CHALLENGING THE VALIDITY OF CONDITIONS OF PROBATION AND OTHER TYPES OF FORMAL SUPERVISION

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I. Overview of the General Law on Probation Conditions

Conditions of probation are fruitful area of appellate litigation, and ensuring that probation conditions are clear, fair, and reasonable, is of vital importance to our clients. The number of adults in California subject to some type of formal non-parole program of supervision (felony probation, mandatory supervision, or post-release community supervision) has increased significantly and, in 2018, constituted 60% of adults involved with California's correctional system.[1] Another 2018 study found that 20% of prison admissions are the result of probation violations, a statistic that does not include probation violations that result in incarceration in county jails.[2] For juveniles, the numbers are similarly striking; approximately half of the wardship petitions that are sustained result in probation,[3] and juveniles not initially placed on probation are frequently subject to probation supervision after completion of out-of-home placement programs.

The statutory basis for probation is Penal Code section 1203.1, which authorizes trial courts to order "reasonable" conditions of probation that further the goals of rehabilitation and public safety.[4] As explained

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[1] In 2018, the Chief Probation Officers of California reported that 365,000 adults were supervised by probation. See https://www.cpoc.org/sites/main/files/file-attachments/california_probation_executive_summary.pdf?1555517616.

[2] Assembly Bill 1950 Assembly Floor Analysis (June 10, 2020), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1950.

[3] https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Juvenile%20Justice%20In%20CA%202019.pdf. In 2019, 9800 juveniles received an initial grant of probation following a wardship determination.

[4] Some offenses carry mandatory probation conditions; those are specified either in the code section related to the offense or in the code sections immediately following 1203. There are also several probation conditions that must be imposed in juvenile cases. (Welf. & Inst. Code, § 729.2.)

further in Section II, conditions of probation may be challenged either as unreasonable or as unconstitutional. It is likely that the same bases for challenging the validity of probation conditions can be used to challenge conditions of mandatory supervision, and possibly post-release community supervision and parole. (See *People v. Martinez* (2014) 226 Cal.App.4th 759.)

Whether discussing the imposition of probation conditions for adults or minors, the basic analysis of a condition's reasonableness and/or constitutionality is the same. However, the juvenile court must consider the minor's entire social history when crafting probation conditions, and the juvenile court has an obligation to rehabilitate the minor. (See *In re Tyrell J.* (1994) 8 Cal.4th 68, 81-83.) These differences, among others, effectively provide the juvenile court with broader discretion in imposing probation conditions. In addition, a juvenile, unlike an adult, may not refuse probation. (*Ibid.*)

In adult cases, probation conditions are appealable following guilty pleas as an appeal of a post-judgment order affecting substantial rights (§ 1237, subdivision (b)), and a Certificate of Probable Cause is generally not required. In juvenile cases, probation conditions are appealable as dispositional, or post-judgment, orders. (Welf. & Inst. Code, § 800, subd. (a).) 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 defendant may agree to waive his right to challenge the validity of a probation condition as part of a negotiated disposition, in which case a Certificate of Probable Cause is required. At least one court has held that a waiver of the right to appeal included probation conditions where the defendant generally waived the "right to appeal the judgment and

rulings of the court." (*People v. Espinoza* (2018) 22 Cal.App.5th 794, 801.) However, this restrictive interpretation of standard waiver language in plea forms has not been widely embraced by other courts. (See *People v. Patton* (2019) 41 Cal.App.5th 934, 940-941 [no waiver of right to challenge conditions on appeal where a plea agreement contemplated probation with reasonable conditions and defendant challenged condition as unreasonable and the conditions were not stipulated in the plea agreement].)

If a discrepancy between the written order of probation (or minute order) and the court's oral pronouncement exists, in general the oral pronouncement controls. (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.) If the discrepancies create a "lack of clarity" to the degree that due process concerns are implicated, remand to the trial court for clarification is appropriate. (*In re D.H.* (2016) 4 Cal.App.5th 722, 726.) However, the court is not required to recite every probation condition orally; 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; *In re Frankie J.* (1998) 198 Cal.App.3d 1149, 1155 [juvenile court not required to orally impose every probation condition].)

If an appellate court finds a probation condition invalid, it may strike the condition in its entirety, modify the condition, or remand to the trial court for modification.

