PROBATION CONDITIONS: ADULT AND JUVENILES

What types of conditions are unreasonable and unconstitutional?

Kimberly Fitzgerald

(Revised and Updated
by Richard Braucher, Kathryn Seligman, and Jeremy Price)

January 2011

FIRST DISTRICT APPELLATE PROJECT
730 Harrison Street, Suite 201
San Francisco, CA 94107
(415) 495-3119

I. OVERVIEW OF THE GENERAL LAW ON PROBATION CONDITIONS

Whether discussing the imposition of probation conditions for adults or minors, the basic analysis begins with *People v. Lent* (1975) 15 Cal.3d 481, for both. As noted below, however, the juvenile court must consider the minor's entire social history (not just the circumstances surrounding the offense(s)) and the juvenile court's obligation to rehabilitate the minor (i.e., a minor cannot refuse probation, unlike an adult, since the court must consider the best way to rehabilitate the minor). (See *In re Tyrell J.* (1994) 8 Cal.4th 68, 81-83.) These differences, among others, effectively provides the juvenile court with broader discretion in imposing probation conditions.

In adult criminal cases, "trial courts have broad discretion to impose conditions of probation to foster rehabilitation and reformation of the defendant, to protect the public and the victim, and to ensure that justice is done." (Pen. Code, § 1203.1, subd. (j); *Brown v. Superior Court* (2002) 101 Cal.App.4th 313, 319; *People v. Miller* (1989) 208 Cal.App.3d 1311, 1314.) Likewise, the juvenile court in delinquency matters can "impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730.) Whether the conditions are reasonable is determined under the three-part *Lent* test. (*People v. Lent, supra,* 15 Cal.3d at 486.) According to *People v. Lent, supra,* a condition is unreasonable if it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. [Citation omitted.]" (*People v. Lent, supra,* 15 Cal.3d at 486; see also *In re Laylah K*. (1991) 229 Cal.App.3d 1496, 1500, disapproved on other grounds in *In re Sade C*. (1996) 13 Cal.4th 952.)

In addition to considering whether a probation condition is reasonable under *Lent*, a probation condition that infringes upon a person's constitutional rights is subjected to additional scrutiny. Such a condition must be narrowly drawn, specifically tailored to meet the probationer's individual needs, and reasonably related to the compelling state interest in reformation and rehabilitation. (*People v. Hackler* (1993) 13 Cal.App.4th 1049, 1058; *People v. Bauer* (1989) 211 Cal.App.3d 937, 942; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084; *People v. Garcia* (1993) 19 Cal.App.4th 97, 102-103.) Moreover, "[t]o the extent it is overbroad it is not reasonably related to a compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights." (*People v. Garcia, supra,* 19 Cal.App.4th at 102*; People v. Hackler, supra,* 13 Cal.App.4th at 1058.)

A probation condition which is overly general or vague violates a probationer's due

process right to fair and adequate notice. (See *Sheena K*. (2007) 40 Cal. 4th 875, 890 [the principle underlying a vagueness challenge is the due process concept of fair warning]; *People v. Lopez* (1998) 66 Cal. App. 4th 615, 629-630.) "It is an essential component of due process that individuals be given fair notice of those acts which may lead to a loss of liberty. This is true whether the loss of liberty arises from a criminal conviction or the revocation of probation." (*In re Robert M.* (1985) 163 Cal. App. 3d 812, 816.) A probation condition "must be sufficiently precise for the probationer to know what is required of him [or forbidden], and for the court to determine whether the condition has been violated." (See *Sheena K., supra,* at 890 [citing *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325].) A probationer of "common intelligence" should not have to guess as to what conduct is prohibited by the condition, when a violation could lead to more restrictive placement. (See *Sheena K., supra*, at 890.)

