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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANTHONY J., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY J.,

Defendant and Appellant.

D062378

(Super. Ct. No. J229516)

APPEAL from an order of the Superior Court of San Diego County, Carlos O. Armour, Judge. Affirmed as modified.

Laurel M. Nelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

The San Diego County District Attorney's Office filed a juvenile petition under Welfare and Institutions Code<sup>1</sup> section 602 alleging Anthony J. committed three lewd and lascivious acts upon a child under the age of 14 (Pen. Code, §288, subd. (a); counts 1, 2, & 3), and unlawfully engaged in misdemeanor sexual intercourse with her (Pen. Code, §§ 17, subd. (b)(4); 261.5, subd. (a); count 4). Anthony admitted the allegation that he committed misdemeanor sexual intercourse. The remaining allegations were dismissed.

At the disposition hearing, the juvenile court declared Anthony a ward of the court and ordered that he be placed on probation subject to a variety of conditions, including the conditions Anthony challenges in this appeal. These conditions prohibit him from: (1) having "direct or indirect contact with the victim(s), Kohl's Department Stores or their employees, Gerardo Camacho, or Sandra Branch; witness(es); or co-offenders(s), Marlon Crawford, Michael Bizzle, Victor Stoltey, or Isaac Godfrey, in this matter or any other of their family members" (Condition 40)<sup>2</sup>; (2) associating "with children whom the minor knows or reasonably should know are under the age of 13, and shall not frequent places where children whom the minor knows or reasonably should know are under the age of 13 congregate, unless in the company of a responsible adult over the age of 21 who is

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

<sup>2</sup> When recommending the probation terms to the court, the probation officer numbered the conditions. The juvenile court's September 23, 2011 minute does not provide numbers for the various conditions. Both parties referred to the probation condition by number and also referred to each condition as a "term." For consistency and clarity, we use the same number used by the parties to refer to the specific probation condition, but we do not adopt the use of "term" instead of "condition."

aware of the allegations filed against the minor and aware that the minor is on probation" (Condition 41); (3) being "on any school grounds unless an enrolled student and it is during regular school hours, unless authorized by the Probation Officer" (Condition 42); (4) being "in any privately owned vehicle with more than one person under the age of 18 unless accompanied by a parent or legal guardian, or with permission of the Probation Officer" (Condition 43); (5) appearing "in Court or at any courthouse unless [Anthony is] a party or a witness in the proceedings, or with permission of the Probation Officer" (Condition 44); (6) using, possessing, transporting, selling or having "in or under [Anthony's] control any firearm, replica, ammunition or other weapon, including a knife, any explosive or any item intended for use as a weapon, including hunting rifles or shotguns" (Condition 46); (7) using "force, threats, or violence on another person" (Condition 54); (8) "participating in chat rooms, using instant messaging such as ICQ, MySpace, Facebook, or other similar communication programs" (Condition 56); (9) possessing "any pornographic material including computer files and disks" or "frequent[ing] web sites or bookstores or any other place the minor knows or reasonably should know contains pornographic material" (Condition 57); (10) accessing "any adult sexually explicit web site" (Condition 58); (11) using "a computer unless supervised by a responsible adult over the age of 21 who is aware that the minor is on probation and is aware of the minor's charges" (Condition 59); and (12) using "a computer for any purpose other than school related assignments" (Condition 60).

Anthony raises a host of constitutional challenges to these 12 probation conditions. Although we conclude none of the conditions should be stricken, we modify nine of them. With these modifications, we affirm the juvenile court's order.

## FACTUAL AND PROCEDURAL HISTORY

### *Prior Offenses*<sup>3</sup>

On June 8, 2011, Anthony and his companions entered a Kohl's department store and stole a total of \$401.24 worth of merchandise. They fled from the store with the stolen goods and left in a vehicle. The store employees provided the police with the vehicle's license plate and a description of the suspects. The vehicle was located and the property was recovered and returned to the store. Two of Anthony's adult companions were on parole and were documented as gang members or gang associates.

