003).

191. *See Bucaro*, 898 F.2d at 370.

192. *See discussion supra* Part I.A.

193. *See discussion supra* Part I.A.

194. *See discussion supra* Part I.B.

beyond the statutory maximum.<sup>195</sup> While some courts read *Apprendi* as allowing juvenile adjudications to count as convictions, that reasoning is flawed because the Court specifically listed a jury trial as one of the procedural safeguards needed to use facts to extend a sentence.<sup>196</sup> Courts cannot rely on the previous use of juvenile adjudications for convictions in the Guidelines because that calls for enhancement within a statutory range.<sup>197</sup> Thus, courts should follow the reasoning of the Ninth Circuit and forbid the use of juvenile adjudications as convictions for *Apprendi* purposes.<sup>198</sup>

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195. See discussion *supra* Part IV.A.

196. See *supra* Part VI.

197. See *supra* Part II.

198. See *supra* Part VI.