II. Types of Challenges to the Validity of Probation Conditions

A. Reasonableness

The statutory basis for probation in adult criminal cases is Penal Code section 1203.1, which provides that the trial court may suspend either the imposition or execution of sentence for a specific term of probation

(now two years for most felonies (§1203.1, subd. (m)). (§ 1203.1, subd. (a)). When a criminal defendant is placed on probation, the trial court has "broad discretion to impose [probation] conditions to foster rehabilitation and to protect public safety." (*People v. Moran* (2014) 1 Cal.5th 398, 402; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Valid conditions of probation may include imprisonment in the county jail, fines, and "other reasonable conditions [that] are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer." (§ 1203.1, subd. (j).)

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.)

In adult cases, if there is a plea bargain, a probation condition may not be based on a dismissed count unless the defendant agrees to the condition or 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* (2010) 51 Cal.4th 75, 82.)

1. *Lent/Ricardo P.* Test

In both adult and juvenile cases, whether the conditions are reasonable is determined under the three-part *Lent* test. (*People v. Lent* (1975)15 Cal.3d 481, 486.) According to *Lent,* 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." (*Lent, supra,* 15 Cal.3d at p. 486, citing *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.)

The third prong of *Lent,* that a condition unrelated to the probationer's underlying offense is valid if "reasonably related to future criminality," has understandably been the subject of significant litigation.

The California Supreme Court recently examined this prong in the context of electronic search conditions and clarified that the *Lent* framework "contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition." (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1122.) "[A] reasonable condition of probation is not only fit and appropriate to the end in view but it must be a reasonable means to that end. Reasonable means are moderate, not excessive, not extreme, not demanding too much, well-balanced." (*Ibid.*, citing *People v. Fritchey* (1992) 2 Cal.App.4th 829, 837-838.)

The Court held that there must be "more than just an abstract or hypothetical relationship between the probation condition and preventing future criminality." (*Ricardo P., supra,* 7 Cal.5th at p. 1121; see also *People v. Brandão* (2012) 210 Cal.App.4th 568, 574 ["Not every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable."]; *In re D.G.* (2010) 187 Cal.App.4th 47, 56 ["Of necessity, a probation condition that can be justified only on grounds that can be applied equally to every juvenile probationer is hardly tailored to the needs of appellant."].)

Though the Court declined to adopt appellant's position that a nexus is required between the condition and the defendant's underlying offense, it did cite approvingly Court of Appeal decisions striking conditions that bore no relationship to the defendant's underlying offense, prior offenses, or social history. (*Ricardo P., supra,* 7 Cal.5th at pp. 1120-1122.) Thus, if "nothing in the record" indicates a connection between the conduct regulated by the condition and the particular defendant's

risk of criminal behavior, the condition is likely invalid as unreasonable under *Lent* and *Ricardo P.* (*Id.* at p. 1122.)

In *Ricardo P.,* the Court also rejected the argument advanced by the Attorney General and several Courts of Appeal that its prior decision in *People v. Olguin* (2008) 45 Cal.4th 375, supported the validity of any probation condition "reasonably related to enhancing the effective supervision of probationers." (*Id.* at pp. 1125.) The Court distinguished the minimal burden placed on the probationer by the condition at issue in *Olguin,* which simply required he notify the probation department of any pets at his residence, with the more "burdensome and intrusive" condition at issue in *Ricardo P.*, which required "a correspondingly substantial and particularized justification." (*Id.* at p. 1126.) Counsel should thus be alert for pre-*Ricardo P.* opinions that relied on the more expansive reading of *Olguin* to uphold conditions on the grounds that they enhanced supervision of the probationer's compliance with other, valid conditions and should argue against reliance on these opinions if based on the expansive reading of *Olguin* rejected by the Court in *Ricardo P.*

Though *Ricardo P.* involved a challenge to a probation condition that implicated a constitutional right, the Court's holding that a proportionality analysis is required under *Lent*'s third prong is not limited to conditions that burden constitutional rights. (*Id.* at p. 1128.) The majority specifically disagreed with the dissenting justices' view that such an analysis was only required when constitutional rights are at issue. (*Ibid.*)

2. Juveniles

In the case of juveniles, the 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 p. 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, may provide 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.)