The next month, Anthony and a companion approached a male victim and asked where he was from and why he was in the Logan area of San Diego. After Anthony and his companion put gloves on, Anthony punched the victim causing the victim to lose his balance and fall back. The victim stated that both Anthony and his friend hit and kicked him multiple times. During the altercation, Anthony and his companion took the victim's I-Pod and yelled "West Coast" as they rode away on their scooters. Anthony and his companion were later caught and the I-Pod was recovered. Anthony's companion was a documented associate of the West Coast Crips criminal street gang.

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<sup>3</sup> The probation officer's report and recommended probation terms reveal that the probation officer considered Anthony's commission of two earlier crimes as well as the instant offense of engaging in sexual relations with a minor.

### *Instant Offense*

On July 6, 2011, then 13-year-old Sharon B. told an investigating officer that about the last week of June 2011, she and Anthony became sexually active with one another. She reported that she and Anthony had consensual, unprotected sex two or three times. Anthony was interviewed and admitted to the investigating officer that he had been sexually active with Sharon since June 2011 and had consensual sex with Sharon two or three times. Anthony had been living with Sharon's family for a month or two when he started having sex with Sharon.

### *Failure to Object to Challenged Conditions and Appeal*

While appearing in front of the juvenile court, Anthony did not object to any of the conditions that he now challenges. However, he timely appealed and argues 12 of the conditions are unconstitutional.

## DISCUSSION

### I

#### *CONSTITUTIONALITY OF THE CHALLENGED CONDITIONS OF PROBATION*

##### A. General Legal Principles and Standard of Review

"The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents." (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) When a juvenile court adjudges a minor a ward of the court under section 602 and places the ward under the supervision of a probation officer, "[t]he court may impose and require any and all reasonable [probation] 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."

(§ 730, subd. (b).)

"The juvenile court has wide discretion to select appropriate [probation] conditions . . . ." (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)). The permissible scope of the juvenile court's discretion in formulating the terms of a minor's probation is greater than that allowed for adult probationers "because juveniles are deemed to be 'more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed.'" (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*); *In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.) Thus, a probation condition that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. (*Sheena K.*, *supra*, at p. 889.)

Generally, a probation condition will be upheld unless 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. . . ." (*People v. Lent* (1975) 15 Cal.3d 481, 486.)

Further, the juvenile court must not order conditions that are unconstitutionally vague or overbroad. (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Although challenges to the constitutionality of probation conditions on the grounds of vagueness and overbreadth are frequently made together, the concepts are distinct.

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.'" (*Sheena K.*, *supra*, 40 Cal. 4th at p. 890; see U.S. Const., Amends. 5, 14; Cal.

Const., art. I, § 7.) A probation condition is unconstitutionally vague if it is not " 'sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.' " (*Sheena K., supra*, at p. 890.) "In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that 'abstract legal commands must be applied in a specific context,' and that although not admitting of 'mathematical certainty,' the language used must have ' "reasonable specificity." ' " (*Ibid.*, italics omitted, quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116-1117.)

In contrast, a probation condition is unconstitutionally overbroad if it imposes limitations on the probationer's constitutional rights and it is not closely or narrowly tailored and reasonably related to the compelling state interest in reformation and rehabilitation. (*Sheena K., supra*, 40 Cal. 4th at p. 890; *Victor L., supra*, 182 Cal.App.4th at p. 910.) "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.)

In an appropriate case, a probation condition that is not " 'sufficiently narrowly drawn' " may be modified and affirmed as modified. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 629; see also *In re E.O., supra*, 188 Cal.App.4th at p. 1158.)

