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Juvenile Justice: Rights During the Adjudicatory Process

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Summary

As more attention is being focused on juvenile offenders, some question whether the justice system is dealing with this population appropriately. Since the late 1960s, the juvenile justice system has undergone significant modifications resulting from U.S. Supreme Court decisions, changes in federal and state law, and the growing belief that juveniles were increasingly involved in more serious and violent crimes. Consequently, at both the federal and states levels, the juvenile justice system has shifted from a mostly rehabilitative system to a more punitive one, with serious ramifications for juvenile offenders. Despite this shift, juveniles are generally not afforded the panoply of rights afforded to adult criminal defendants. The U.S. Constitution requires that juveniles receive many of the features of an adult criminal trial, including notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross-examination, proof beyond a reasonable doubt, and double jeopardy. However, in *McKeiver v. Pennsylvania*, the Court held that juveniles do not have a fundamental right to a jury trial during adjudicatory proceedings.

The Sixth Amendment explicitly guarantees the right to an impartial jury trial in criminal prosecutions. In *Duncan v. Louisiana*, the U.S. Supreme Court held that this right is fundamental and guaranteed by the Due Process Clause of the Fourteenth Amendment. However, the Court has since limited its holding in *Duncan* to adult defendants by stating that the right to a jury trial is not constitutionally required for juveniles in juvenile court proceedings. Some argue that because the Court has determined that jury trials are not constitutionally required for juvenile adjudications, courts should not treat or consider juvenile adjudications in subsequent criminal proceedings. In addition, some argue that the use of non-jury juvenile adjudications in subsequent criminal proceedings violates due process guarantees, because juvenile justice and adult criminal proceedings are fundamentally different.

Has the juvenile justice system changed in such a manner that the Supreme Court should revisit the question of jury trials in juvenile adjudications? Are the procedural safeguards in the juvenile justice system sufficient to ensure their reliable use for sentence enhancement purposes in adult criminal proceedings? To help address these questions, this report provides a brief background on the purpose of the juvenile system and discusses procedural due process protections provided by the Court for juveniles during adjudicatory hearings. It also discusses the Court's emphasis on the jury's role in criminal proceedings and will be updated as events warrant.

Contents

Background: The Juvenile Justice System	1
Procedural Due Process Rights	2
<i>Kent v. United States</i>	2
<i>In re Gault</i>	3
<i>In re Winship</i>	4
<i>McKeiver v. Pennsylvania</i>	5
Right to Jury Trial Revisited	6

Juvenile Justice: Rights During the Adjudicatory Process

As attention continues to focus on juvenile offenders, some question the way in which they are treated in the U.S. criminal justice system. Since the late 1960s, the juvenile justice system has undergone significant modifications as a result of United States Supreme Court decisions, changes in federal and state law and the growing perception that juveniles were increasingly involved in more serious and violent crimes.¹ As a result, federal and state juvenile justice systems have focused less on rehabilitation and more on punishment, which may have significant ramifications for juvenile offenders once they reach adulthood. For example, recidivist statutes such as the Armed Career Criminal Act (ACCA)² impose mandatory minimums based on prior convictions, including juvenile adjudications.³ As such, adult criminal defendants are exposed to longer terms of imprisonment based on prior juvenile misconduct. Despite this shift in focus to one more closely resembling the adult criminal justice system, juvenile offenders are not generally afforded the full panoply of rights provided to adult criminal defendants.

Background: The Juvenile Justice System

The establishment of a juvenile court in Cook County, Illinois, in 1899 marked the first statewide implementation of a separate judicial framework whose sole concern was the problems and misconduct of children. The juvenile court was designed to be more than a court for children. The underlying theory behind a separate juvenile court system was that the state has a duty to assume a custodial and protective role over individuals who cannot act in their own best interest.⁴ As such, the separate system for juvenile offenders was predicated on the notion of rehabilitation — not punishment, retribution, or incapacitation. Because the juvenile court focused on protection rather than punishment, the juvenile proceeding was

¹ The focus of this report is on juvenile offenders adjudicated delinquent within the juvenile justice system and not juvenile offenders tried as adults.

