

The Fortuity of a Search Condition: Revisiting the Fourth Amendment Rights of Juvenile Probationers and the Viability of the “Search First, Ask Questions Later” Rule

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Introduction

It was a warm evening. Tyrell was at a high school football game with two friends. A police officer patrolling the game noticed one of Tyrell’s friends wearing a heavy, quilted coat, despite the warm weather. The officer asked Tyrell and his friends to walk towards a fence. As they did so, the officer noticed Tyrell adjusting his crotch three times. The officer pat searched Tyrell; he felt something he did not believe was a weapon, but retrieved it anyway and discovered it was marijuana.¹

The Fourth Amendment provides that a search is constitutional only if it is conducted pursuant to a warrant supported by probable cause.² The officer that searched Tyrell did not have a search warrant, nor was there probable cause or even reasonable suspicion to believe Tyrell was committing a crime.³ Why then was the search deemed lawful? As it turned

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¹ See *In re Tyrell J.*, 876 P.2d 519, 521-22 (Cal. 1994).

² See U.S. CONST. amend. IV. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.” *Id.*

³ See *Tyrell J.*, 876 P.2d at 522.

out, Tyrell was a juvenile on probation and subject to a *search condition*.⁴ The California Supreme Court, in a startling departure from well-settled Fourth Amendment principles, upheld the constitutional validity of the search, reasoning that a juvenile probationer subject to a search condition has no reasonable expectation of privacy.⁵ Even though the officer had no knowledge of Tyrell's search condition, the fortuity of his search condition validated an otherwise unlawful search.

To be sure, while ordinary citizens enjoy the full protection of the Fourth Amendment, probationers do not. Probationers possess a "qualified liberty that is partway between that of a free adult and that of a prisoner serving a sentence within the prison walls."⁶ Unlike the absolute liberty to which every citizen is entitled, probationers possess a qualified liberty limited by certain restrictions.⁷ One such restriction often imposed as a term of probation is a search condition. A search condition generally requires a probationer to submit to a search at any time by any law enforcement officer with or without a warrant.⁸ Such restrictions are necessary for the rehabilitation of the probationer and the protection of the community.⁹ Nonetheless, these needs do not justify stripping juvenile probationers of Fourth Amendment protections. Courts should not so easily discard these fundamental constitutional protections.¹⁰

⁴ See *id.* at 521.

⁵ See *id.*

⁶ *People v. Reyes*, 968 P.2d 445, 458 (Cal. 1998) (Kennard, J., concurring in part, dissenting in part).

⁷ See *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987).

⁸ See *People v. Bravo*, 738 P.2d 336, 336-37 (Cal. 1987).

⁹ See *Griffin*, 483 U.S. at 875. California has recognized that "[i]t is in the best interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge." *People v. Burgener*, 714 P.2d 1251, 1267 (Cal. 1986) (citation and internal quotations omitted).

¹⁰ See Sunny A.M. Koshy, Note, *The Right of [All] the People to Be Secure: Extending Fundamental Fourth Amendment Rights to Probationers and Parolees*, 39 HASTINGS L.J. 449, 466 (1988).

This Comment examines the rule established in *In re Tyrell J.*¹¹ in light of subsequent decisions that illuminate the flaws underlying its rationale and questions its continued constitutional viability. Part I provides a general background of the Fourth Amendment and reviews relevant federal and California Fourth Amendment case law. Part II discusses the California Supreme Court's drastic departure from established Fourth Amendment principles in *Tyrell J.* and examines the ramifications on the protections available to juvenile probationers. Part III proposes the California Supreme Court abandon the *Tyrell J.* rule and adopt a constitutionally viable standard that adequately protects the Fourth Amendment rights of juvenile probationers.

I. Background: Traditional Fourth Amendment Safeguards

The Fourth Amendment provides “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹² Additionally, the Fourth Amendment prohibits unreasonable searches and seizures by police officers and other governmental officials.¹³ Over the years, courts have substantially developed the Fourth Amendment discourse, delineating the scope of the Fourth Amendment.