Generally, "[t]he juvenile court's exercise of discretion in establishing conditions of probation in juvenile cases 'will not be disturbed in the absence of manifest abuse.' "

(*In re Christopher M.* (2005) 127 Cal.App.4th 684, 692; *In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) However, a facial challenge to a condition of probation on the ground of unconstitutional vagueness or overbreadth that is capable of correction without reference to the particular sentencing record developed in the trial court presents a pure question of law, and we review such challenges de novo. (*Sheena K., supra*, 40 Cal.4th at p. 887; *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

#### B. Forfeiture

Anthony did not object below to the conditions he now challenges. In *Sheena K., supra*, 40 Cal.4th 875, the Supreme Court held that the minor did not forfeit her challenge to a probation condition on grounds of vagueness and overbreadth by failing to raise the issue in the juvenile court. (*Id.* at p. 889.) Her challenge presented "a pure question of law, easily remediable on appeal by modification of the condition." (*Id.* at p. 888.) However, the Supreme Court cautioned that its conclusion "[did] not apply in every case in which a probation condition is challenged on a constitutional ground . . . . [W]e do not conclude that '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." [Citation.]' " (*Id.* at p. 889.) Thus, even though he failed to object in juvenile court, Anthony did not forfeit any constitutional challenge that presents a pure question of law.

However, Anthony forfeited any claim that a challenged condition is unreasonable by failing to raise the objection with the juvenile court. (*People v. Welch* (1993)

5 Cal.4th 228, 234-237 (*Welch*.) Also, as we explain below, Anthony forfeited some of his challenges to the extent his arguments require us to review the disposition record and the materials considered by the juvenile court. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889.) That said, even where Anthony's challenges were forfeited, we evaluate any claim that a condition was unconstitutionally vague and/or overly broad based on the condition itself without reference to any additional facts.<sup>4</sup>

### C. Analysis

#### 1. Condition 40

Condition 40 prohibits Anthony from having "direct or indirect contact with the victim(s), Kohl's Department Stores or their employees, Gerardo Camacho, or Sandra Branch; witness(es); or co-offenders(s), Marlon Crawford, Michael Bizzle, Victor Stoltey, or Isaac Godfrey, in this matter or any other of their family members." Anthony contends the condition is too vague because it does not provide him with sufficient notice regarding whom he cannot contact and the dictate that he avoid indirect contact with

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<sup>4</sup> Anthony insists his counsel's failure to object was the result of ineffective assistance of counsel, and as such, we should not conclude the claims were forfeited. To show that trial counsel's performance was constitutionally defective, an appellant must prove: (1) counsel's performance fell below the standard of reasonableness, and (2) the "deficient performance prejudiced the defense." (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688.) An appellate court generally cannot fairly evaluate counsel's performance at trial based on a silent record. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) In many instances, like here, evaluation of a claim of ineffective assistance of counsel will have to await a petition for writ of habeas corpus, should the defendant believe there is a viable claim that can be pursued. (*Ibid.*) However, as we address all of Anthony's claims on the merits below, we fail to see how Anthony was prejudiced by his counsel's failure to object.

victims is unclear. In addition, Anthony argues the condition is overly broad because it unconstitutionally prohibits his right to associate with others and to travel.

The People concede, and we agree, that the condition is vague to a limited extent. Anthony must have knowledge of the persons whom he is prohibited from contacting. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 891.) Therefore, the condition should be modified to provide that Anthony is prohibited from contacting individuals whom he knows to be "witness(es)," "Kohl's employees," or co-offenders' family members. (*Id.* at p. 892 [an acceptable remedy when such a condition is challenged on appeal is for the appellate court to insert the qualification that defendant have knowledge].)

However, we reject Anthony's remaining contentions regarding Condition 40. Anthony's assertion that the phrase prohibiting him from making "indirect" contact with victims is vague lacks merit. A plain reading of Condition 40 indicates that Anthony may not have any contact with the victims, including but not limited to, personal contact, telephone conversations, email or other electronic contact, and contact through third parties. Condition 40 clearly indicates that Anthony is to have no contact whatsoever with any of the listed individuals without exception. The phrase "indirect" does not render this condition unconstitutionally vague.

In addition, we are not persuaded by Anthony's argument that Condition 40 is overly broad because it prohibits his right to associate with others and to travel. Condition 40's effect of limiting Anthony from associating with a limited number of identified individuals is not unconstitutional but is reasonably related to his rehabilitation and prevention of future criminality because Anthony stole items from a Kohl's

department store and associates with criminal street gang members. (Cf. *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018 [upholding a probation condition prohibiting the juvenile from associating with any individuals "disapproved of by his probation officer" after juvenile and two accomplices stole a video game player and shoes from an acquaintance's house]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1243 [approving a probation condition prohibiting the juvenile from associating with anyone disapproved of by his probation officer after the juvenile purchased gun from an unknown "person on the streets"].)