B. Unconstitutional as Overbroad

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.) "The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

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 p. 102*; People v. Hackler, supra,* 13 Cal.App.4th at p. 1058.) Because the

court may not delegate judicial authority to the probation department, an overbroad or vague condition cannot be "saved by permitting the probation department to provide the necessary specificity." (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358.)

C. Unconstitutional as Vague

A probation condition that 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 [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,* 40 Cal.4th at p. 890 [citing *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325].) However, when interpreting a probation condition, an appellate court should "rely on context and common sense," and a condition should not be "invalidated as unconstitutionally vague if any reasonable and practical construction can be given to its language." (*People v. Rhinehart* (2018) 20 Cal.App.5th 1123, 1129, internal citations omitted.)

A vague probation condition presents two dangers. First, because the probationer cannot ascertain what conduct is forbidden, he may unwittingly violate probation. (See *People v. Lopez, supra*, 66 Cal.App.4th at p. 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.*, 40 Cal.4th at p. 890.)

Because a violation of probation must be willful, probation conditions that implicitly contain a knowledge requirement -- such as those prohibiting possession of weapons or narcotics -- need not specifically articulate a knowledge requirement. (*People v. Hall* (2017) 2 Cal.5th 494; see also *People v. Rhinehart, supra,* 20 Cal.App.5th at pp. 1127-1128 [applying *Hall* to condition prohibiting probationer from entering places where alcohol is the primary item of sale].)

D. Unconstitutional Delegation of Authority to Probation Department

Both the United States and California Constitutions provide for the separation of powers among the three branches of government. (U.S. Const., art. III; Cal. Const., art. III, § 3.) Trial courts alone have the power to impose probation conditions. (*People v. Welch* (1993) 5 Cal.4th 228, 233; *People v. Cruz* (2011) 197 Cal.App.4th 1306, 1310; § 1203.1, subd. (j) [trial court may impose reasonable conditions of probation].) Thus, under both the state and federal separation of powers doctrines, it is well settled that "courts may not delegate the exercise of their discretion to probation officers." (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1372 [probation department not authorized to modify probation by imposing new terms]; see *United States v. Stephens* (9th Cir. 2005) 424 F.3d 876, 881 [limitations on probation officer's power to decide the nature or extent of punishment imposed on a probationer is of constitutional dimension, derived from Article III's grant to courts of power over cases and controversies].)

A court "may leave to the discretion of the probation officer the specification of the many details that invariably are necessary to

implement the terms of probation." (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358-59; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 918-919.) However, because probation officers "may not create conditions not expressly authorized by the court," a court may not impose a probation condition which is "entirely open-ended." (*Ibid.,* citing *In re Pedro Q., supra,* 209 Cal.App.3d at pp. 1372-1373.)

E. 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.)

A probation condition that presents a constitutional issue that is a pure question of law is reviewed de novo. (See *People v. Cromer* (2000) 24 Cal.4th 889, 899-900; *People v. Martinez* (2014) 226 Cal.App.4th 759.)

F. Preservation of the Issue for Appeal

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, supra,* 5 Cal.4th at pp. 234-237.) Absent an objection, appellate counsel must raise this issue under the umbrella of ineffective assistance of counsel. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687-694; *People v. Jones* (2009) 178 Cal.App.4th 853, 860.)

With respect to unconstitutional probation conditions, a challenge to a probation condition as facially vague and/or 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 p. 889.) However, if a challenge to an unconstitutional condition requires additional factual findings, significant reference to the sentencing record, or is not easily

correctable by modification on appeal, the appellate court may find the claim forfeited if no objection was made in the trial court. (See *id.* at pp. 888-889; *People v. Stapleton* (2017) 9 Cal.App.5th 989, 994; *People v. Kendrick* (2014) 226 Cal.App.4th 769, 776-777 [constitutional challenge to condition prohibiting internet access forfeited by lack of objection as the claim required extensive review of facts in the record on appeal].) To the extent possible, such a constitutional claim should be framed as a facial challenge to the condition rather than an "as-applied" challenge.

G. Timeliness of Appeal

Challenges to probation conditions are generally raised immediately following the order granting probation (or dispositional orders in juvenile cases) and are appealable as post-judgment orders affecting substantial rights subject to the normal rules governing the timeliness of appeals. (Cal. Rules of Court, rule 8.308(a).)