A. The Fourth Amendment and the Exclusionary Rule

The Fourth Amendment protects against unlawful searches and seizures. These rights are safeguarded through the exclusionary rule, which prohibits the admission at trial of evidence obtained in unreasonable searches and seizures.¹⁴

¹¹ 876 P.2d 519 (Cal. 1994).

¹² U.S. CONST. amend. IV.

¹³ See, e.g., *New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985) (noting that the basic purpose of the Fourth Amendment is to protect against arbitrary searches and seizures by government officials).

¹⁴ See *United States v. Leon*, 468 U.S. 897, 906 (1987); *Massachusetts v. Sheppard*, 468 U.S. 981, 990-91 (1984). The exclusionary rule also applies

Even though judicially created, the Court has held the exclusionary rule is a “clear, specific, and constitutionally required . . . deterrent safeguard without insistence upon which the Fourth Amendment would [be] . . . ‘a form of words.’”¹⁵ The exclusionary rule safeguards Fourth Amendment rights by deterring officers from securing incriminating evidence through unlawful searches.¹⁶

B. Exceptions to the Warrant Requirement

A search is reasonable only if it is conducted pursuant to a warrant supported by probable cause.¹⁷ A warrantless search is unreasonable *per se* unless it is conducted pursuant to one of the few, narrowly drawn exceptions to the Fourth Amendment.¹⁸ In certain limited circumstances, the Court has recognized the need to dispense with the warrant and probable cause requirement.¹⁹ With respect to juvenile probationers, the consent exception and the special needs exception are of particular relevance.

1. The Consent Exception

One of the well-settled exceptions to both the warrant and the probable cause requirements is the consent exception.²⁰ California recognizes that a probationer may validly consent to be subject to a search condition instead of

in juvenile proceedings filed pursuant to section 602 of the California Welfare and Institutions Code. CAL. WELF. & INST. CODE § 602 (West 1998); see *In re William G.*, 709 P.2d 1287, 1298 n.17 (Cal. 1985).

¹⁵ *Mapp v. Ohio*, 367 U.S. 643, 648 (1961) (citation omitted).

¹⁶ See *United States v. Chalandra*, 414 U.S. 338, 348 (1974).

¹⁷ See *United States v. Place*, 462 U.S. 696, 722 (1983) (Blackmun, J., concurring in judgment) (noting that the Framers of the Constitution deemed a search or seizure is reasonable “only if supported by a judicial warrant based on probable cause”); *Payton v. New York*, 445 U.S. 573, 586 (1980).

¹⁸ See *People v. Bravo*, 738 P.2d 336, 342 (Cal. 1987) (citing *Mincey v. Arizona*, 437 U.S. 385, 390 (1978)).

¹⁹ See *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985) (citing *Almeida-Sanchez v. United States*, 413 U.S. 266, 277 (1973)).

²⁰ See *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

-serving a prison term.²¹ The California Supreme Court has upheld the legality of searches conducted pursuant to a search condition imposed as a term of probation.²² Warrantless searches conducted within the scope of a probation search condition are justified because such searches help deter further offenses and monitor compliance with probation.²³ In addition, searches conducted pursuant to a probation search condition promote the rehabilitation of the probationer, reduce recidivism, and help protect the community.²⁴

In the context of juvenile probationers, however, the consent exception is inapplicable because a juvenile has no choice but to accept a search condition as part of probation.²⁵ While an adult probationer can refuse probation and choose incarceration if the conditions of probation seem more onerous than the sentence a court might impose,²⁶ a juvenile has no such choice.²⁷ Allowing a juvenile to choose between probation and incarceration would contravene the juvenile justice system's goal of rehabilitating juvenile offenders.²⁸

2. The Special Needs Exception

Although warrantless searches are presumed unreasonable, the United States Supreme Court has recognized

²¹ See *People v. Robles*, 3 P.3d 311, 315 (Cal. 2000); see also *Bravo*, 738 P.2d at 341 (noting that a probationer consents to a waiver of his Fourth Amendment rights in exchange for avoiding a prison term).

²² See *People v. Woods*, 981 P.2d 1019, 1023 (Cal. 1999); see also *Bravo*, 738 P.2d at 340 (noting that the court has previously held that a search condition alone justifies a warrantless search).