Anthony, however, argues that the prevalence of Kohl's stores around his home unconstitutionally limits his right to travel. This argument requires us to refer to the record and consider more than just the facial constitutionality of this condition. Specifically, we would have to consider the location of various Kohl's department stores in connection with Anthony's current residence and his usual destinations. Thus, Anthony's contention does not raise a pure question of law and is forfeited. (*Sheena K., supra*, 40 Cal.4th at p. 889.) Even if we were going to address this argument on the merits, we would conclude it does not impermissibly infringe on Anthony's constitutional rights. Condition 40 merely prohibits Anthony from entering a Kohl's department store. This condition was placed on Anthony because he stole items from a Kohl's department store. His right to travel is not otherwise limited by this condition.

## 2. Condition 41

Condition 41 prohibits Anthony from associating "with children with whom the minor knows or reasonably should know are under the age of 13," and "frequent[ing]

places where children whom [he] knows or reasonably should know are under the age of 13 congregate, unless in the company of a responsible adult over the age of 21 who is aware of the allegations filed against [Anthony] and aware that [he] is on probation." Anthony asserts this condition is unconstitutional because it infringes on his "basic fundamental rights of association and travel"<sup>5</sup> We disagree.

Anthony's latest offense stemmed from his sexual relationship with a 13 year old. A psychologist evaluated Anthony and was troubled by Anthony's lack of candor. Because of the psychologist's inability to evaluate the risk Anthony posed to children under the age of 13, the psychologist recommended that Anthony be permitted to interact with children only when supervised by an adult who knows of Anthony's potential problems. Anthony does not address his evasiveness with the psychologist, but instead, stresses that he was only a few years older than the girl with whom he had consensual sex. Based on the age difference and the consensual nature of the encounters, Anthony argues there is no justification for his interaction with children under the age of 13 to be restricted. We are not persuaded. Anthony had sex multiple times with a 13 year old and was not forthcoming regarding his reasons for doing so or his sexual history. We appreciate the juvenile court's concern, based on the psychologist's evaluation and recommendation, that Anthony should not be permitted to associate with children under the age of 13 without supervision.

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<sup>5</sup> As we explain, we need to look at the record in evaluating Anthony's challenge to Condition 41. As such, he forfeited this issue. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Even if we were to address this challenge on the merits, we would find it unpersuasive.

Also, we determine that Condition 41 is not overbroad. While it prohibits Anthony from associating with children under the age of 13 or visiting areas he knows or should know such children congregate, he is permitted to engage in these prohibited activities if accompanied by an adult. In short, we see no reason to strike this condition.<sup>6</sup>

### 3. Condition 42

Condition 42 restricts Anthony from being "on any school grounds unless an enrolled student and during regular school hours, unless so authorized by the Probation Officer." Anthony contends this condition unconstitutionally restricts his right to associate with other students by preventing him from engaging in activities like sports events and club meetings, which would contribute to his rehabilitation. The People argue a similar provision was determined to be constitutional in light of Penal Code sections 627.2<sup>7</sup> and 627.8,<sup>8</sup> which preclude nonenrolled students and outsiders from being on

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<sup>6</sup> The People address arguments that Condition 41 is vague. Anthony made no such argument in his opening brief. Therefore, we do not address a vagueness challenge to this condition.

<sup>7</sup> Penal Code section 627.2 provides: "No outsider shall enter or remain on school grounds during school hours without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering. If signs posted in accordance with Section 627.6 restrict the entrance or route that outsiders may use to reach the office of the principal or designee, an outsider shall comply with such signs."

<sup>8</sup> Penal Code section 627.8 provides: "Every outsider who willfully and knowingly violates this chapter after having been previously convicted of a violation of this chapter committed within seven years of the date of two or more prior violations that resulted in conviction, shall be punished by imprisonment in the county jail for not less than 10 days nor more than six months, or by both such imprisonment and a fine not exceeding five hundred dollars (\$500)."

school grounds subject to certain conditions. (*In re D.G.* (2010) 187 Cal.App.4th 47, 57 (*D.G.*.)

