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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re LEONARDO B., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARDO B.,

Defendant and Appellant.

F062937

(Super. Ct. No. JJD064542)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L. Boccone, Judge.

Gillian Black, under appointment by the Court of Appeal, for Defendant and Appellant.

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\* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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This appeal challenges two conditions of probation imposed on minor, Leonardo B., in a probation violation proceeding. (See Welf. & Inst. Code, § 777.) We will modify the probation conditions and affirm the order for probation as modified. (Code Civ. Proc., § 906.)

### **FACTS AND PROCEDURAL HISTORY**

Minor was initially adjudicated a ward of the court on February 8, 2011, following his admission of an amended Welfare and Institutions Code section 602 petition alleging two misdemeanor counts arising from minor's theft of two other children's cell phones in 2010. He was placed on home probation and ordered to comply with terms and conditions of probation as set forth in the order.

Within days, on February 12, minor, then 16 years old, violated Penal Code section 288, subdivision (a) by having sexual intercourse with an intoxicated 13-year-old girl. On March 24, 2011, the court granted deferred entry of judgment on the Welfare and Institutions Code section 602 petition arising from this incident. The court again imposed terms and conditions of probation.

On May 4, 2011, minor served as the look-out while two other boys stole property from parked cars. After a contested hearing on June 3, 2011, the court found that minor had violated the terms of the deferred entry of judgment order. At a dispositional hearing on June 22, 2011, the court continued minor as a ward of the court and imposed terms and conditions of probation. As relevant to this appeal, the court reimposed one condition of probation that had been imposed in both of the previous orders: "Submit to chemical testing in the form of, but not limited to, blood, breath, urine, or saliva on the

direction of the probation officer or a peace officer.” In addition, the court imposed a new condition of probation: “The minor shall not possess any pornographic material or access pornographic sites on the Internet. Nor shall the minor possess any coloring books, comic books, or other material or games targeted for younger minors’ interests.” Both conditions are on what appears to be a three-page listing of standard terms and conditions of probation, the applicable paragraphs of which are indicated by marking a box. Minor’s counsel objected to the second of these conditions, which was paragraph 31 on the terms and conditions form, but apparently only to the extent the condition limited Internet access: “Number 31, I would ask that not be ordered again. Not that he shouldn’t be having those documents, just that should be something the parents are checking on.”

### **DISCUSSION**

On appeal, minor acknowledges that Welfare and Institutions Code section 730, subdivision (b) permits the juvenile court to “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.” (All further section references are to the Welfare and Institutions Code, except as noted.) He contends that the probation conditions impinge upon his First and Fourth Amendment rights and, as such, the court “must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

As to the chemical testing condition, minor contends that section 729.3 impliedly limits the juvenile court to urine testing unless there is some particularized need for a broader range of chemical testing in a particular case. Section 729.3 provides that when a ward in a section 601 or 602 proceeding has not been removed from the home, “the court, as a condition of probation, may require the minor to submit to urine testing upon the request of a peace officer or probation officer for the purpose of determining the presence

of alcohol or drugs.” The lesser privacy intrusion of urine testing is permitted under the statute regardless of the nature of the criminal activity or other circumstances involved in the particular case, even where there is no previous involvement with drugs or alcohol by the minor. (*In re Kacy S.* (1998) 68 Cal.App.4th 704, 711.) However, there is no such restriction to urine testing if the minor’s offense involves “the unlawful possession, use, sale, or other furnishing of a controlled substance.” (§ 729.9.) In those circumstances, the court “shall require, as a condition of probation ..., that the minor ... shall submit to drug and substance abuse testing as directed by the probation officer.” (*Ibid.*) In the present case, minor admitted frequent use of a controlled substance, marijuana, and one of his sustained section 602 petitions involved illegal use of alcohol by minor and his victim. In addition, that petition involved sexual activities in circumstances that might raise concerns about sexually transmitted diseases. In these circumstances, section 729.3 does not evince a legislative prohibition on forms of chemical testing other than urinalysis. Further, under the circumstances of this case, the requirement for submission to the other forms of chemical testing was reasonable.<sup>1</sup>

As minor points out, however, obtaining blood samples for chemical testing is significantly more intrusive than obtaining the other samples contemplated by the probation condition. Business and Professions Code section 1246, subdivision (a)(1), for example, requires that an unlicensed person who performs “venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes” must, among other requirements, do so only when a doctor or registered nurse “shall be physically available to be summoned to the scene of the venipuncture within five minutes

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<sup>1</sup> To the extent minor contends the probation condition would permit arbitrary and oppressive testing, or would permit scientifically unreliable testing, we note that all probationers are protected from the implementation of a search condition to the extent such implementation is arbitrary or oppressive. (See *People v. Reyes* (1998) 19 Cal.4th 743, 753 [parole search; citing probation search cases].)

during the performance of those procedures.” While blood testing is commonly required in many circumstances in modern society, and while the circumstances of this case justify a blood testing condition of probation, the nature of the condition should be narrowly specified. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Minor did not forfeit his appellate right to seek further limitations on this probation condition by failing to raise the issue in the court below. (*Id.* at p. 889.) Accordingly, we modify the condition to make express a commonsense limitation on the chemical testing condition: Any blood sample must be obtained by a person licensed or otherwise permitted by law to obtain such samples.

As to the probation condition concerning reading materials and Internet access, minor contends the second sentence of the condition is overbroad and unrelated to any public safety or rehabilitative goals arising from the factual context of this case. We agree. The language of probation condition number 31, quoted in our factual summary, clearly is addressed to two different issues. Minor does not contend on appeal that the first sentence, restricting his access to pornographic materials, is inappropriate, since one of his section 602 petitions involved a sexual crime. The second sentence of the condition, however, is obviously intended to focus on minors who have sexually abused small children: “Nor shall the minor possess any coloring books, comic books, or other material or games targeted for younger minors’ interests.” Nothing in the petitions or the probation officer’s reports in the present case indicates that minor has engaged in, or has a propensity for, such conduct. On the other hand, remedial reading and general literacy programs may often employ reading materials for “younger minors’ interests,” since participants may not be reading at grade-level. In the absence of any reason reflected in the record of this case to restrict minor’s access to such materials, the restriction of his First Amendment rights to such materials is not justified by public safety and rehabilitative concerns and is, accordingly, impermissible. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1035-1036 [restriction on body piercings stricken as unrelated to the

minor's offense or to future criminality]; see also *People v. Lent* (1975) 15 Cal.3d 481, 486.)

### **DISPOSITION**

Paragraph 11 of the terms and conditions of probation dated June 22, 2011, is hereby modified to read as follows: "Submit to chemical testing in the form of, but not limited to, blood, breath, urine, or saliva on the direction of the probation officer or a peace officer. Any blood sample must be obtained by a person licensed or otherwise permitted by law to obtain such samples."

The second sentence of paragraph 31 is stricken. Paragraph 31 of the terms and conditions of probation dated June 22, 2011, is modified to read as follows: "The minor shall not possess any pornographic material or access pornographic sites on the Internet." Subparagraphs 1 and 2 of paragraph 31 remain unchanged.

As modified, the order of June 22, 2011, is affirmed.