A vague probation condition presents two dangers. First, because the probationer cannot ascertain what conduct is forbidden, he may unwittingly violate probation. (See *Lopez, supra*, 66 Cal. App. 4th at 630.) Second, because the court failed to provide an "explicit standard" to those charged with monitoring the probationer's compliance, police and probation officers must speculate as to what behavior is barred. This creates a risk of ad hoc "arbitrary and discriminatory enforcement." (See *Graynard v. City of Rockford* (1972) 408 U.S. 104, 108-109; *Sheena K., supra*., at 890.)

The California Supreme Court has held that, in an adult case, the rule of *People v. Harvey* (1979) 25 Cal.3d 754 applies to imposition of probation conditions: "when under a plea agreement a defendant pleads guilty to one or more charges in exchange for dismissal of one or more charges, the trial court cannot, in placing the defendant on probation, impose conditions that are based solely on the dismissed charge or charges unless the defendant agreed to them or unless there is a 'transactional' relationship between the charge or charges to which the defendant pled and the facts of the dismissed charge or charges." (*People v. Martin* (Dec. 30, 2010) __Cal.4th __, 2010 WL 5393660.)

In setting a minor's probation conditions, the juvenile court must consider not only the circumstances of the crime, but also the minor's entire social history. (*In re Tyrell J., supra,* 8 Cal.4th at 82; *In re Frankie J.* (1998) 198 Cal.App.3d 1149, 1153; *In re Todd L.* (1980) 113 Cal.App.3d 14, 20.) This additional factor, along with the juvenile court's duty to consider rehabilitation, essentially provides the juvenile court with more leeway in ordering probation conditions. "A condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court." (*In re Frank* V. (1991) 233 Cal.App.3d 1232, 1242, citing In *re Todd L.* (1980) 113 Cal.App.3d 14, 19; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941; *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033.)

Which governs: the written order or the court's oral pronouncement? It depends. Recital in court of all conditions is unnecessary so long as the defendant knows what they are. If the court's oral pronouncement is an abbreviated reference to a condition detailed on the probation order, the written order governs. (*People v. Thrash* (1978) 80 Cal.App.3d 898, 901-902.) However, when there is a discrepancy between the minute order and the oral pronouncement of conditions, the oral pronouncement controls. (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.) However, if the clerk's transcript simply clarifies a point that the reporter's transcript left ambiguous, the minute order correctly recites the court's ruling. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018.)

One last thing, although it may be obvious, it bears restating that a defendant's ultimate acceptance of the conditions of probation does not preclude him from challenging them on appeal: "'[I]t is established that if a defendant accepts probation, he may seek relief from the restraint of an allegedly invalid condition of probation on appeal from the order granting probation.'" (*People v. Penoli* (1996) 46 Cal.App.4th 298, 302, fn. 2.)

A. Standard of Review on Appeal

Appellate review of a challenged probation condition that is unreasonable under *Lent* considers whether the lower court abused its discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 969.) Although the lower court enjoys broad discretion in formulating conditions of probation, that discretion is not limitless. (*In re Tyrell J., supra,* 8 Cal.4th at 81; *In re Babak S., supra,* 18 Cal.App.4th at 1084; *People v. Carbajal, supra,* 10 Cal.4th at 1121.) Arguably, a probation condition that presents a constitutional issue that is a pure question of law should be reviewed de novo. (See *People v. Cromer* (2000) 24 Cal.4th 889, 899-900.)

B. Necessity of Objection by Trial Counsel Below

The California Supreme Court has held that, in adult criminal cases, trial counsel's failure to object to a probation condition on *Lent* grounds at the time of sentencing waives any challenge to that condition on appeal. (*People v. Welch* (1993) 5 Cal.4th 228, 234-237.) Although the California Supreme Court has not yet specifically decided whether this contemporaneous objection rule set forth in *People v. Welch, supra,* applies in juvenile delinquency cases, several appellate courts have declared that it does. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815 [Second District, Division Four]; *In re Josue S.* (1999) 72 Cal.App.4th 168, 173 [Second District, Division Five]; *In re Abdiraham S.*, 58 Cal.App.4th

963, 970 [Fourth District, Division One].) Absent an objection, adult cases will require raising this issue under the umbrella of ineffective assistance of counsel and juvenile cases will most likely require this as an alternative argument as well. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687-694; *In re Avena* (1996) 12 Cal.4th 694, 721.)