In *D.G.*, *supra*, 187 Cal.App.4th 47, the court concluded a condition prohibiting the minor from coming within 150 feet of any school campus other than the school he was attending was unreasonable. (*Id.* at p. 50.) The court, however, modified the condition to comply with Penal Code sections 627.2 and 627.8 and approved of the modified condition. (*Id.* at p. 57.) The People argue Condition 42 is analogous to the modified condition in *D.G.* It is not.

The probation condition in *D.G.*, *supra*, 197 Cal.App.4th 47 provided: "Do not enter on the campus or grounds of any school unless enrolled, accompanied by a parent or guardian or responsible adult, or authorized by the permission of school authorities." (*Id.* at p. 57.) In contrast, Condition 42 only allows Anthony on school grounds if he is enrolled as a student and it is during regular school hours. Therefore, he is only permitted to be at his own school during a specific time. The condition at issue in *D.G.*, *supra*, 187 Cal.App.4th 47, allowed the minor to be on his school grounds with no time restrictions. In this regard, Condition 42 is more restrictive than the modified condition approved in *D.G.*

The subject condition in *D.G.*, *supra*, 187 Cal.App.4th 47 also allowed the minor to be on school grounds where he was not an enrolled student if accompanied by a parent, guardian, or responsible adult or with permission of school authorities. Here, Condition 42 permits Anthony to go on any school grounds only with the permission of his probation officer. Thus, under Condition 42, Anthony is not permitted on school

grounds, if not enrolled as a student there, even if he is accompanied by an adult or with permission of the appropriate school official as permitted under Penal Code section 627.2. As such, Condition 42 is again more restrictive than the modified condition approved by the court in *D.G.*, *supra*, 187 Cal.App.4th 47.

In addition, we are not satisfied that Condition 42 is "generally consistent" with Penal Code sections 627.2 and 627.8. It does not allow Anthony to be on school grounds with permission of the principal or the principal's designee, but only Anthony's probation officer.

The People contend Condition 42 is acceptable because Anthony often associates with street gang members and sometimes carries a knife. To some extent, we agree and are mindful of the concern of the juvenile court and the People that Anthony's access to students should be restricted to the extent permissible. However, we agree with Anthony that Condition 42 is overbroad and could be more narrowly tailored and effectively serve the same rehabilitative goals as in its current form. (See *In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153.) We therefore modify Condition 42 to more closely track the approved language in *D.G.*, *supra*, 187 Cal.App.4th at page 57.

#### 4. Condition 43

Condition 43 restricts Anthony from being "in any privately owned vehicle with more than one person under the age of 18 unless accompanied by a parent or legal guardian, or with permission of the Probation Officer." Anthony contends, and the People concede, this condition is unduly vague because it does not require that he "know" the ages of the passengers in the private vehicle. We agree.

To constitute a violation of probation, conduct must be knowing or willful. (See *People v. Patel* (2011) 196 Cal.App.4th 956, 960.) We thus modify Condition 43 to include a knowledge requirement.

#### 5. Condition 44

At the outset, we note there is some confusion regarding what Condition 44 actually entails. Anthony claims it prohibits him from appearing in court or any courthouse unless he is a party in the proceedings. The People contend the condition is not so restrictive and only prohibits Anthony from being in court or any courthouse unless he is a party or a witness in the proceedings, or with permission of the probation officer. The People are correct. The September 23, 2011 minute order clearly describes this condition the same way the People do.

The People note that a similar probation term was addressed in *People v. Leon* (2010) 181 Cal.App.4th 943. The challenged term in that case stated, "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." (*Id.* at p. 952.) To preserve the First Amendment right to attend court proceedings, the court in *Leon* modified the term to read: "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." (*Id.* at p. 954.)

Both Anthony and the People agree that Condition 44 should be modified to read like the condition in *People v. Leon, supra*, 181 Cal.App.4th 943. We agree and modify the condition accordingly.