² 18 U.S.C. § 924(e) requires the imposition of a minimum 15-year term of imprisonment for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) by an individual with three prior serious drug or violent felony convictions.

³ 18 U.S.C. § 924(e)(2)(C)(defining the term “conviction” to include prior juvenile adjudications involving a violent felony).

⁴ See, *Kent v. United States*, 383 U.S. 541, 555 (1966) (stating that theory of the state’s juvenile court act is “rooted in social welfare philosophy rather than in corpus juris.”).

conceptualized as a civil proceeding (not a criminal one), with none of the trappings of an adversarial proceeding.⁵

By the mid-20th century, questions arose regarding the fairness and efficacy of the juvenile justice system and its ability to effectively rehabilitate young offenders. Concerns that the differences between the adult and juvenile systems were illusory prompted the need to preserve the legal rights of children adjudicated in the juvenile justice system.⁶ As such, state courts began to expand the legal rights of juvenile offenders. The emerging focus on juveniles' rights in the state courts prompted intervention from the U.S. Supreme Court, which had traditionally deferred to the states.

Procedural Due Process Rights

Beginning in the mid-1960s, the Court examined the due process rights of minors in four landmark cases: *Kent v. United States*,⁷ *In re Gault*,⁸ *In re Winship*,⁹ and *McKeiver v. Pennsylvania*.¹⁰ Through these cases, the Court left an indelible mark on the juvenile justice system by restricting the discretion of juvenile court judges and enumerating the constitutional rights retained by juveniles during adjudication. These decisions resulted in a hybrid juvenile justice system that renders some of the procedural rights afforded to adult criminal defendants. Some argue that this hybrid system blurs the historical distinction between the juvenile justice and adult criminal systems.

Kent v. United States

The Court first recognized that the U.S. Constitution guaranteed juveniles due process rights in *Kent v. United States*.¹¹ In *Kent*, the Court reviewed a District of Columbia case in which the petitioner challenged the validity of the juvenile court's

⁵ For a historical account of the early efforts toward juvenile reform, see Mennel, "Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquent," 18 CRIME AND DELINQ. 68 (1972); See generally, *Ex parte Sharp*, 96 P. 563 (1908).

⁶ See, e.g., *Shioutakon v. District of Columbia*, 236 F.2d 666, 669 (D.C. Cir 1956)(recognizing juveniles' right to legal counsel during adjudications in the District of Columbia); *In re Contreras*, 241 P.2d 631,633 (Cal. Dist. Ct. App. 1952)(acknowledging that the claim that a delinquency adjudication is not a criminal conviction is "legal fiction" and that a delinquency adjudication has future implications on a minor's character just as a criminal conviction does); but see, e.g. *In re Holmes*, 109 A.2d 523, 525 (Pa. 1954)(reaffirming that the civil nature of juvenile proceedings justified a denial of constitutional rights guaranteed to adults who were charged with a crime).

⁷ 383 U.S. 541 (1966).

⁸ 387 U.S. 1 (1967).

⁹ 397 U.S. 358 (1970).

¹⁰ 403 U.S. 528 (1971).

¹¹ 383 U.S. 541 (1966).

decision to waive jurisdiction over him, on the ground that the procedure used by the court in reaching its decision constituted a denial of due process of law. The U.S. Supreme Court held that the waiver of jurisdiction was a “critically important” stage in the juvenile process and must be attended by minimum requirements of due process and fair treatment required by the Fourteenth Amendment.¹² In reaching its decision, the Court expressed concern that the non-criminal nature of the juvenile proceeding was an invitation to “procedural arbitrariness”¹³ including broad judicial fact-finding.

In re Gault

In *In re Gault*,¹⁴ the Court held that the informal procedures of juvenile courts amount to a denial of juveniles’ fundamental due process rights.¹⁵ Although the Court recognized that juvenile courts were attempting to help juveniles, it reasoned that this worthy purpose failed to justify informal procedure, particularly when a juvenile’s liberty was threatened.¹⁶ After a thorough examination of the history of the juvenile court system, the Court reiterated much of the criticism it raised in *Kent*, specifically expressing concern about the juvenile court’s informality and the broad discretion of its judges.¹⁷ To ensure that juveniles receive the essentials of fair treatment during an adjudicatory hearing, the Court found that juveniles were entitled to certain due process rights afforded to adult criminal defendants under the U.S.