²³ See *Robles*, 3 P.3d at 315; see also *Bravo*, 738 P.2d at 342; *People v. Mason*, 488 P.2d 630, 632-33 (Cal. 1971).

²⁴ See *Robles*, 3 P.3d at 315; see also *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987).

²⁵ See *In re Tyrell J.*, 876 P.2d 519, 527 (Cal. 1994). In rejecting the consent exception to justify the warrantless search of a juvenile, the court explained that "conditions of probation for minors are . . . placed on a juvenile probationer to ensure his or her reformation and rehabilitation. The conditions are deemed necessary for that purpose and no choice is given to the youthful offender." *Id.*

²⁶ See *Bravo*, 738 P.2d at 341.

²⁷ See *Tyrell J.*, 876 P.2d at 527.

²⁸ See *id.*

exceptions where special needs, other than law enforcement, render the warrant and probable cause requirement unfeasible.²⁹ Where such special needs arise, the Court has adopted a balancing test to assess the feasibility of the warrant and probable cause requirements in each situation.³⁰ Determining the reasonableness of a search pursuant to the special needs exception involves a twofold inquiry, examining whether the search was lawful at its inception and whether the search as conducted was reasonably related in scope to the surrounding circumstances.³¹ The Court has adopted a less onerous standard than probable cause in situations where a balance of governmental and privacy interests suggests a standard of reasonableness best serves the public interest.³²

In a variety of contexts, the Court has recognized the legality of searches based on reasonable suspicion that does not rise to the level of probable cause.³³ In particular, the Court has upheld the validity of probation searches pursuant to a search condition under the special needs exception, recognizing the purpose of the probation system presents special needs that justify departures from the usual warrant and probable cause requirements.³⁴

²⁹ See *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring opinion).

³⁰ See *Tyrell J.*, 876 P.2d at 523.

³¹ See *T.L.O.*, 469 U.S. at 341.

³² See *id.*

³³ See, e.g., *O'Connor v. Ortega*, 480 U.S. 709, 721-25 (1987) (upholding warrantless work-related searches of employees' offices and desks); *T.L.O.*, 469 U.S. at 337-42 (1985) (upholding warrantless searches of a student's property); *Camara v. Mun. Ct.*, 387 U.S. 523, 538 (1967) (upholding searches pursuant to a legislative scheme).

³⁴ See, e.g., *United States v. Knights*, 534 U.S. 112, 122 (2001) (finding a warrantless search of a probationer pursuant to a search condition and supported by reasonable suspicion comported with the Fourth Amendment); *Griffin v. Wisconsin*, 483 U.S. 868, 875-76 (1987) (upholding a warrantless search of a probationer based on a reasonable grounds standard because the special needs of the state's probation system justified the departure from the probable cause requirement); see also *People v. Burgener*, 714 P.2d 1251, 1270-71 (Cal. 1986) (adopting a reasonable suspicion standard for searches of parolees conducted pursuant to a search condition).

C. Case Law

Proposition 8, passed by California voters in June 1982, amends the California Constitution and “forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal Constitution as interpreted by the United States Supreme Court.”³⁵ Thus, in California, federal Fourth Amendment law governs the exclusion of evidence obtained in an unlawful search and seizure.³⁶ Absent a controlling United States Supreme Court decision, the California Supreme Court is free to adopt its own interpretation of the Fourth Amendment.³⁷ Federal and California case law illuminate the flaws underlying the *Tyrell J.* decision and the need for its abandonment.

1. The Federal Approach

*Griffin v. Wisconsin*³⁸ is the seminal case in which the United States Supreme Court addressed the constitutionality of warrantless probation searches.³⁹ The case involved a Wisconsin regulation that authorized probation officers to conduct warrantless searches of probationers with a showing of reasonable grounds.⁴⁰ The Court upheld the warrantless search pursuant to the “special needs” exception because the special needs of Wisconsin’s probation system justified the

³⁵ *In re Tyrell J.*, 876 P.2d 519, 522-23 (Cal. 1994); *see also* Proposition 8 (1982) (codified as CAL. CONST. art. 1., § 28 (d)); John Warren May, Note, *In re Tyrell J.: California’s Application of Search and Seizure Limitations to Juvenile Probationers*, 21 J. CONTEMP. L. 307, 318-19 (1995) (explaining that the California Constitution, as amended by Proposition 8, permits exclusion of unlawfully obtained evidence only if exclusion is required by the United States Constitution).