If the trial court later modifies the order of probation by adding or changing a condition (or denies a defense request for modification), that order is appealable as a separate, post-judgment order. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421; *People v. Douglas* (1999) 20 Cal.4th 85, 91). However, a 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. (*People v. Ramirez, supra,* 159 Cal.App.4th at p. 1421.)

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.)

A probation condition may also be challenged on constitutional grounds as part of a probation revocation appeal if the defendant's alleged violation was based on the unconstitutional condition. (See *In re Pedro Q.*, *supra*,209 Cal.App.3d at p. 1371; *People v. Austin* (2019) 35 Cal.App.5th 778 [constitutional challenge to parole condition following parole revocation hearing].)

III. Applicability of Probation Conditions Analysis to Conditions of Other Types of Supervision

A. Mandatory Supervision

In *People v. Bryant* (2021) 11 Cal.5th 976, 2021 WL 3201079, the California Supreme Court recently settled the question of the appropriate framework for analyzing reasonableness challenges to mandatory supervision conditions and determined that the *Lent/Ricardo P.* test applies to mandatory supervision conditions. The Court looked to the statutory framework for mandatory supervision, which "reveals a scheme similar to that governing probationers with respect to the conditions of release." (2021 WL 3201079, *2; see also § 1170, subd. (h)(5)(B) [county probation departments to supervise defendants on mandatory supervision according to the "terms, conditions, and procedures generally applicable" to probationers].) "The balance of interests between effective supervision and an individual's privacy concerns does not substantially differ between probation and mandatory supervision settings." (*Ibid.*)

The Court rejected the Attorney General's argument that mandatory supervision is more akin to parole than probation. The Court acknowledged that, "for some purposes," there are similarities between mandatory supervision and parole. (*Id.* at *5.) However, "the fact that mandatory supervision tracks parole for some purposes does not mean

that it does so for all purposes." (*Ibid*.) Thus, an electronics search condition is not per se reasonable simply because the individual is placed on mandatory supervision, and a case-specific analysis is required. (*Id*. at *7.)

Prior Court of Appeal decisions applying the *Lent/Ricardo P.* test to conditions of mandatory supervision include *People v. Martinez* (2014) 226 Cal.App.4th 759,[5] *People v. Brand* (2021) 59 Cal.App.5th 861, *People v. Malago* (2017) 8 Cal.App.5th 1301, 1306, and *People v. Relkin* (2016) 6 Cal.App.5th 1188. *Bryant* affirmed the ultimate outcome of these cases, but specifically disapproved of the language in *Martinez* suggesting that mandatory supervision was more akin to parole than probation. (2021 WL 3201079, at *6.)

Note: The Court also pointed out an important difference between mandatory supervision and probation, which is that there are *no* statutorily required conditions of mandatory supervision (see *Probation, Mandatory, Supervision, Parole, and Postrelease Community Supervision: Understanding the Differences*, available on the FDAP website). (2021 WL 3201079, at *4.) In addition, in some areas, the trial court's authority to craft conditions of release may be broader in the case of probation than mandatory supervision. For example, the trial court's discretion to impose victim restitution as a condition of mandatory supervision is more constrained than its discretion to impose restitution as a condition of probation. (*People v. Rahbari* (2014) 232 Cal.App.4th 185 [as condition of mandatory supervision,

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[5] In *People v. Martinez* (2014) 226 Cal.App.4th 759, 763, the Court of Appeal held that "mandatory supervision is more similar to parole than probation [citation omitted]," but that conditions of mandatory supervision should be analyzed like probation conditions because the "validity and reasonableness of parole conditions is analyzed under the same standard as that developed for probation conditions." The court went on to analyze a reasonableness challenge and constitutional challenge to two conditions of mandatory supervision as if they were conditions of probation. (*Id.* at pp. 763-765.)

victim restitution is analyzed under section 1202.4 and cannot be based on conduct that does not form the basis of the conviction].)