#### 6. Condition 46

Condition 46 prohibits Anthony from using, possessing, transporting, selling or having "in or under [his] control any firearm, replica, ammunition or other weapon, including a knife, any explosive or any item intended for use as a weapon, including hunting rifles or shotguns." Anthony asserts this condition is unconstitutionally vague because it lacks a "knowing" element and the phrase "item intended for use as a weapon" is uncertain.

Although they at first argue the condition is constitutional as written, the People seemingly concede that a scienter requirement is necessary. We agree and modify the condition accordingly.

The People did not respond to Anthony's second point that the phrase "item intended for use as a weapon" is uncertain. We are not persuaded by Anthony's argument that this phrase is uncertain, but in any event, the addition of the knowledge requirement sufficiently addresses Anthony's concern that the condition is vague.

#### 7. Condition 54

Condition 54 prohibits Anthony from using "force, threats, or violence on another person." Anthony argues this condition is overly broad because it prevents Anthony from defending himself and others. Anthony also points out that the record indicates that he lives in conditions "many consider unsafe" and as such, he must be permitted to protect

himself. To the extent that Anthony's contention requires us to review the record, he has forfeited the argument. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Nevertheless, we are mindful that the California Constitution protects and state law permits self-defense or the lawful defense of others. (See Cal. Const., art I, § 1; Pen. Code, § 693.) To assure that Condition 54 does not violate Anthony's constitutional rights in this regard, we will insert the word "unlawful" prior to the prohibited acts listed in Condition 54 as the People suggest.

#### 8. Internet Conditions (Conditions 56, 59, & 60)

Anthony challenges three conditions (56, 59, & 60) placing restrictions on his computer and Internet use on the grounds they are overbroad, restrict his right of free speech and association, and, at least one condition (59), impedes his normal school related academic activities.<sup>9</sup> Condition 56 prohibits Anthony from "participating in chat rooms, using instant messaging such as ICQ, MySpace [and] Facebook." Condition 59 prohibits Anthony from using "a computer unless supervised by a responsible adult over the age of 21 who is aware the minor is on probation and of his charges." Condition 60 prohibits Anthony from using "a computer for any purpose other than school related assignments" and also requires that he "be supervised when using a computer in the common area of [his] residence or in a school setting."

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<sup>9</sup> Condition 58 also prohibits certain internet activity. The activity addressed by that condition (accessing adult sexually explicit websites) relates to Condition 57. We thus address Conditions 57 and 58 together below.

At the outset, Anthony concedes that computer or Internet related offenses can give rise to appropriate probation conditions restricting the offender's use of the Internet. (See *Victor L.*, *supra*, 182 Cal.App.4th at p. 923.) Anthony, nevertheless, points out that the record "is devoid of any computer or internet-related offenses," and therefore, the various Internet restrictions are unconstitutionally overbroad. However, Anthony failed to object to any of these conditions at the juvenile court and has forfeited any challenge that requires us to review the sentencing record. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Accordingly, we only consider Anthony's overbreadth arguments that present pure questions of law.

"Computers and Internet access have become virtually indispensable in the modern world of communications and information gathering." (*United States v. Peterson* (2d Cir. 2001) 248 F.3d 79, 83.) Computers and the Internet now " 'comprise[ ] the "backbone" of American academic, governmental, and economic information systems.' " (*In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.) "The Supreme Court has characterized the Internet as 'a vast library including millions of readily available and indexed publications. . . .' " (*Ibid.*)

"Restrictions upon access to the Internet necessarily curtail First Amendment rights." (*In re Stevens*, *supra*, 119 Cal.App.4th at p. 1235.) Thus, a probation condition that restricts the use of a computer to access the Internet "must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Sheena K.*, *supra*, 40 Cal.4th at p. 890; see *In re Stevens*, *supra*, at p. 1237.)