³⁶ *See Tyrell J.*, 876 P.2d at 522-23; May, *supra* note 35, at 318-19 (noting that the State Constitution and the California Supreme Court mandate California’s adherence to federal Fourth Amendment law).

³⁷ *See Tyrell J.*, 876 P.2d at 524; *see also* Shelley Davis, Note, *In re Tyrell J.: Children and Their Reasonable Expectations of Privacy*, 25 GOLDEN GATE U.L. REV. 391, 399 (1995).

³⁸ 483 U.S. 868 (1987).

³⁹ *See id.* at 870.

⁴⁰ *See id.*

departure from the probable cause requirement.⁴¹ The Court limited its conclusion to Wisconsin's regulation, finding it unnecessary to determine whether "any search of a probationer's home by a probation officer is lawful" when it is based on reasonable grounds.⁴²

Subsequently, in *United States v. Knights*,⁴³ the Court addressed the question left open in *Griffin*—whether a warrantless search of a probationer's home conducted pursuant to a search condition and supported by reasonable suspicion is constitutional.⁴⁴ At the time of the search, Mark Knights was subject to a search condition as part of his probation for a prior drug offense.⁴⁵ After a detective observed Knights involved in suspicious activity possibly related to a recent arson, he decided to conduct a search of Knights's apartment.⁴⁶ During the search, the detective found incriminating evidence.⁴⁷ The detective was aware of Knights's search condition and believed a warrant was unnecessary.⁴⁸

In upholding the constitutional validity of the search, the Court held the warrantless search of Knights was justifiable under the Fourth Amendment because it was supported by reasonable suspicion and authorized by a probation search condition.⁴⁹ The Court reasoned the search was reasonable considering the totality of circumstances.⁵⁰ In analyzing the reasonableness of the search, the Court balanced "the degree to which it intrudes on an individual's privacy and . . . the degree to which it is needed for the promotion of legitimate governmental interests."⁵¹ The Court found the government's interest in rehabilitating the probationer and

⁴¹ *See id.* at 875-76.

⁴² *Id.* at 880.

⁴³ 534 U.S. 112 (2001).

⁴⁴ *See id.* at 114.

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *See id.*

⁴⁹ *See id.* at 121.

⁵⁰ *See id.* at 118.

⁵¹ *Id.*

ensuring the probationer does not engage in further criminal activity while on probation outweighed Knights's diminished expectation of privacy.⁵² Knights's expectation of privacy was significantly diminished because of his probation search condition.⁵³ Thus, the balance of interests warranted a reasonable suspicion standard, a standard less than the traditionally required probable cause standard.⁵⁴

The Court declined to address the applicability of the consent exception as a justification for a warrantless search pursuant to a search condition.⁵⁵ In addition, the Court declined to examine whether the Fourth Amendment limits the scope of searches conducted pursuant to a search condition to those conducted for probation purposes.⁵⁶ The Court noted it has been disinclined to assess Fourth Amendment challenges based on the underlying motivations of officers except in a few special needs and administrative search cases.⁵⁷

2. California's Approach

Prior to *Tyrell J.*, the California Supreme Court had not addressed the constitutionality of warrantless searches of juvenile probationers. However, at the time the California Supreme Court decided *Tyrell J.*, it had addressed the use of search conditions to validate warrantless searches in the context of adult probationers and parolees.

In *People v. Bravo*,⁵⁸ the California Supreme Court issued the well-settled rule governing the validity of a warrantless search of an adult probationer conducted pursuant to a probation search condition.⁵⁹ The court held a warrantless search conducted pursuant to a search condition is valid because a probationer consents to a waiver of his Fourth

⁵² *See id.* at 120.

⁵³ *See id.*

⁵⁴ *See id.* at 120-21.

⁵⁵ *See id.* at 118.

⁵⁶ *See id.* at 121.

