

PROBATION CONDITIONS IMPOSED ON JUVENILES
What types of conditions are unreasonable and unconstitutional?

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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. Although general principles of adult probation conditions are mentioned in these materials to highlight the differences and the materials are generally applicable to adults, the focus concentrates on juveniles since the juvenile court has more discretion. As a result, probation conditions held invalid for juvenile probationers would likely be invalid for adult probationers, but the converse is not always true.

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.)

Finally, 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.)

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.* (1997) 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 in a concurring opinion did not extend the waiver rule to probation conditions which infringe upon a constitutional right. (*People v. Welch* (1993) 5 Cal.4th 228, 240-241 (Arabian, J., concurring).) The appellate court in *In re Justin S.*, *supra*, agreed that appellate review was not waived by the failure to object at the dispositional hearing since the defendant contested the constitutionality of the probation conditions. (*In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815; but see *People v. Gardineer* (2000) 79 Cal.App.4th 148, 151 [objection required]; *In re Josue S.* (1999) 72 Cal.App.4th 168, 173 [objection required].) The *Justin S.* court, however, noted that not all “constitutional defects in conditions of probation may be raised for the first time on appeal, since there may be circumstances that do not present ‘pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court.’” (*In re Justin S.*, *supra*, 93 Cal.App.4th at 815, fn. 2.) Alternatively, appellate counsel may wish to consider arguing ineffective assistance of counsel if trial counsel failed to object to the probation conditions on constitutional grounds. (See *Strickland v. Washington*, *supra*, 466 U.S. at 687-694; *In re Avena*, *supra*, 12 Cal.4th at 721.)

C. Examples of Probation Conditions that may be Objectionable

1. Gang Conditions

***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 appellant 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 appellant 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

***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 however invalidated the search condition because the present 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

***In re Dwayne T.* (Nov. 22, 2002, A097770 [nonpub. 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. 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

***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.

***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 Terez M. (Nov. 24, 2003, A102995 [nonpub. 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 and/or Grades

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.