¹² *Id.* at 560. Specifically, the Court found that the “essentials of due process and fair treatment” require (1) a hearing on the issue of waiver with legal representation, (2) juvenile court judges to give juveniles’ counsel access to records that the judges relied on in making the waiver decision, and (3) juvenile court judges to provide a brief statement of the facts they considered when making the waiver decision. *Id.* at 561-63.

¹³ *Id.* at 555.

¹⁴ 387 U.S. 1 (1967). The police took Gerald Gault, age 15, into custody for allegedly making a lewd and obscene phone call to a neighbor. Neither of his parents received notice that the police had taken Gault into custody. Gault’s mother learned that her son was in custody only when she returned home from work and sent her other son to look for him. Gault’s brother learned from friends that Gault was in custody. When Gault’s mother picked him up at the detention home, an officer told her that there would be a hearing the following day. At the hearing, the accuser was not present, the judge did not swear in anyone, and the court did not make a record of the proceeding. At a subsequent hearing, the judge found Gault to be a juvenile delinquent and committed him to an “industrial school” until the age of 21. Because state law did not allow Gault to appeal the decision, he filed a habeas corpus petition.

¹⁵ *Id.* at 30-31.

¹⁶ *Id.* at 26-27.

¹⁷ *Id.* at 17-18 (calling the juvenile court’s constitutional and theoretical bases “debatable” and stating that, in practice, the results are unsatisfactory). Further, the Court asserted that principle and procedure cannot be substituted by a judge’s vast discretion to determine what is in the child’s best interest.

Constitution.¹⁸ These rights include the right to reasonable notice of the charges, the right to counsel, the right to confrontation, and the right against self-incrimination.¹⁹

In re Winship

In *In re Winship*, the Court continued to expand the rights of juveniles by holding that the state must show proof beyond a reasonable doubt to adjudicate a minor as delinquent for an act that would be a crime if committed by an adult.²⁰ The state of New York charged Samuel Winship with delinquency for stealing \$112 from a woman's pocketbook in a furniture store.²¹ Having already established that juvenile proceedings must conform to due process and fair treatment, the Court considered a single issue: whether due process and fair treatment require a state to demonstrate proof beyond a reasonable doubt to hold a juvenile accountable for committing an adult criminal act.²²

Although a New York juvenile court found Winship to be delinquent under a statute that required the state to show guilt merely by a preponderance of the evidence, the Court reversed, emphasizing that criminal charges have always required a higher burden of persuasion than civil cases.²³ The Court expressly held that the Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged.²⁴ Finding that juveniles are constitutionally entitled to the reasonable doubt standard, the Court stated, "[t]he same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child."²⁵ The Court rejected the state's argument that the delinquency adjudication is a civil proceeding that did not require due process protections, calling this argument the "civil label of convenience."²⁶

¹⁸ *Id.* at 20 (stating that due process is a fundamental element of the justice system that limits the state's power over the individual). The Court declined to address other pre-trial procedures relating to juveniles. *Id.* at 12-13.

¹⁹ *Id.* at 31-42.

²⁰ 397 U.S. 358, 368 (1970).

²¹ *Id.* at 360 (noting that the charge against Winship would have been larceny if he had been an adult).

²² *Id.* at 359 n. 1 (declining to consider the due process requirement of any stage other than the adjudicatory phase and declining to consider other constitutional issues).

²³ *Id.* at 361-63 (stating that the reasonable doubt standard has always been assumed to be the requisite standard of proof in criminal cases and that there has been ubiquitous adoption of this standard by the states).

²⁴ *Id.* at 364 (expressing that the reasonable doubt standard is "indispensable" as a safeguard against convictions resting on factual error and to maintain the community's respect and confidence in the criminal law system).

²⁵ *Id.* at 365.