⁵⁷ *See id.*

⁵⁸ 738 P.2d 336 (Cal. 1987).

⁵⁹ *See id.* at 338.

Amendment rights by accepting probation.⁶⁰ The court construed the probationer's consent to warrantless searches as authorizing searches conducted without reasonable cause.⁶¹ Thus, an officer who conducts a search of an adult probationer pursuant to a warrantless search condition may do so without a warrant and without reasonable cause because of the probationer's advance consent.⁶²

The *Bravo* court noted, however, its decision does not imply that such searches are justified when conducted for reasons unrelated to the rehabilitation of the probationer or other legitimate law enforcement purposes.⁶³ While a probationer may waive his Fourth Amendment rights as a condition of probation, such a waiver "does not permit searches undertaken for harassment or searches for arbitrary or capricious reasons."⁶⁴ The court delineated limits on the scope of searches conducted pursuant to a search condition, recognizing that such searches must meet some level of reasonableness.⁶⁵

In *People v. Gallegos*⁶⁶ and *In re Martinez*,⁶⁷ the California Supreme Court established the rule governing the use of a search condition to justify a warrantless search of parolees. These cases are factually distinguishable from *Tyrell J.* in that the persons searched were adult parolees and not juvenile probationers. But, these distinctions are inconsequential for Fourth Amendment purposes.⁶⁸ As such, a

⁶⁰ See *id.* at 342.

⁶¹ See *id.* at 342-43.

⁶² See *In re Tyrell J.*, 876 P.2d 519, 525 (Cal. 1994).

⁶³ See *Bravo*, 738 P.2d at 342.

⁶⁴ *Id.*

⁶⁵ See *id.*

⁶⁶ 397 P.2d 174 (Cal. 1964).

⁶⁷ 463 P.2d 734 (Cal. 1970).

⁶⁸ "[T]here are no significant differences, for purposes of the Fourth Amendment, between search conditions imposed upon adult parolees and those imposed upon juvenile probationers." *In re Tyrell J.*, 876 P.2d 519, 536 (Cal. 1994) (Kennard, J., dissenting) (noting that most courts have found no significant difference between probation search conditions and parole search conditions because the underlying purpose for the imposition of search conditions is the same in both contexts).

review of these cases helps inform the understanding of the flaws underlying the *Tyrell J.* rationale.

Gallegos and *Martinez* established a police officer cannot rely on a defendant's parole status, of which the officer is unaware, to justify a warrantless search. In *Gallegos*, police officers conducted an illegal search of the defendant's house.⁶⁹ Though the defendant may have been on parole at the time of the search, the officers did not claim his house was searched for a possible parole violation.⁷⁰ The court noted although an officer may search a parolee's house prior to an arrest, the arresting officer in this case did not rely upon the defendant's parolee status.⁷¹ Thus, the court concluded an officer could not use the defendant's parolee status to justify an illegal search when the officer is unaware of such status at the time of the search.⁷²

Subsequently, in *In re Martinez*, the California Supreme Court affirmed its findings in *Gallegos*.⁷³ In *Martinez*, police officers conducted a warrantless search of the defendant's home for suspected criminal activity.⁷⁴ At the time of the search, the officers were unaware of defendant's parole status.⁷⁵ The court held officers cannot attempt to justify a search without probable cause by relying on the defendant's parole status, a status of which they are unaware at the time of their search.⁷⁶

II. Problem: *Tyrell J.* and the Diminished Fourth Amendment Rights of Juvenile Probationers

In *Tyrell J.*, the California Supreme Court departed from Fourth Amendment principles that protect against

⁶⁹ See *Gallegos*, 397 P.2d at 177.

⁷⁰ See *id.* at 175.

⁷¹ See *id.* at 175-76.

⁷² See *id.* at 176.

⁷³ See *In re Martinez*, 463 P.2d 734, 738 (Cal. 1970).

⁷⁴ See *id.*

⁷⁵ See *id.* at 737-38.