With respect to unconstitutional probation conditions, the California Supreme Court has held that a challenge to a probation condition as facially vague and overbroad presents an asserted error that is a pure question of law, requiring no objection in the trial court. (*Sheena K., supra,* 40 Cal. 4th at 889.)

Note that phrases such as "all previous Orders of the Court not inconsistent with today's Orders remain in full force and effect," "[a]ll prior orders not in conflict remain in effect," and "[a]ll prior orders not in conflict with today's orders to remain in full force and effect" in a juvenile court disposition order do not revive a previous order that has become final and is nonappealable. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1133.) No doubt this rule applies to adult criminal cases. (See *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421 [defendant who elects not to appeal an order granting or modifying probation cannot raise claims of error with respect to the grant or modification of probation in a later appeal from a judgment following revocation of probation].)

C. Categories of Probation Conditions

1. Gang Conditions

***In re H.C.* (2009) 175 Cal.App.4th 1067**

Two conditions challenged on appeal as facially vague and overbroad. (Note: No forfeiture of issue for failure to object per *Sheena K.*) "That the minor not associate with any known probationer, parolee, or gang member" is vague because passive form "known" does not specify a subject. Since the defect was "obvious," the court modified condition as follows: "You H.C. will not associate with any person known to you to be on probation, on parole or a member of a criminal street gang." Second condition, stating, "That the minor not frequent any areas of gang related activity and not participate in any gang activity" was unconstitutionally vague requiring remand to define obscure verb "frequent" and phrase "areas of gang related activity," which could include an entire town.

***In re Shaun R.* (2010) 188 Cal.App.4th 1129**
"All prior orders not in conflict remain in effect" not unconstitutionally vague and requiring the court to specify where the conflicts between the terms of a new disposition order and a previous order places too great a burden on the trial court.

***In re Victor L.* (2010) 182 Cal.App.4th 902**
Condition of probation ordering the minor to stay away from "areas known by [him] for gang-related activity" is impermissibly vague in that it does not provide notice of what areas the minor may not frequent or what types of activities he must shun.

***People v. Leon* (2010) 181 Cal.App.4th 943**
Gang condition stating "No insignia, tattoos, emblem, button, badge, cap, hat, scarf, bandana, jacket, or other article of clothing which is evidence of affiliation with or membership in a gang" is unconstitutionally vague because it lacks an explicit knowledge requirement, rendering defendant vulnerable to criminal punishment for possessing paraphernalia that he did not know was associated with gangs. However, no need to expressly insert the name of defendant's particular gang into the probation condition to save it from being overbroad.

***In re Justin S.* (2001) 93 Cal.App.4th 811**
Probation condition prohibited association with gang members without restricting the prohibition to *known* gang members. Condition held unconstitutionally overbroad, but remedy was to modify the condition to persons known to the probationer to be associated with a gang.

***People v. Lopez* (1998) 66 Cal.App.4th 615**
Gang conditions upheld under *Lent* as reasonably related to preventing future criminality, but modified to avoid constitutional defects. The defendant was an admitted gang member and there was an inference that the offense was gang-related.
-- Condition prevented the defendant from wearing/displaying gang emblems, colors, etc. Condition unconstitutional in that it was overbroad, but modified to prevent the defendant from displaying symbols *known* by him to have a gang connotation.
-- Condition restricted the defendant from associating with gang

members. This condition was also deemed unconstitutionally overbroad and modified to require a knowledge element -- preventing association with *known* gang members.
-- Condition prohibiting the defendant from associating with *gang* members or wearing *gang* attire without defining the term *gang* was also unconstitutionally vague and violated due process. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7(a).) Condition modified to insert the *gang* definition as set forth in Penal Code section 186.22, subdivisions (e)-(f).