²⁶ *Id.* at 365-66 (rejecting the civil nature argument as untenable after *Gault* and discarding the argument that incorporating due process rights in a juvenile proceeding would
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McKeiver v. Pennsylvania

By 1970, the Supreme Court had ruled that the due process notion of fundamental fairness entitled juveniles to various procedural protections in juvenile court. However, in *McKeiver v. Pennsylvania*,²⁷ the Court held that juveniles do not have a fundamental right to a jury trial when being adjudicated in the juvenile justice system.²⁸ *McKeiver* was a consolidation of three similar appeals involving minors adjudicated delinquent in juvenile court by judges who had rejected their requests for a jury to serve as fact-finder at their hearing.²⁹ The Court narrowed the issue presented to whether the Due Process Clause of the Fourteenth Amendment ensured the right to trial by jury in the adjudicative phase of a juvenile court delinquency proceeding.³⁰ After reviewing its previous juvenile court jurisprudence, the Court first considered whether the right to a jury was automatically guaranteed to minors by the Sixth and Fourteenth Amendments.³¹ Although it had never expressly characterized juvenile court proceedings as criminal prosecutions within the meaning and reach of the Sixth Amendment, the Court reiterated that the juvenile court system reflected many of the adult criminal court's punitive aspects.³²

However, a plurality of the Court rejected the argument that adjudicatory proceedings were substantively similar to criminal trials,³³ reasoning that a jury trial was only constitutionally required if due process required fact-finding by a jury.³⁴

²⁶ (...continued)

necessarily equate a delinquency adjudication with a criminal conviction, destroy the confidentiality of the proceeding, formalize the proceeding, and delay the adjudicatory process).

²⁷ 403 U.S. 528 (1971).

²⁸ *Id.* at 545.

²⁹ *Id.* at 534-38.

³⁰ *Id.* at 541 (stating that the court would limit its analysis to whether the fundamental fairness standard of due process required juveniles the right to elect a jury in delinquency proceedings).

³¹ *Id.* at 540 (stating that the Sixth Amendment guarantees the right to an impartial jury in all criminal prosecutions under federal law, and the Fourteenth Amendment compels states to grant a jury trial in state courts if one is held in federal court).

³² *Id.* at 541.

³³ *Id.* at 541-42 (arguing that an adjudication mirrored a criminal trial because the petition charged a violation of the penal code in language similar to an indictment, juveniles were detained in facilities similar to adult prisons prior to their hearings, defense counsel and the prosecution conducted plea bargains, similar motions were heard and decided, the same rules of evidence applied, the public could observe both types of proceedings, and the stigma attached to a delinquency adjudication amounted to a criminal conviction).

³⁴ *Id.* at 545 (refraining from holding that all rights constitutionally ensured to adult criminal defendants extend to minors, and noting that the *Gault* and *Winship* Courts incorporated the right to notice, counsel, confrontation, cross-examination, and reasonable doubt standard of proof because those rights were considered essential to adequate fact-finding and therefore
(continued...)

In support of its conclusion that a jury is unnecessary for fair fact-finding, the plurality noted that equity cases, workmen's compensation cases, probate matters, deportation cases, and military trials, among others, had been traditionally decided by judges without juries.³⁵ In reaching its decision, the Court expressed doubt as to whether imposing such a right would improve the fact-finding ability of juvenile courts. In addition, the Court reasoned that imposing such a right would jeopardize the unique nature of the juvenile system and blur the distinctions between juvenile court and adult criminal court.³⁶ To do so would make the juvenile system obsolete. The plurality's holding signaled the Court's return to the more paternalistic approach it had rejected in its previous opinions and marked the end of the era of expansion of procedural rights in juvenile adjudications.³⁷

Right to Jury Trial Revisited

Arguably, the absence of a jury trial requirement in adjudicatory proceedings presents a host of questions that may warrant a reexamination of the issue. First, some are likely to argue that the increasingly punitive nature of cases adjudicated in the juvenile justice system calls into question the validity of the Court's reasoning underlying its holding in *McKeiver* that juveniles are not entitled to the right to a jury trial.³⁸ When the Court decided *McKeiver*, it did so to maintain the civil and

³⁴ (...continued)
required by due process).