⁷⁶ See *id.* at 738.

unreasonable searches and seizures of juvenile probationers.⁷⁷ Despite the criticism surrounding *Tyrell J.*, the California Supreme Court went on to extend the rationale of *Tyrell J.* to the context of parolees, thereby threatening the Fourth Amendment rights of parolees and beginning a dangerous trend toward diminishing the Fourth Amendment rights of all citizens.⁷⁸

A. California Erodes the Fourth Amendment Rights of Juvenile Probationers

In *Tyrell J.*, an officer, without probable cause and unaware of the juvenile's warrantless search condition, pat searched the juvenile and found a bag of marijuana hidden in his pants.⁷⁹ The California Supreme Court held an officer may rely on a probation search condition, of which he is unaware at the time of the search, to validate an otherwise illegal warrantless search of a juvenile probationer.⁸⁰ The court upheld the constitutionality of the search, reasoning a "juvenile probationer subject to a valid search condition does not have a reasonable expectation of privacy over his or her person or property."⁸¹ The court reasoned a juvenile probationer subject to a search condition is aware he may be searched by a police officer, probation officer, or school official at any time.⁸² Accordingly, the court concluded the officer did not violate the juvenile's Fourth Amendment rights, despite his ignorance of the search condition, because the officer did not intrude upon an area the juvenile reasonably expected to remain private.⁸³

In reaching its conclusion, the court found *Griffin*,⁸⁴ the only United States Supreme Court case addressing the

⁷⁷ See *In re Tyrell J.*, 876 P.2d 519, 532, 533-35 (Cal. 1994) (Kennard, J., dissenting).

⁷⁸ See *People v. Reyes*, 968 P.2d 445, 449 (Cal. 1998); see also discussion *infra* Part II.B.

⁷⁹ See *Tyrell J.*, 876 P.2d at 522.

⁸⁰ See *id.* at 531-32.

⁸¹ *Id.* at 529.

⁸² See *id.* at 529-30.

⁸³ See *id.* at 531-32.

⁸⁴ *Griffin v. Wisconsin*, 453 U.S. 868 (1987).

constitutionality of probation search conditions, was not controlling.⁸⁵ The court distinguished *Griffin*, noting *Griffin* involved a case where the searching probation officer was aware of the search condition prior to the search.⁸⁶ Further, the court found the search could not be validated under the consent exception as in *Bravo* because, unlike an adult, a juvenile has no choice whether or not to accept a search condition as part of probation.⁸⁷ Similarly, the court was not persuaded by *Gallegos* and *Martinez*.⁸⁸

Justice Kennard, in her dissenting opinion, characterized the court's holding as a "startling departure from settled principles underlying the Fourth Amendment."⁸⁹ Justice Kennard criticized the majority's departure from United States Supreme Court precedent⁹⁰ and its other decisions⁹¹ governing search conditions.⁹² Although *Griffin* did not control the outcome of this case, Justice Kennard noted the *Griffin* decision "strongly impl[ies] that when, as here, a search is conducted . . . by a police officer who does not even know of the suspect's probationary status, the eventual discovery that the terms of probation included a search condition may not be used to uphold the validity of the search."⁹³ In addition, the court failed to follow its prior decisions that prohibited the reliance on a defendant's parole status to uphold the validity of a warrantless search when the

⁸⁵ See *Tyrell J.*, 876 P.2d at 523-24.

⁸⁶ See *id.* at 524.

⁸⁷ See *id.* at 527.

⁸⁸ See *id.* at 531.

⁸⁹ *Id.* at 532 (Kennard, J., dissenting).

⁹⁰ See discussion *supra* Part I.C.1.

⁹¹ See discussion *supra* Part I.C.2.

⁹² See *Tyrell J.*, 876 P.2d at 533-35 (Kennard, J., dissenting); see also Davis, *supra* note 37, at 414 (noting that the California Supreme Court strayed from United States Supreme Court precedent); Lidia Stiglich, Comment, *Fourth Amendment Protection for Juvenile Probationers in California, Slim or None?: In re Tyrell J.*, 22 HASTINGS CONST. L.Q. 893, 914 (1995) (concluding that the *Tyrell J.* decision is inconsistent with United States Supreme Court precedent and prior decisions of the California Supreme Court).