***In re Laylah K.* (1991) 229 Cal.App.3d 1496**
Various gang conditions imposed -- the minor was not to be present in known gathering areas of the Crips gang, not to associate with Crips gang members, not to wear Crips gang colors, not to possess weapons, and not to attend court proceedings unrelated to the minor. All conditions were deemed constitutional as they were narrowly tailored and also satisfied the *Lent* test in that the conditions were likely to prevent the minor from future criminality even though the minor was not a gang member. The minor's social history indicated that she was a runaway, out of her parents' control, and often truant from school. She admitted that she associated with Crips gang members, although she was not a member herself. At least one person involved in the commission of the offense was a Crips gang member, the victim attacked was wearing a rival gang color, and the offense was arguably gang-related. Thus, the gang conditions were to prevent the minor from taking the next step in joining the Crips.

2. Search Conditions

a. Upheld based on prior/current drug or alcohol use

***In re Laylah K.* (1991) 229 Cal.App.3d 1496**
Search condition imposed and upheld as not impermissibly infringing upon the minor's Fourth Amendment rights since it was specifically tailored to achieve rehabilitation of the probationer. The minor admitted alcohol and marijuana use. The court noted that "[i]n alcohol and drug-related matters, search conditions are reasonable."

***People v. Wardlow* (1991) 227 Cal.App.3d 360**
Imposition of search condition upheld as it was reasonably related to the defendant's offense and to prevent future criminality. The defendant was under the influence of drugs and alcohol during the commission of the offenses and his past history indicated that he had a serious substance abuse problem.

***In re Todd L.* (1980) 113 Cal.App.3d 14**
Search condition valid and deemed reasonably related to the minor's current offense and to prevent future criminality. The minor's current offense was for petty theft and within the past few weeks he had been arrested twice for drug-related offenses. There was also evidence of past drug use and possible drug dealing.

b. Upheld based on drug/alcohol use & weapon possession

***People v. Bauer* (1989) 211 Cal.App.3d 937**
Search condition upheld as reasonably related to the facts of the defendant's current offense and to his future criminality. There was evidence that defendant had used a firearm during the commission of his crimes, he had been drinking on the night he committed these offenses, the incident was possibly drug-related, and defendant had used drugs in the past.

c. Upheld based on weapon possession

***In re Michael D.* (1989) 214 Cal.App.3d 1610**
Search condition upheld. The minor was charged with assault with a deadly weapon (although sustained as a misdemeanor battery), admitted that he was a gang member, and had experimented with drugs and used alcohol (although the drug/alcohol use was not specifically articulated as a basis for the search).

d. Invalid search conditions

***Derick B. v. Superior Court* (2009) 180 Cal.App.4th 295**
Court has no authority to impose a Fourth Amendment waiver

as a condition of informal supervision under Welfare and Institutions Code sections 654 and 654.2.

In re Martinez **(1978) 86 Cal.App.3d 577**
Search condition not upheld under the test set forth in *People v. Lent, supra*. The defendant was part of a crowd of people yelling and throwing bottles/cans at police. The defendant was convicted of battery on a police officer. The appellate court invalidated the search condition because the offense did not involve a concealed weapon and nothing in the defendant's prior history indicated a propensity to possess concealed weapons in the future. Thus, no "factual nexus" existed between the crime, defendant's manifested propensities, and the search condition.

People v. Keller **(1978) 76 Cal.App.3d 827**
Search condition deemed invalid. The defendant was convicted of petty theft of a 49-cent pen with no evidence the theft was drug-related (although the defendant did have a prior history of drug abuse). The condition was not reasonably related to the underlying offense, nor was it likely to prevent future criminality.

3. Restrictions on Travel, Association, and Stay Away Orders

Alex O. v. Superior Court **(2009)174 Cal.App.4th 1176**
The minor, a United States citizen who lived with his mother in Mexico, admitted smuggling marijuana into the United States. The juvenile court imposed a condition preventing the minor from entering the United States except to attend school, meet with his probation officer, complete the terms of his probation, seek or maintain employment, visit his father and family members. The court held that the condition was overbroad and not reasonably related to the juvenile's underlying smuggling offense. Similarly, the limits on the purposes for which the minor could enter the United States, which taken together with the juvenile's living arrangements, effectively banished the juvenile from the United States. However, because any border crossing by the juvenile was closely related to his underlying smuggling offense, the court could reasonably require that the juvenile give his probation officer notice of when he entered

the United States so that the probation officer could make sure the juvenile did not commit further smuggling offenses.