B. Parole & PRCS

Probation is very different from parole, as a parolee is "constructively a prisoner in the legal custody of state prison authorities," and the statutory basis for parole conditions is different than for probation.[6] (*In re Taylor* (2015) 60 Cal.4th 1019, 1037.) In *People v. Burgener* (1986) 41 Cal.3d 505, the California Supreme Court distinguished parole from probation and upheld the inclusion of a search condition in all parole agreements as reasonable based on the qualitative differences between probation and parole and the corresponding reduced expectation of privacy available to parolees.[7] (See also *Samson v. California* (2006) 547 U.S. 843, 850 [parolees entitled to less protection under the Fourth Amendment than probationers].)

However, in *Burgener,* the Court also affirmed that "parole conditions, like conditions of probation, must be reasonable." (*People v. Burgener, supra,* 41 Cal.3d at p. 532.) Since *Burgener,* appellate courts have tended to apply the *Lent* test and analyze reasonableness challenges to parole conditions in the same way as challenges to probation conditions. (*People v. Navarro* (2016) 244 Cal.App.4th 1294, 1298-1300; *In re Corona* (2008) 160 Cal.App.4th 315; *In re Hudson* (2006) 143 Cal.App.4th 1, 9-11; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233-1234.) Courts have also cited authority on probation conditions to analyze claims challenging the constitutionality of parole conditions. (See *People v. Austin* (2019) 35 Cal.App.5th 778, 787, 790-791 [no

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[6] The statutory basis for imposition of conditions of parole is Penal Code section 3053, subdivision (a), which authorizes the Board of Prison Terms to impose "any conditions that it may deem proper."

[7] To the extent *Burgener* held that a parole search requires reasonable suspicion, it is no longer valid. (*People v. Reyes* (1998) 19 Cal.4th 743, 753-754.)

contact order void for vagueness].) The exception may be protections from warrantless, suspicionless searches under the Fourth Amendment. (*People v. Cervantes* (2017) 859 F.3d 1175, 1180-1181; *Sampson v. California* (2006) 547 U.S. 843, 850 [noting "parolees have fewer expectations of privacy than probationers"].)

Recently, in *People v. Bryant,* 11 Cal.5th 976, the California Supreme Court addressed the framework for assessing the validity of conditions of mandatory supervision (see section III.A., above). Though the Court did not directly address how to analyze the reasonableness of parole conditions, it did make clear that *Burgener* should be read narrowly and "is limited to the conclusion that a warrantless search of a parolee's property or residence," mandated by both the California Code of Regulations statute, "is per se reasonable." (2021 WL 3201079, at *7.) The Court rejected the idea that courts have the authority to mandate certain conditions for all parolees, instead noting "it is the Legislature's role to require . . . uniform conditions." (*Ibid.*) Thus, it appears that parole conditions, if not statutorily required, are subject to a reasonableness analysis. Moreover, the Court particularly noted that *Burgener* "did not involve an electronics search condition," which appears to leave open challenges to electronics search conditions imposed as conditions of parole. (*Ibid.*)

If challenges to parole conditions can be based on *Lent/Ricardo P.*, it seems likely that conditions of post-release community supervision can also be challenged on the same basis as probation conditions. However, we were unable to find published authority on the applicable standards for reviewing conditions of post-release community supervision.

IV. Types of Frequently-Challenged Probation Conditions.

This section includes a non-exhaustive list of interesting and potentially useful cases.

A. 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 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."

***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.

***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.

***People v. Balestra* (1999) 76 Cal.App.4th 57:** In an elder abuse case, search condition justified by other conditions prohibiting probationer's use of drugs or alcohol.

***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.

***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.

***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.

B. <u>Electronics Usage and/or Monitoring</u>

***In re Amber K.* (2020) 45 Cal.App.5th 559:** Condition at issue was electronics search condition imposed to monitor child's compliance with probation conditions. Wardship petition was filed after minor was in a fight at school with her former best friend; she had a no-contact order with the victim and her former school. The fight resulted in part from interactions over social media, but Amber did not disseminate videos of the fight. However, she did contact the former friend and posted messages on social media after the fight. A more narrowly tailored condition limiting searches to monitoring compliance with no-contact order would be reasonable. However, as imposed it "imposes a burden that is not proportionate to the legitimate interest it serves, which is to make sure that Amber has no contact with B."

***In re David C.* (2020) 47 Cal.App.5th 657:** Electronics search condition not reasonably related to future criminality where justification was that in general minors in sex offender treatment are subject to electronics search conditions. Even though the condition was limited, it still imposed a very heavy burden on privacy interests, which was not justified by the particular facts of the case.