³⁵ *Id.* at 543 (acknowledging the benefits of a jury but finding that a defendant may be treated as fairly by a judge alone as he or she would be by a jury).

³⁶ *Id.* at 547. The Court reasoned that the non-criminal juvenile justice system in place provided certain rehabilitative benefits to juveniles. The Court concluded that granting juveniles the right to a jury trial would threaten these rehabilitative benefits to juveniles by creating delay, imposing formality, forcing juvenile courts to be more adversarial, and possibly even resulting in public trials.

³⁷ Because *McKeiver* held that juveniles are not constitutionally guaranteed the right to a jury, some states have granted this right by statute. Approximately one-third of the states provide juveniles with either a conditional or unconditional right to fact-finding by a jury. See Alaska Stat. § 47.10.070; Mass Gen. Laws Ann. ch. 19, § 55A; Mich. Comp. Laws Ann. § 712A.17(2); Mont. Code Ann. § 41-5-1502; N.M. Stat. Ann. § 32A-2-16; Okla. Stat. Ann. tit. 10, § 7003-3.8; Tex. Fam. Code Ann. § 54.03(c); W. Va. Code Ann. § 49-5-6; Wis. Stat. Ann. § 48.31(2); Wyo. Stat. Ann. § 14-6-223(c) (codifying an unconditional right to fact-finding by jury in juvenile adjudications in the respective states); see also Colo. Rev. Stat. Ann. § 19-2-107; Idaho Code § 20-509; 705 Ill. Comp. Stat. Ann. 405/5-101; Kan. Stat. Ann. § 38-1656; R.I. Gen. Laws § 14-1-47; S.D. Codified Laws § 26-7A-34; S.D. Codified Laws § 15-6-38(a); Va. Code Ann. § 16.1-272 (providing a conditional right to a jury in juvenile adjudications in the respective states).

³⁸ Barry C. Feld, "The Constitutional Tension Between Apprendi and *McKeiver*: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts," 38 *Wake Forest L. Rev.* 1111, 1156-57 (2003).

rehabilitative nature of the juvenile justice system.³⁹ At the time of the decision, juvenile adjudication hearings were closed to the public, the system was informal, and the records of the juvenile adjudications were confidential and not relied on in criminal prosecutions.⁴⁰ Currently, some juvenile adjudication hearings are open to the public, the system is more formal and adversarial, and juvenile adjudications are frequently used in criminal prosecutions for sentence enhancement.⁴¹ From their perspective, the civil and rehabilitative nature of the juvenile justice system has shifted to a more punitive one which more closely resembles the adult criminal justice system.

Central to the *McKeiver's* holding was the Court's conclusion that juries were not essential to accurate fact-finding. However, this premise may be called into question in light of the Court's reemphasis on the importance of a jury. In a series of cases, the U.S. Supreme Court has recognized and emphasized the important role that juries play in criminal proceedings. In *Duncan v. Louisiana*,⁴² the U.S. Supreme Court held that the right to jury trial is fundamental and guaranteed by due process. In *Williams v. Florida*,⁴³ the Court reaffirmed that the "purpose of the jury trial ... is to prevent oppression by the Government."⁴⁴ The U.S. Supreme Court recognized the superiority of group decision-making over individual judgments in *Ballew v. Georgia*,⁴⁵ which defined the constitutional minimum number of jurors that a state must empanel in a criminal prosecution. In *Ballew*, the Court, relying on empirical data, found that a jury composed of less than six members was less likely to foster effective group deliberation and more likely to lead to inaccurate fact-finding and incorrect application of the community's common sense to the facts. In addition, the court concluded that a smaller panel could increase the risk of convicting an innocent person. More recently, the Court has stressed the constitutional necessity of juries,

³⁹ 403 U.S. at 547.

⁴⁰ *Id.* at 1147.

⁴¹ For example, the Armed Career Criminal Act (ACCA) requires imposition of a minimum 15-year term of imprisonment for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) by an individual with three prior serious drug or violent felony convictions. Congress defined the term "conviction" to include "a finding that a person has committed an act of juvenile delinquency involving a violent felony." 18 U.S.C. § 924(e)(2)(C).