***In re Victor L.* (2010) 182 Cal.App.4th 902**
Condition of probation ordering the minor to stay away from "areas known by [him] for gang-related activity" is impermissibly vague in that it does not provide notice of what areas the minor may not frequent or what types of activities he must shun.

***In re D.G.* (2010) 187 Cal.App.4th 47**
Minor was found to have committed a burglary of a home and receiving stolen property and had had prior sustained petitions for auto burglary and sales of marijuana. The juvenile court imposed as a condition of probation: "Do not be on any campus or within 150 feet of any campus other than the school in which you are currently enrolled." The court held that the condition was unreasonable under *Lent*, because (1) there was no relationship between school or students and the minor's current or past crimes, as none were committed on school grounds and none involved school age children; (2) the condition did not relate to conduct that is itself criminal (i.e., it is not illegal to pass within 150 feet of school grounds); and (3) restriction was not related to the minor's possible future criminality, because there was nothing in his past or current offenses or his personal history that demonstrated a predisposition to commit crimes near school grounds or upon students and would therefore serve no rehabilitative function.

***People v. Gabriel* (2010) 189 Cal.App.4th 1070**
Condition requiring defendant to "[n]ot associate with any individuals you know or suspect to be gang members, drugs users, or on any form of probation or parole supervision" was unconstitutionally vague. The word "suspect," lacking specificity, failed to provide defendant with adequate notice. The court noted the condition, as written, is insufficiently precise for a court to determine whether a violation has occurred. The court modified the condition to delete the word "suspect."

***In re H.C.* (2009) 175 Cal.App.4th 1067**
Condition stating "[t]hat the minor not associate with any known probationer, parolee, or gang member" is vague because passive

form “known” does not specify a subject. Since the defect was “obvious,” the court modified condition as follows: “You H.C. will not associate with any person known to you to be on probation, on parole or a member of a criminal street gang.” Second condition, stating, “That the minor not frequent any areas of gang related activity and not participate in any gang activity” was unconstitutionally vague requiring remand to define obscure verb “frequent” and phrase “areas of gang related activity,” which could include an entire town.

People v. O'Neil **(2008) 165 Cal.App.4th 1351**
A “standard” term of probation in the county, this condition stated: “You shall not associate socially, nor be present at any time, at any place, public or private, with any person, as designated by your probation officer.” Court held the condition is overbroad and permits an unconstitutional infringement on defendant’s right of association. First, it is not limited to those defendant knows are so designated. Second, the court’s order does not identify the class of persons with whom defendant may not associate nor does it provide any guideline as to those with whom the probation department may forbid association. Since the condition contains no such standard by which the probation department is to be guided, the condition is too broad.

In re Sheena K. **(2007) 40 Cal.4th 875**
Probation condition forbidding minor’s association with “anyone disapproved of by probation” is unconstitutionally vague and overbroad.

People v. Smith **(2007) 152 Cal.App.4th 1245**
Condition imposed upon defendant, as part of a blanket restriction on all persons convicted of sex offense, banning him from leaving the county for any purpose, was constitutionally infirm, as too restrictive of his right to association and travel and not narrowly tailored.

People v. Turner **(2007) 155 Cal.App.4th 1432**
Condition requiring defendant to “[n]ot associate with persons under the age of 18 unless accompanied by an unrelated responsible adult” is vague under *Sheena K.*, because a person may reasonably not know whether he or she is associating with someone under the age of 18. Court modified the condition to state, “Not associate with

persons he knows or reasonably should know to be under the age of 18 unless accompanied by a responsible adult unrelated to defendant"

People v. Jungers **(2005) 127 Cal.App.4th 698**
Condition forbidding defendant from initiating contact with his wife was declared reasonable under *Lent* because it restricts conduct not itself criminal, is directly related to his domestic violence offense and reasonably related to future criminality. It was also constitutional. Although the defendant's expectations of free association and marital privacy were necessarily reduced, it was not a ban on association or marital privacy, but a narrowly tailored condition consistent with defendant's rehabilitation and the safety of the victim, supporting the state's compelling interest in preventing further incidents of violence, threats and harassment.