***In re Hudson* (2006) 143 Cal.App.4th 1:** Upheld parole condition requiring approval of parole officer before using computer, where crime was child molestation and defendant deliberately encrypted computer and withheld password so authorities could not ascertain whether internet was involved in offense, other offenses did involve computer use, and defendant was not denied all access to internet.

***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.

***People v. Appleton* (2016) 245 Cal.App.4th 717:** Probation conditions requiring consent to search electronic devices and prohibiting deletion of internet browsing history were sufficiently related to offense of false imprisonment where defendant met victim through social media.

***People v. Contreras* (2015) 237 Cal.App.4th 868:** Probation condition prohibiting possession of "surveillance equipment" without explanation of the types of devices prohibited was unconstitutionally vague. Discusses how many commonly-used electronic devices could be considered surveillance equipment.

***People v. Ebertowski* (2014) 228 Cal.App.4th 1170:** Condition requiring probationer convicted of criminal threats to surrender passwords for electronic devices and social media websites valid.

***People v. Pirali* (2013) 217 Cal.App.4th 1341:** Upheld condition requiring prior approval of probation officer before using any computer or computer-related device, where conviction was for possession of child pornography.

C. Travel, Court Attendance, and Residence Restrictions

***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. 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 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 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. Condition prohibiting minor from being within 150 feet of any school campus other than the one in which he was enrolled invalid under *Lent*. The court rejected the Attorney General's argument that the condition was

related to future criminality because it was important to keep the minor away from children out of a general concern for their vulnerability rather than a specific risk that the minor would commit crimes against children.

***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."

***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. Arevalo* (2018) 19 Cal.App.5th 652:** Condition requiring that the probation department approve of the probationer's residence was valid because it was narrowly tailored and did not banish her from a particular neighborhood. Rather, the nature of the offense (drug sales) "suggests a need for oversight" of her living situation.

***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. Nassetta* (2016) 3 Cal.App.5th 699:** Curfew condition for adult convicted of drug offenses and DUI invalid.

***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."

***People v. Soto* (2016) 245 Cal.App.4th 1219:** Where offense was DUI and driving with suspended license, condition requiring that probationer obtain approval before changing residence or leaving state was unreasonable.

***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. Stapleton* (2017) 9 Cal.App.5th 989:** Condition requiring probation approval of residency valid because condition was required to aid in defendant's rehabilitation where he had history of mental illness and substance abuse. Court relies on *People v. Olguin, supra,* to "presume a probation officer will not withhold approval for irrational or capricious reasons."

D. <u>Association Restrictions and Stay Away Orders</u>

***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 Edward B.* (2017) 10 Cal.App.5th 1228:** Probation condition prohibiting association with gang members or associates unreasonable where no evidence in record that minor was involved in a gang.

***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.

***In re G.B.* (2018) 24 Cal.App.5th 464:** Juvenile probation condition requiring minor to have only peaceful contact with law enforcement and not act aggressively towards law enforcement was unconstitutionally vague. Also duplicative of condition requiring him to "obey all laws."

***In re I.M.* (2020) 53 Cal.App.5th 929:** Condition requiring juvenile to report "any police contacts" is unconstitutionally vague and overbroad.

***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.

***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.

***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.

***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 own 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.

***People v. Brandão* (2012) 210 Cal.App.4th 568:** Condition prohibiting association with gang members unreasonable where offense was not gang related and there was no evidence the probationer was affiliated with a gang.

***People v. Forrest* (2015) 237 Cal.App.4th 1074**: Condition prohibiting defendant from being in any building, vehicle, or in the presence of a person where she knew a firearm, deadly weapon, or ammunition exists was overbroad because it infringed on her rights of association. Modified to prohibit being around illegally possessed weapons or where she would have ready access to a legal or illegal firearm.

***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."

***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.

***People v. Holzmann* (2018) 18 Cal.App.5th 1241:** In the context of a stay-away order, a condition is not vague because an ordinary person exercising ordinary common sense would understand what not to do.

***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 was 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.

People v. Moran **(2016) 1 Cal.5th 398:** Aside from *Ricardo P.*, this is the most recent CSC case discussing probation, standards of review for probation conditions, and the *Lent* test. No abuse of discretion where condition required defendant to stay away from all Home Depot stores where he stole items from only one store as it was reasonably related to preventing his future criminality.

