

## Appellate Court Upholds Minor's Cell Phone Search Terms

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Probation conditions requiring a minor to submit his electronic devices to a warrantless search recently were upheld by the Sixth District Court of Appeal in a case involving a constitutional challenge to the probation terms. The court held in *In re Q.R.* (2020) 44 Cal.App.5<sup>th</sup> 696, that the probation conditions were not constitutionally overbroad given the nature of the minor's sex-related offenses.

The constitutionality of juvenile probation search terms that include warrantless access to a minor's cell phone or other electronic devices has been much debated by California courts in recent years. Last year, in *In re Ricardo P.* (2019) 7 Cal.5<sup>th</sup> 1113, the California Supreme Court rejected probation conditions requiring a warrantless search of a minor's electronic devices because there was no evidence the minor had used a device in committing two residential burglaries. The decision in *In re Q.R.* comes after the California Supreme Court ordered the appellate court to reconsider its ruling in light of *In re Ricardo P.*

### ***Minor Placed on Probation for Offenses Involving Cell Phone***

The minor in *In re Q.R.* had recorded on his cell phone photos and videos of himself having sex with another minor. He protected these images with an app that required a separate password. The minor extorted money from her by threatening to disclose the recordings to other students at their high school and coerced her into sex with another boy using the same threats. The victim reported the sex and blackmail to her father.

The minor admitted to felony possession of child pornography and extortion. He challenged as "constitutionally overbroad" a probation term that required him to submit all electronic devices under his control to a search of text messages, voicemails, photographs, call logs, and e-mail and social media accounts, as well as to provide probation officers with any passwords to access those records.

### ***Electronic Device Search Terms Must Be Tied to Offense***

Probation terms may be challenged both as "unreasonable" and "overbroad". The courts evaluate these challenges under different standards. A probation condition imposed on a minor (or any other criminal defendant)

is reasonable so long as the condition relates to the crime for which the probationer was convicted; relates to future criminal conduct; and requires or prohibits conduct related to future criminality by the probationer. Furthermore, there must be a "proportional relationship" between the burden imposed on the probationer and the government interest served by the condition. This is the "*Lent* test", established in *People v. Lent* (1975) 15 Cal.3d 481.

A minor's challenge that a probation condition is "overbroad" requires courts to ask whether the condition is reasonably related to the purpose of the condition. For juveniles, probation conditions may be broader than those imposed on adults so as to satisfy the goals of reformation and rehabilitation, but the conditions nonetheless must be tied to the minor's criminal conduct.

### ***Court Rejects Challenge to Search Terms***

The court in *In re Q.R.* found the minor's use of a cell phone to commit his crimes to be sufficient to support the cell phone search term. The court said access to the minor's devices, including the passwords, was essential to monitor his progress on probation and prevent future similar conduct.

Key to the court's analysis is the purpose of juvenile probation and the status of a juvenile probationer as a ward of the court with limited constitutional rights. The role of probation departments, while constantly under challenge from legislators, youth advocates and local governments, still is to use lawful probation terms as one of many tools to exercise control over minors who commit crimes.