In re Byron B. **(2004) 119 Cal.App.4th 1013**
Condition that the minor "[n]ot have direct or indirect contact with anyone known to be disapproved by parent(s)/guardian(s)/probation officer, staff" not unconstitutionally unreasonable, vague, or overbroad.

In re Dwayne T. **(Nov. 22, 2002, A097770 [unpub. opn.])**
The condition ordering appellant to stay away from 61st Avenue entirely was unconstitutional in that it unnecessarily restricted his right to travel and the condition was vague and overbroad. The court modified the condition to restrict the minor from entering the 800 block of 61st street -- the location where the crime occurred. Another condition prevented the minor from traveling outside of Alameda County without first seeking permission. The court held the condition invalid under *Lent* because there was no nexus or connection between areas outside of Alameda County and the minor's underlying crime or his future criminality since the minor lived in and committed the crime in Alameda County.

In re Antonio R. **(2000) 78 Cal.App.4th 937**
Condition prevented the minor from entering Los Angeles County unless accompanied by a parent or with the prior permission of the probation officer. Condition upheld and deemed not an unconstitutional restriction on the minor's right to travel/association,

in part because the minor was not completely banished from the area and he lived in another county. The minor was also part of a gang that resided in Los Angeles County and his current and past offenses were arguably a result of that gang association.

In re Kacy S. **(1998) 68 Cal.App.4th 704**
Condition required the probation officer to pre-approve all of the persons with whom the minor associated. Condition was deemed overbroad since the minor's offense consisted of challenging a person to a public fight and therefore modifying the condition to stay away from that particular person was sufficient to effectuate the court's order and to prevent an unconstitutionally overbroad condition.

People v. Peck **(1996) 52 Cal.App.4th 351**
Defendant, a member of a church that used marijuana as a sacrament, was convicted of transportation of marijuana. Court upheld a condition, that defendant not associate with drug users, as constitutionally valid and not an impermissible burden on his freedom of association.

People v. Garcia **(1993) 19 Cal.App.4th 97**
Condition required the defendant to stay away from users/sellers of narcotics, felons, and ex-felons. Condition invalid as it violated the defendant's freedom of association because the trial court did not limit the conditions to persons *known* by the defendant to fall within the prohibited group.

In re Frank V. **(1991) 233 Cal.App.3d 1232**
Probation condition required the probation officer or the minor's parents to approve each person with whom the minor associated with because the crime consisted of the minor obtaining a gun from an unknown person on the street. Condition upheld since a more specific condition could not be drawn.

People v. Beach **(1983) 147 Cal.App.3d 612**
Probation condition required the defendant to move out of her house and the community. She was convicted of involuntary manslaughter after shooting a person in front of her house. Condition struck as unconstitutional as it violated her freedom of travel, speech,

association, assembly, and to the possession and enjoyment of her property. Having the defendant move from one geographical area to another was of minimal value to the public when compared with the infringement of her basic constitutional rights.

***In re White* (1979) 97 Cal.App.3d 141**
Probation condition prohibited the defendant convicted of prostitution to be banished from certain areas of Fresno. Condition was unconstitutional and overbroad since legitimate reasons as well as non-legitimate ones could be carried out within the restricted areas.

4. Drug Testing Conditions/Prohibition on Drug Use, Medical Marijuana Use

***People v. Moret* (2009) 180 Cal.App.4th 839**
A sharply divided panel of Division Two of the First District upheld imposition of probation conditions on defendant, convicted of possession of a concealed firearm, requiring him to surrender his medical marijuana card and refrain from using medical marijuana while on probation.