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 the 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.

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. Relkin **(2016) 6 Cal.App.5th 1188:** Condition requiring reporting of "any contacts" with any peace officer vague and overbroad.

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.

E. Conditions Related to Alcohol, Drugs, and Testing

***Inouye v. Kemna* (9th Cir. 2007) 504 F.3d 705:** Requiring a person on parole to participate in a religion-based Alcoholics Anonymous/Narcotics Anonymous program violated the First Amendment.

***People v. Acosta* (2018) 20 Cal.App.5th 225:** Condition requiring drug testing was unreasonable where the offense (graffiti) was not related to drugs. However, the court upheld a no-alcohol condition based on an incident a month before the offense where appellant was part of a group drinking and yelling gang references. Respondent conceded a condition requiring therapy and counseling was invalid. (Note: Review was granted based on *Ricardo P.* and case was dismissed as moot following remand after *Ricardo P.* decided.)

***People v. Beal* (1997) 60 Cal.App.4th 84:** This case is frequently cited for the proposition that there is a nexus between drug and alcohol abuse such that a no-alcohol condition is valid where the defendant has a history of drug use and drug conditions are reasonable.

***People v. Cota* (2020) 45 Cal.App.5th 786:** The court struck the electronics search condition based on *Ricardo P.,* but upheld a no-alcohol condition as reasonably related to future criminality based on the defendant's past drug use though he had no history of abusing alcohol. Cites the "empirical nexus between drugs and alcohol" noted in *People v. Beal.*

***People v. Cruz Cruz* (2019) 54 Cal.App.5th 707:** No-marijuana condition unreasonable under *Lent* where defendant used marijuana, but the offense was a theft offense and there was no evidence marijuana usage was connected with his past criminal history or underlying offense. The court rejected the Attorney General's argument that appellant's judgment "may have been impaired" by marijuana. "What is missing is some indication that appellant is predisposed or more likely to commit crimes when under the influence of marijuana."

***People v. Kiddoo* (1990) 225 Cal.App.3d 922:** No-alcohol condition was unreasonable where alcohol was unrelated to the underlying offense of drug possession and there was no indication that alcohol use was related to future criminal behavior on the part of the probationer.

***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 P.A.* (2013) 211 Cal.App.4th 23:** Blood testing for drugs/alcohol may be ordered for minors on probation but only urine testing may be ordered for minors who are status offender or who have not been adjudged wards. Analyzed Welfare and Institutions Code sections 729.3 and 730.

***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. The 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.

F. Conditions Related to Medical Marijuana

Penal Code section 11362.795 provides that any defendant on probation or parole who is eligible to use medical marijuana under the Compassionate Use Act (§ 11362.5) may request that medical marijuana use be allowed during the period of probation or parole.

***People v. Leal* (2012) 210 Cal.App.4th 829:** Condition prohibiting use of medical marijuana valid where underlying offense was possession of marijuana for sale and there was evidence that he was using his medical marijuana card to hide illegal activity. The Court set forth a three-part test for determining validity of the conditions: (1) assess validity of cannabis card under the Compassionate Use Act, (2) apply the *Lent* test, and (3) balance medical needs of probationer for marijuana against need to protect public. Interprets Compassionate Use Act to circumscribe (but not eliminate) the courts' discretion to prohibit medical marijuana use.

***People v. Moret* (2009) 180 Cal.App.4th 839:** A 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. The court found relevant that the probationer specifically agreed to the condition as part of a negotiated disposition, but did not reach the Attorney General's argument that the claim was waived.

***People v. Mulcrevy* (2014) 233 Cal.App.4th 127:** Compassionate Use Act available as a defense to a petition to revoke probation based on probationer's failure to obey all laws.

***People v. Tilehkooh* (2003) 113 Cal.App.4th 1433:** Compassionate Use Act available as a defense to a petition to revoke probation based on probationer's failure to obey all laws and trial court could not have imposed a specific condition prohibiting medical marijuana use. The "judicial discretion to create a condition of probation is not served when the probation condition proscribes the lawful use of marijuana for medical purposes pursuant to Penal Code section 11362.5 any more than it is served by the lawful use of a prescription drug." Note that this case was decided prior to the implementation of Penal Code section 11362.795.