Here, we are not troubled by Condition 56 that limits the ways in which Anthony may communicate by prohibiting his use of Internet chat rooms and some social networking sites. The juvenile court has broader discretion in formulating the terms of a minor's probation than that exercised with adult probationers. (*Victor L., supra*, 182 Cal.App.4th at p. 910.) Although, as we note above, restrictions on access to the Internet necessarily curtail First Amendment rights (*In re Stevens, supra*, 119 Cal.App.4th at p. 1235), the state may restrict the constitutional right so long as it is narrowly drawn to serve a compelling state interest. (*Id.* at p. 1237). Anthony has associated with criminal street gangs and committed crimes with members of criminal street gangs. The juvenile court thus could reasonably conclude that Anthony's access to certain websites, especially those that allow him to easily communicate with members of criminal street gangs, should be curtailed. Like the juvenile in *Victor L., supra*, 182 Cal.App.4th 902, Anthony remains free to exercise his constitutional right of expression but must use less sophisticated means, such as a telephone, the mail, or in person communication. (See *id.* at p. 921.) Moreover, we note that this condition does not limit Anthony's access to all websites, just those the juvenile court believed he could use to communicate with criminal street gang members or associates. In other words, this condition limits Anthony's "access to the Internet in ways designed to minimize the temptation to contact his gang friends." (*Id.* at p. 926.) We thus leave this condition in place, unmodified. (See *id.* at pp. 926-927.)

Like Condition 56, Condition 59 does not prohibit all of Anthony's access and use of a computer and/or the Internet. Instead, it merely requires that Anthony's computer

use be supervised by an adult over the age of 21 who is aware Anthony is on probation and of his charges. Anthony does not provide any cogent argument why this condition is unconstitutional, but asserts it adds an "embarrassing element into the supervision that is likely to lead [Anthony] to avoid important computer use and familiarity." This argument does not raise a pure question of law. Instead, it is a challenge to the reasonableness of the condition. Because Anthony did not make such an objection below, he has forfeited this argument. (See *Welch, supra*, 5 Cal.4th at pp. 234-237.)

We view Condition 59 similar to Condition 56. They both limit Anthony's access to the Internet in ways designed to minimize the temptation to contact his gang friends or to otherwise use the computer for illegal purposes by requiring adult supervision whenever he uses the computer. (See *Victor L., supra*, 182 Cal.App.4th at p. 926.) They do not, however, prohibit all use of the computer or the Internet.

Condition 60 is much more restrictive than Conditions 56 and 59. Condition 60 only permits Anthony to use a computer for school work while being supervised. As such, this blanket restriction precludes his extracurricular use of a computer to write letters; create art; use software to learn a foreign language; learn about current local, national, and international news; obtain medical information; and obtain other legitimate information wholly unrelated to her criminal conduct in this case. Such a broad restriction is not narrowly tailored and reasonably related to the state's interests in rehabilitating Anthony and deterring future criminality.

Accordingly, we conclude this restriction is unconstitutionally overbroad and must be modified to protect Anthony's constitutional rights by adding language allowing him

to have supervised use of a computer not only for school-related assignments, but also for legitimate work or personal purposes as his probation officer may reasonably permit from time to time. (See *In re Hudson* (2006) 143 Cal.App.4th 1, 11 ["[Defendant] will be allowed to use a computer and access the Internet if he first obtains permission from [his parole officer."].) Furthermore, in the interest of avoiding any uncertainty regarding such permitted use, the probation officer shall describe such permitted legitimate use in writing and deliver that writing to Anthony and his parents, guardians, or other adults charged with supervising his use of a computer. As so modified, we believe the probation condition will not unduly impinge on Anthony's constitutional rights.

#### 9. Conditions 57 and 58

Under Condition 57, Anthony may not "posses any pornographic material including computer files and disks, nor frequent web sites or bookstores or any other place the minor knows or reasonably should know contains pornographic material." Condition 58 prohibits Anthony from accessing "any adult sexually explicit web site." Anthony asserts these conditions require a scienter requirement to pass constitutional muster. Also, he insists the terms "pornographic" and "sexually explicit" are too uncertain to provide Anthony with notice regarding what conduct is prohibited. We disagree.