⁹³ See *Tyrell J.*, 876 P.2d at 533-34 (Kennard, J., dissenting).

searching police officer has no prior knowledge of the status.⁹⁴ Although *Gallegos* and *Martinez* dealt with parolees and *Tyrell J.* concerned juvenile probationers, Justice Kennard stated such distinctions are inconsequential and the court's prior decisions governing parolee cases are dispositive of cases involving juvenile probationers.⁹⁵

In addition, Justice Kennard raised compelling policy reasons to illuminate the flaws in the majority's decision. Justice Kennard noted the majority rule announced in *Tyrell J.* "encourages police to 'search first and ask questions later.'"⁹⁶ Justice Kennard expressed concern that the court's holding gives officers an incentive to search any juvenile even without probable cause or a warrant, for if by chance, the juvenile is subject to a search condition, the court will validate the search and admit the evidence.⁹⁷ Justice Kennard concluded such a rule fails to safeguard the rights of juvenile probationers⁹⁸ and erodes the protections guaranteed by the Fourth Amendment.⁹⁹

B. California Extends the Rationale of Tyrell J. to the Context of Parolees

Not only does the *Tyrell J.* decision threaten the Fourth Amendment rights of juvenile probationers, it began a trend leading to the erosion of the Fourth Amendment protections in other contexts. One such example is the California Supreme Court's extension of the *Tyrell J.* rationale to parolees. In *People v. Reyes*,¹⁰⁰ the California Supreme Court examined whether, in light of *Tyrell J.*, reasonable suspicion is required

⁹⁴ See *id.* at 534 (Kennard, J., dissenting).

⁹⁵ See *id.* at 535 (Kennard, J., dissenting). Like juvenile probationers, a parolee does not consent to a waiver of his Fourth Amendment rights since parole is not a matter of choice. See *People v. Burgener*, 714 P.2d 1251, 1266 n.12 (Cal. 1986) (explaining that "the parolee's acceptance of parole under the determinative sentence law is in no sense pursuant to a voluntary agreement by which he has waived his right to privacy in exchange for release on parole").

⁹⁶ *Id.* at 537 (Kennard, J., dissenting).

⁹⁷ See *id.*

⁹⁸ See *id.*

⁹⁹ See *id.* at 532 (Kennard, J., dissenting).

¹⁰⁰ 968 P.2d 445 (1998).

for a search of a parolee conducted pursuant to a search condition.¹⁰¹ In *Reyes*, police officers searched the defendant's home based on information of suspected drug activity provided by the defendant's parole agent.¹⁰²

The court rejected the consent exception to validate the search because parole is not a matter of choice.¹⁰³ More importantly, the court declined to follow *People v. Burgener*,¹⁰⁴ the court's prior decision regarding warrantless searches of parolees.¹⁰⁵ In *Burgener*, the California Supreme Court relied on the special needs exception to adopt a reasonable suspicion standard for searches of parolees pursuant to a search condition.¹⁰⁶ Finding the Fourth Amendment does not require compliance with the probable cause requirement in the case of parolees, the *Burgener* court held warrantless searches of parolees are constitutional if supported by reasonable suspicion.¹⁰⁷ The court reasoned the state's interest in effective parole supervision justified a standard less than probable cause for parolee searches conducted for proper parole supervision purposes.¹⁰⁸ The court concluded "the appropriate standard of reasonableness to justify a parole search is a reasonable suspicion on the part of the parole officer that the parolee is again involved in criminal activity, or has otherwise violated his parole."¹⁰⁹ The requisite reasonable suspicion must be based on facts that support an objectively reasonable suspicion.¹¹⁰

Instead of following *Burgener*, the *Reyes* court extended the rationale of *Tyrell J.*, a case involving a juvenile probationer, to the context of adult parolees.¹¹¹ The *Reyes* court held even in the absence of any suspicion, a warrantless

¹⁰¹ See *id.* at 446.

¹⁰² See *id.*

¹⁰³ See *id.* at 448.

¹⁰⁴ 714 P.2d 1251 (Cal. 1986).

¹⁰⁵ See *id.* at 1270-71.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.* at 1270.

¹⁰⁸ See *id.* at 1269.

¹⁰⁹ *Id.* at 1271.

