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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

In re ADRIANNA M., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIANNA M.,

Defendant and Appellant.

A133766

(Contra Costa County  
Super. Ct. No. J11-00142)

Minor Adrianna M. was placed on probation after a misdemeanor hit-and-run incident, subject to certain conditions of probation. (Veh. Code, § 20002, subds. (a), (c).) Six months later, the juvenile court added certain gang conditions of probation. On appeal, Adrianna challenges the new conditions, contending inter alia that the juvenile court imposed them without complying with statutory and due process notice and hearing requirements. (Welf. & Inst. Code,<sup>1</sup> § 778.) We agree and reverse the order modifying the conditions of probation.

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

## I. FACTS

In November 2010, appellant Adrianna M. committed misdemeanor hit-and-run driving.<sup>2</sup> In March 2011, after she pleaded no contest to committing this offense, the 16-year-old was adjudged to be a ward of the juvenile court. (Veh. Code, § 20002, subs. (a), (c).) She was granted probation, subject to a series of conditions including submission to probation searches and following her probation officer's orders. A September 2011 search turned up evidence of Norteño gang association—some red clothing as well as letters from Norteño gang members who were incarcerated at county jail and in state prison.<sup>3</sup>

The results of the search prompted the probation officer to direct Adrianna to stop associating or communicating with gang members. She refused. When it became clear that she would not comply, the probation officer sought a status review hearing to advise the juvenile court of Adrianna's possible Norteño gang affiliation and communications with incarcerated adult males.

On October 5, 2011, a status hearing was conducted in juvenile court. A report from the probation officer detailing the results of the search and Adrianna's lack of willingness to cease gang association and communication at the probation officer's request was filed on the day of the hearing. There is no indication that the report was provided to Adrianna before that time, nor does the report specifically request that the juvenile court impose gang conditions of probation.

At the hearing, the juvenile court indicated its intention to impose specific gang conditions of probation at that hearing. Adrianna's counsel objected that no new conditions of probation should be added for various reasons—because no section 777 petition had been filed, because Adrianna had not violated the original terms of probation, and because her original offense was not gang-related. Counsel also sought a

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<sup>2</sup> A second allegation of driving without a license was dismissed. (Veh. Code, § 12500, subd. (a).)

<sup>3</sup> Adrianna's siblings were both on juvenile probation at certain times and both were suspected of gang connections.

contested hearing on the proposed conditions of probation and an opportunity to cross-examine the probation officer, without success. Finding that gang conditions of probation were in Adrianna's best interests, the juvenile court modified Adrianna's probation to impose conditions prohibiting her from participation in gang-related activity, possession of gang insignia, and use of her cell phone to transmit gang-related information.

## II. SECTION 778 COMPLIANCE

### A. *Forfeiture*

Adrianna contends that the juvenile court erred by imposing new gang conditions of probation without first complying with the requirements of section 778 and due process. Section 778 authorizes a probation officer to petition the juvenile court to change or modify any prior juvenile court order, based on a change of circumstances or new evidence. If the juvenile court agrees that the proposed change would be in the best interests of the minor, then a noticed hearing on the petition is required. (§ 778.)

Before the juvenile court, Adrianna objected that no section 777 dispositional request had been filed by the prosecution.<sup>4</sup> Section 777 requires a noticed hearing before a placement change. (§ 777, subs. (a), (b).) On appeal, the Attorney General asserts that Adrianna forfeited her right to raise her section 778 claim of error on appeal because she objected on section 777 grounds.

This assertion ignores other objections that Adrianna raised in the juvenile court—most particularly, her repeated requests for a contested hearing and her desire to cross-examine the probation officer about the September 2011 search. The requirement that a party make a specific objection to preserve an issue on appeal must be interpreted in a realistic, non-formalistic manner. If the objection fairly informs the juvenile court of the specific reason for it, then the objection is sufficient to avoid forfeiture on appeal. (See

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<sup>4</sup> In context, this objection was appropriate because the prosecution moved to revoke Adrianna's probation and to remand her, which would have constituted a change of placement. The juvenile court denied this request, opting to modify the conditions of Adrianna's grant of probation instead.

*People v. Partida* (2005) 37 Cal.4th 428, 434-435 [evidentiary objection].) We are satisfied that Adrianna's request for a contested hearing at which she could cross-examine the probation officer about the facts underlying the proposed gang conditions of probation was sufficient to alert the juvenile court that she sought a noticed hearing before the conditions were added.

### B. *Procedure*

The Attorney General also argues that section 778 does not apply when the juvenile court adds conditions of probation. Our reading of the statute satisfies us that it is applicable to Adrianna's case. Under that statute, if a juvenile court—presented with new evidence or a change of circumstances—finds that a proposed change of a prior order would be in the best interests of the minor, it must conduct a noticed hearing. (§ 778; see Cal. Rules of Court, rule 5.560(e)(1) [probation officer empowered to file section 778 petition].) In the matter before us, the probation officer did not provide Adrianna with notice in advance of the hearing that additional conditions of probation would be sought. The probation officer was authorized to file a section 778 petition, which would have satisfied this due process requirement. (See Cal. Rules of Court, rule 5.560(e)(1).) As the juvenile court found that the conditions of probation proposed at the hearing were in the minor's best interests, a hearing was required to comply with statutory and due process requirements. (*In re Steven S.* (1979) 91 Cal.App.3d 604, 607.) The order modifying the conditions of Adrianna's probation must be reversed.

### C. *Substantive Claims of Error*

This matter must be remanded to the juvenile court to comply with the notice and hearing requirements of section 778 and due process. As such, we need not address Adrianna's substantive objections to the gang conditions of probation—that these conditions were not reasonably related to her rehabilitation; that they are overbroad; and that they impinge on her First Amendment rights. We note that gang conditions of probation are within the authority of the juvenile court to impose, in an appropriate case. The evidence adduced at a subsequent hearing could establish whether these conditions were appropriate in Adrianna's case. (See, e.g., *In re Laylah K.* (1991) 229 Cal.App.3d

1496, 1501, disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2.)

The order modifying the conditions of probation is reversed and the matter is remanded for further proceedings consistent with this decision.

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Reardon, J.

We concur:

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Ruvolo, P.J.

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Sepulveda, J.\*

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\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.