***In re Kacy S.* (1998) 68 Cal.App.4th 704**
Probation condition required drug testing ordered pursuant to Welfare and Institutions Code section 729.3. The condition was upheld even though the underlying offense was not drug/alcohol related and there was no evidence that the minor had any past history of drug or alcohol use. Two judges of the Third District held that since the urine testing condition was designed to detect the minor's use of drugs and alcohol, it was "reasonably related to future criminality" as minors are legally prohibited from using those substances and "alcohol and drugs are precursors of serious criminality." However, the one dissenting justice noted that the majority disregarded the cardinal rule that each case must be evaluated based on its own individual facts.

***People v. Peck* (1996) 52 Cal.App.4th 351**
Defendant, a member of a church that used marijuana as a sacrament, was convicted of transportation of marijuana. Court upheld a probation condition, that defendant not use or possess a

controlled substance and that he submit to drug testing, as not impermissibly burdening his constitutional free exercise of religion, since these requirements were reasonably related to his offenses and to future criminality.

***In re Jason J.* (1991) 233 Cal.App.3d 710**
The juvenile court imposed a chemical testing condition and it was upheld as being amply justified by the minor's social history even though no drugs/alcohol were involved in the offense. The minor was an admitted beer drinker and gang member, but denied using drugs. The probation officer had also noted that "drug usage is common amongst gang members."

***In re Laylah K.* (1991) 229 Cal.App.3d 1496**
The appellate court approved a chemical testing condition for the minor based on the fact that it was reasonably related to preventing future criminality. Although the sustained offense was for public fighting, the minor acknowledged alcohol and marijuana use. Moreover, she was a runaway, truant from school, and basically beyond her parents' control.

***In re Jimi A.* (1989) 209 Cal.App.3d 482**
Drug testing approved for a minor on in-home probation with an admitted background of substance abuse even though his underlying battery offense was not drug-related. The court noted that the minor was also being placed in the home where he had no parental supervision in the late evening hours and therefore the condition was reasonably related to preventing future criminality.

5. Restriction on Attending Court

***In re E.O.* (2010) 188 Cal.App.4th 1149**
A petition was sustained for possessing a knife on school grounds. The court found the following condition unconstitutionally vague: "[t]hat said minor not knowingly come within 25 feet of a Courthouse when the minor knows there are criminal or juvenile proceedings occurring which involves [sic] anyone the minor knows to be a gang member or where the minor knows a witness or victim of gang-related activity will be present, unless the minor is a party in the action or subpoenaed as a witness or needs access to the area for

a legitimate purpose or has prior permission from his Probation Officer."

***People v. Leon* (2010) 181 Cal.App.4th 943**
Condition imposed on an alleged gang member stating, "You shall not appear at any court proceeding unless you're a party, you're a defendant in a criminal action, subpoenaed as a witness, or with permission of probation," is constitutionally overbroad. The court modified the condition as follows: "You shall not be present at any court proceeding where you know or the probation officer informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer."

***People v. Perez* (2009) 176 Cal.App.4th 380**
The court struck down the following condition as constitutionally overbroad, unnecessarily restricting defendant's First Amendment access to the courts: "The defendant shall not attend any Court hearing or be within 500 feet of any Court in which the defendant is neither a defendant nor under subpoena. The defendant shall inform the probation officer prior to any Court appearance."

***In re Terez M.* (Nov. 24, 2003, A102995 [unpub. opn.])**
Condition prohibited the minor from being present at any court proceeding unless he was a party, defendant, or subpoenaed witness. The court upheld the condition under *Lent* and did not find it overbroad. The court stated that the restriction on court attendance prevents the gathering of gang members to intimidate witnesses. Although the minor denied being a gang member, there was some evidence that he had some contact with persons involved in gangs.

6. Mandatory School Attendance, Employment, Grades

***People v. Tupper* (Dec. 23, 2010, A125301 [unpub. opn.])**
Defendant was convicted of embezzlement and burglary. The court found a condition requiring defendant to "seek and maintain meaningful employment" vague. The court remanded the matter for

insertion of the word "paid" for "meaningful," observing that a proper purpose of the condition is to require defendant to take steps to enable her to pay restitution.