G. Gang Conditions

In re Edward B. **(2017) 10 Cal.App.5th 1228:** Probation condition prohibiting association with gang members or associates unreasonable where no evidence in record that minor was involved in a gang.

In re H.C. **(2009) 175 Cal.App.4th 1067:** Two conditions challenged on appeal as facially vague and overbroad. "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 the condition. 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 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.

In re Laylah K. **(1991) 229 Cal.App.3d 1496:** Various gang conditions 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.

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. 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.

***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.

H. Mandatory School Attendance, Employment, Grades, Behavior

***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 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.

***In re P.O.* (2016) 246 Cal.App.4th 288:** Probation conditions requiring minor to "be of good behavior and perform well" (as related to school and employment) and to "be of good citizenship and good conduct" found unconstitutionally vague.

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.

People v. Sanchez **(2019) 38 Cal.App.5th 907:** Condition requiring probationer to "seek and maintain training, schooling, or employment as approved by Probation" valid because any non-compliance with the condition due to circumstances beyond her control would not be willful and could not serve as the basis for revocation of probation.

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.

I. Other Conditions

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. Petty **(2013) 213 Cal.App.4th 1410:** Condition requiring parolee to comply with all directions of mental health worker, including taking medications as directed, was invalid where there was no evidence connecting the commitment offense with the parolee's mental health condition.

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."

United States v. Williams **(9th Cir. 2004) 356 F.3d 1045:** Court struck supervised release condition requiring person to take all psychotropic medications prescribed for his mental illness, where there was a lack of medical evidence to support such an extreme restriction on the right to refuse medication.

J. Delegation to Probation Officer

In re David C. **(2020) 47 Cal.App.5th 657:** Juvenile court did not improperly delegate authority where the court left details of the specific psychological treatment program to the probation department.

In re Debra A. **(1975) 48 Cal.App.3d 327:** Improper delegation of authority where court left choice of custodial program to probation department.

In re I.M. **(2020) 53 Cal.App.5th 929:** No improper delegation of authority where court required minor to participate in a custodial program where the length of the custodial term depends on the minor's successful completion of the program and the probation department determines when the minor has completed the program.

In re J.G. **(February 5, 2019, G055029 [unpub. opn.]):** Condition requiring minor to "complete any program of counseling if directed" by probation unconstitutionally overbroad because it delegates judicial authority to the probation department.

In re M.J. **(April 14, 2021, H047988 [unpub. opn.]:** Condition requiring "minor and his parents [to] participate in a counseling or education program as determined by the Probation Officer" amounted to an unconstitutional delegation of judicial authority. Because the order did not specify the type of program, it was "open-ended" and "effectively

delegated unfettered discretion to the probation officer" to determine the program needed.

***In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1372:** Probation department not authorized to modify probation by imposing new terms. Probation officer unilaterally added condition prohibiting juvenile from going to a certain neighborhood.

***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.

***People v. Cervantes* (1984) 154 Cal.App.3d 353**: Condition delegating unlimited discretion to probation officer to set restitution amount invalid.

***People v. Leon* (2010) 181 Cal.App.4th 943** (see description above in section IV.C., Travel, Court Attendance, and Residence Restrictions) Finds condition prohibiting court attendance not saved by allowing defendant to attend proceedings with permission of probation officer because probation officers "may not create conditions not expressly authorized by the court."

***People v. O'Neil* (2008) 165 Cal.App.4th 1351:** Probation officers may not create probation conditions not expressly authorized by the court. This case involved a challenge to a condition that prohibited the probationer from associating with any person designated by the probation officer. The court analyzed the challenge as unconstitutionally overbroad but also discussed what type of decision may properly be delegated to probation.

***People v. Penoli* (1996) 46 Cal.App.4th 298:** Condition requiring probationer to enter a residential treatment program "as approved by the Probation Officer" and to remain there for the completion of the program not an unconstitutional delegation of authority because the court had already identified the type of program (drug treatment) and probation department was in the best position to approve the specific program.

United States v. Esparza **(9th Cir. 2009) 552 F.3d 1088:** Delegation of the decision as to whether the defendant needed inpatient treatment was improper.