LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

THE CRIMINAL JUSTICE INSTITUTE
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

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NUMBER: 2019-24 **DATE: 11-13-19** **BY: Devallis Rutledge** **TOPIC: Electronic Search Terms**

ISSUE: When is an electronics search condition on probationers allowed?

● Per PC § 1546.1(a)(3), a government entity may not access **electronic device information** (such as in a cell phone, laptop, computer or tablet), except as provided in PC § 1546.1. Per § 1546.1(c)(10), access is permissible under a *"clear and unambiguous condition of probation, mandatory supervision, or pretrial release."*

However, PC § 1203.1(j) and W&I § 730(b) specify that probation conditions must be *"reasonable."* So even if an electronics search condition is clear and unambiguous, it may not be enforceable if it is not *"reasonable."* When might an electronics search condition be *un*reasonable?

● The longstanding three-part test of reasonableness of probation search conditions was set forth in 1975:

> *"A condition of probation will not be held invalid 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 .... Conversely,* ***a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.****"***
>
> *People v. Lent* (1975) 15 Cal.3d 481, 486, *abrogated on other grounds by Proposition 8,* as declared by *People v. Wheeler* (1992) 4 Cal.4th 284, 290-95.

● To *Lent*'s three tests has now been added a fourth—***proportionality***.

● Ricardo P. admitted to residential burglary in juvenile court. His grant of probation included an electronics search condition, which he then challenged on appeal. The California Supreme Court ruled that because nothing about the **current offense** or Ricardo's **history** indicated a **previous use** or the likelihood of **future use** of electronic devices for criminal behavior—and weighing the **high degree of intrusion** into Ricardo's privacy in **devices that may store vast amounts of personal data**, against the interests in furthering his rehabilitation and protecting public safety—this probation condition was so "disproportionate" as to be unreasonable. It was therefore invalid. Moreover, the same "proportionality analysis" also applies to *non-electronics* search conditions:

> *"[A]* ***property or residence search condition is likewise subject*** *to Lent's three-part test. Under the rule we set forth today, a juvenile* ***court imposing such a condition must consider*** *whether, in light of the facts and circumstances in each case, the burdens imposed by the conditions are* ***proportional*** *to achieving some legitimate end of probation.*
>
> *… "A probation condition that imposes substantially greater burdens on the probationer than the circumstances warrant is not a 'reasonable' one. …* ***Our holding does not categorically invalidate all electronics search conditions."***

In re Ricardo P. (2019) 7 Cal.5th 1113, 1127, 1128.

(Although *Ricardo P.* is a *juvenile* case decision directing *juvenile* courts to consider proportionality, this directive would apply with even greater force to *adult* courts placing *adult* defendants on probation search terms—juveniles being subject to greater restrictions than adults: *"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 Todd L.* (1980) 113 Cal.App.3d 14, 19. *See, e.g., People v. Kayvon Patton* (2019) WL 5781909, applying *Ricardo P.*'s proportionality test in an adult probation case).

<u>BOTTOM LINE</u>: To be valid, any search term of probation must pass the traditional *Lent* test <u>and</u> must not disproportionately burden the probationer's privacy rights—which are heightened in data-rich electronic devices.

(Emphases added in quoted material.)