***In re Angel J.* (1992) 9 Cal.App.4th 1096**
Condition required that the minor maintain satisfactory grades. The court upheld the condition finding that it satisfied *Lent* since there is a correlation between education and the crime rate. The court also held the condition constitutional and not overbroad/vague since the condition could be interpreted to mean any passing grade and nothing in the record indicated this was beyond the minor's ability.

***In re Robert M.* (1985) 163 Cal.App.3d 812**
Condition requiring the minor to obtain satisfactory grades and citizenship was struck because the condition was beyond the minor's capacity to achieve satisfactory grades.

***In re Gerald B.* (1980) 105 Cal.App.3d 119**
A condition of probation requiring school attendance has been upheld under *Lent* as reasonably related to the rehabilitation and prevention of future criminality. However, the court cannot impose a condition that makes juvenile hall automatic based on just a reported school absence without a medical excuse.

7. Miscellaneous

***In re Victor L.* (2010) 182 Cal.App.4th 902**

Condition banning possession of a cell phone is not unduly restrictive of First Amendment rights. However, condition completely banning Internet use and access was constitutionally vague, as it conflicted with other conditions which contemplated some use and access. The court was troubled by the complete ban on access to Internet-enabled computers. However, the court had no difficulty with a condition prohibiting *possession* of a computer with Internet access, as reasonable to discourage and prevent surreptitious use in contravention of the monitoring requirements.

***In re Luis F.*(2009) 177 Cal.App.4th 176**

The court held that a condition modified so as to require the minor to "continue taking medications prescribed for depression and social anxiety disorder, as directed by his doctors" was not vague or overbroad, and did not violate a federal due process liberty interest in avoiding coerced medications or a state constitutional right to privacy.

***People v. Turner* (2007) 155 Cal.App.4th 1432**

Condition requiring defendant to "[n]ot possess any sexually stimulating/oriented material deemed inappropriate by the probation officer and/or patronize any places where such material or entertainment is available" is constitutionally vague under *Sheena K.*, because "the phrase 'sexually stimulating/oriented material deemed inappropriate by the probation officer' is an inherently imprecise and subjective standard." The court modified the condition to state, "Not possess any sexually stimulating/oriented material having been informed by the probation officer that such material is inappropriate and/or patronize any places where such material or entertainment in the style of said material is known to be available."

***People v. Harrisson* (2005) 134 Cal.App.4th 637**

Defendant sent child pornography over the Internet and pled no contest to misdemeanor possession of child pornography. After his conviction, he made a threat to kill the prosecutor and a search of his computer disclosed he had been viewing adult pornography. The court held that a condition of probation banning Internet use was reasonable under *Lent* and was not unconstitutional under the circumstances, declaring: "when such a beneficial tool is put to evil use, there is no constitutional impediment to restrictions calculated to forestall a recurrence."

***In re Christopher M.* (2005) 127 Cal.App.4th 684**

The challenged condition required "all records" relating to the minor's medical and psychological treatment be made available to the court and the probation officer upon their request. The court held that the conditions imposed on the troubled youth with substance

abuse problems were valid under *Lent*, did not violate his federal constitutional right to privacy or the psychotherapist-patient privilege.

***People v. Sanchez* (2003) 105 Cal.App.4th 1240**

Condition requiring defendant, subject to disclose information to law enforcement as a gang registrant (Pen. Code, § 186.32), to list "areas frequented" was constitutionally vague. Additional condition requiring the defendant to disclose his "moniker" did not violate his Fifth Amendment right to remain silent.

D. Delegation to Probation Officer

***People v. O'Neil* (2008) 165 Cal.App.4th 1351**

Probation officers may not create probation conditions not expressly authorized by the court.

***In re Victor L.* (2010) 182 Cal.App.4th 902**

Distinguishing *O'Neil, supra,* a court may dictate the basic policy of a condition of probation, leaving specification of details to the probation officer.