⁴² 391 U.S. 145 (1968).

⁴³ 399 U.S. 78 (1970)(holding that the constitutional guarantee of a jury trial does not require that jury membership be fixed at 12).

⁴⁴ 399 U.S. at 100 (stating that "providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased or eccentric judge").

⁴⁵ 435 U.S. 223, 232-39 (1978) (stating that "when individual and group decisionmaking were compared [in social scientific studies], it was seen that groups performed better because prejudices of individuals were frequently counterbalanced, and objectivity resulted. Groups ... exhibited ... self-criticism.... Because juries frequently face complex problems laden with value choices, the[se] benefits are important.... In particular, the counterbalancing of various biases is critical to the accurate application of the common sense of the community to the facts of any given case").

rather than judges, making factual determinations upon which sentences are based.⁴⁶ The Court's reasoning in *Ballew* and subsequent cases regarding fact-finding by juries during sentencing may call into question the Court's conclusion in *McKeiver* that a jury would not improve the fact-finding ability and fairness of juvenile courts.⁴⁷

An argument can also be made that the absence of a jury trial in the adjudicatory process could lead to inequities in other criminal proceedings. For example, recidivist statutes such as the Armed Career Criminal Act⁴⁸ impose mandatory minimums based on prior convictions, which by definition include juvenile adjudications.⁴⁹ As such, adult criminal defendants are subjected to longer terms of imprisonment based on prior juvenile misconduct. Some state and lower federal courts have found that equating juvenile adjudications with a conviction as a predicate offense for the purposes of state recidivism statutes subverts the civil nature of the juvenile adjudication to an extent that makes it fundamentally unfair and, thus, violative of due process.⁵⁰ One way to remedy the perceived inequities in using non-jury juvenile adjudication as sentence enhancements, critics of the current system maintain, might be to grant juveniles a right to a jury trial during adjudicatory hearings.

⁴⁶ See *Jones v. United States*, 526 U.S. 227 (1999)(holding that under the Sixth Amendment's jury trial guarantee, any fact [other than a prior conviction] that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt); *Apprendi v. New Jersey*, 520 U.S. 466 (2000); *Ring v. Arizona*, 536 U.S. 584 (2002)(holding that an aggravating circumstance that makes a defendant eligible for a death sentence is the functional equivalent of an element of an offense for purposes of the Sixth Amendment right to jury trial and therefore must be found by a jury); *Blakely v. Washington*, 542 U.S. 296 (2004)(finding that the "statutory maximum" for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant); *United States v. Booker*, 543 U.S. 220 (2005)(finding that the mandatory nature of the Federal Sentencing Guidelines violates the Sixth Amendment right to jury trial).

⁴⁷ 403 U.S. at 543 (finding that a defendant may be treated as fairly by a judge alone as he or she would be by a jury).

⁴⁸ 18 U.S.C. § 924(e) requires the imposition of a minimum 15-year term of imprisonment for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) by an individual with three prior serious drug or violent felony convictions.

⁴⁹ 18 U.S.C. § 924(e)(2)(C)(defining the term "conviction" to include prior juvenile adjudications involving a violent felony).

⁵⁰ *Id.*; *State v. Chatman*, 2005 WL 901138 (Tenn. Crim. App. 2005) (Apr. 19, 2005); *Pinkston v. State*, 836 Ne 2d 453 (2005); *United States v. Jones*, 332 F.3d 688 (3d Cir. 2003), *cert. denied*, 540 U.S. 1150 (2004); *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002), *cert. denied*, 537 U.S. 1114 (2003); *State v. Hitt*, 42 P.3d 732 (Kan. 2002), *cert. denied*, 537 U.S. 1104 (2003). For a discussion of the constitutionality using non-jury juvenile adjudications in subsequent criminal proceedings for sentence enhancement, refer to CRS Report RS22610, *Armed Career Criminal Act (ACCA): Using Prior Juvenile Adjudications for Sentence Enhancements*, by Alison M. Smith.