The phrase "sexually explicit" is not so imprecise that Anthony will be unable to determine whether he is in compliance with the terms of his probation. (See *People v. Turner* (2007) 155 Cal.App.4th 1432, 1437 [prohibition on possession of "'sexually stimulating or sexually oriented material' " was not vague or overbroad].) Nor are we

troubled by the use of the word "pornographic" in Condition 57. Pornography is "the depiction of erotic behavior (as in pictures or writing) intended to cause sexual excitement." (Webster's 11th Collegiate Dict. (2006) p. 966, col. 2.) Reading both Conditions 57 and 58 together, it is clear Anthony is prohibited from possessing or accessing pictures, writings, or other material whose primary purpose is to cause sexual arousal. These conditions are not too uncertain. However, we do modify both conditions to add a knowledge requirement.

#### DISPOSITION

Condition 40 stating that "[t]he minor shall have no direct or indirect contact with the victim(s), Kohl's Department Stores or their employees, Gerardo Camacho, or Sandra Branch; witness(es); or co-offenders(s), Marlon Crawford, Michael Bizzle, Victor Stoltey, or Isaac Godfrey, in this matter or any other of their family members" is modified to read: "The minor shall have no direct or indirect contact with individuals he knows or has reason to know are the victim(s), employees of Kohl's Department Stores, Gerardo Camacho, or Sandra Branch; witness(es); or co-offenders(s), Marlon Crawford, Michael Bizzle, Victor Stoltey, or Isaac Godfrey, in this matter or any other of their family members."

Condition 42 stating that "[t]he minor shall not be on any school grounds unless an enrolled student and it is during regular school hours, unless authorized by the Probation Officer" is modified to read: "The minor shall not enter on the campus or grounds of any school unless enrolled, accompanied by a parent or guardian or responsible adult, or authorized by the appropriate school authorities and/or the Probation Officer."

Condition 43 stating "[t]he minor shall not be in any privately owned vehicle with more than one person under the age of 18 unless accompanied by a parent or legal guardian, or with permission of the Probation Officer" is modified to read: "The minor shall not knowingly be in any privately owned vehicle with more than one person under the age of 18 unless accompanied by a parent or legal guardian, or with permission of the Probation Officer."

Condition 44 stating that "[t]he minor is not to appear in Court or at any courthouse unless he is a party or witness in the proceedings, or with permission of the Probation Officer" is modified to read: "The minor shall not be present at any court proceeding where he knows or the Probation Officer informs him that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless he is a party, he is a defendant in a criminal action, he is subpoenaed as a witness, or he has the prior permission of his Probation Officer."

Condition 46 stating that "[t]he minor shall not use, possess, transport, sell or have in or under his/her control any firearm, replica, ammunition or other weapon, including a knife, any explosive or any item intended for use as a weapon, including hunting rifles or shotguns" is modified to read: "The minor shall not knowingly use, possess, transport, sell or knowingly have in or under his control any firearm, replica, ammunition or other weapon, including a knife, any explosive or any item intended for use as a weapon, including hunting rifles or shotguns."

Condition 54 stating that "[t]he minor is not to use force, threats, or violence on another person" is modified to read: "The minor is not to use unlawful force, threats, or violence on another person."

Condition 57 stating that "[t]he minor is not to possess any pornographic material including computer files and disks, nor frequent web sites or bookstores or any other place the minor knows or reasonably should know contains pornographic material" is modified to read: "The minor is not to knowingly possess any pornographic material including computer files and disks, nor knowingly frequent web sites or bookstores or any other place the minor knows or reasonably should know contains pornographic material."

Condition 58 stating that "[t]he minor is not to access any adult sexually explicit web site" is modified to read: "The minor is not to knowingly access any adult sexually explicit web site."

Condition 60 stating that "[t]he minor is not to use a computer for any purpose other than school related assignments. The minor is to be supervised when using a computer in the common area of his/her residence or in a school setting" is modified to read: "The minor is not to use a computer for any purpose other than school-related assignments, except as his Probation Officer may from time to time reasonably permit for legitimate work or personal purposes by a written notice delivered to the minor, his parents, and other adults supervising his computer use. The minor is to be supervised when using a computer in the common area of his/her residence or in a school setting."

The trial court is directed to forward a copy of the corrected order to the probation authorities. As so modified, the order is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.