¹¹⁰ See *id.*

¹¹¹ See *People v. Reyes*, 968 P.2d 445, 449 (Cal. 1998).

search conducted pursuant to a search condition and for a proper purpose does not violate any expectation of privacy society is prepared to recognize as warranting constitutional protection.¹¹² In so doing, the court found *Tyrell J.*, a case involving a juvenile probationer, applied “equally, if not more so, to parolees,” than *Burgener*, a case involving a parolee.¹¹³ The court reasoned because of society’s interest in rehabilitating parolees and protecting the community against parolees who re-offend, a search conducted pursuant to a parole condition and without reasonable suspicion is lawful.¹¹⁴ As a result, the court abandoned the reasonable suspicion standard set forth in *Burgener*.¹¹⁵

Justice Werdegar disagreed with the abandonment of California Supreme Court precedent and the extension of *Tyrell J.* to adult parolees.¹¹⁶ Justice Werdegar noted the court’s decision effectively “reduc[es] the privacy rights of an adult who is attempting to rejoin the law-abiding public and rebuild his or her life, essentially to that of an inmate in prison.”¹¹⁷ Similarly, Justice Kennard declined to support a rule that allows warrantless and suspicionless searches of a parolee’s home, rendering it indistinguishable from a prison cell.¹¹⁸ Justice Kennard noted the court’s decision authorizes officers to search homes indiscriminately and violate the Fourth Amendment rights of citizens who happen to live with a parolee subject to a search condition.¹¹⁹

¹¹² *See id.* at 451.

¹¹³ *Id.* at 449.

¹¹⁴ *See id.* at 449 (citing *In re Tyrell J.*, 876 P.2d 519, 532 (Cal. 1994)).

¹¹⁵ *See id.* at 453. The court concluded that “a parole search may be reasonable despite the absence of particularized suspicion.” *Id.* at 451; *cf.* *People v. Burgener*, 714 P.2d 1251, 1271 (Cal. 1986) (holding that a warrantless search of a parolee pursuant to the terms of his parole is unreasonable in the absence of reasonable suspicion that the parolee is engaged in criminal conduct or other violation of his parole).

¹¹⁶ *See Reyes*, 968 P.2d at 461-62 (Werdegar, J., concurring in part, dissenting in part).

¹¹⁷ *Id.* at 461.

¹¹⁸ *See id.* at 458 (Kennard, J., concurring in part, dissenting in part).

¹¹⁹ *See id.*

C. The California Supreme Court Declines to Extend the Rationale of Tyrell J.

In *People v. Robles*,¹²⁰ the California Supreme Court took the first step towards unraveling the constitutionally suspect holding of *Tyrell J.* In *Robles*, the court held an officer could not rely on a probationer's search condition to conduct a warrantless search of a common area and gather incriminating evidence against the probationer's housemate if the officer is unaware of the probationer's search condition at the time of the search.¹²¹ In so doing, the court declined to stretch the rationale of *People v. Woods*¹²² to justify the search at bar.¹²³ In *Woods*, the California Supreme Court held an officer may rely on a probationer's search condition, of which he has prior knowledge, to justify a warrantless search of the probationer's home to gather evidence against the probationer's cohabitants.¹²⁴ The *Robles* court found *Woods* does not authorize a police officer to search a probationer's home, without a warrant *and without knowledge* of a probationer's search condition, to gather evidence of suspected criminal activity.¹²⁵

In addition, the *Robles* court declined to apply the logic of *Tyrell J.* to validate the search.¹²⁶ The court reasoned searches pursuant to a search condition must be reasonably related to advancing the interests of the probation system.¹²⁷ Where an officer has no knowledge of a search condition prior to conducting a search, the search cannot be reasonably related to probationary purposes.¹²⁸

Justice Kennard concurred with the majority in *Robles*, but not without noting the majority's effort to distinguish two

¹²⁰ 3 P.3d 311 (Cal. 2000).

¹²¹ *See id.* at 318.

¹²² 981 P.2d 1019 (Cal. 1999).

¹²³ *See Robles*, 3 P.3d at 316.

¹²⁴ *See Woods*, 981 P.2d at 1028.

¹²⁵ *See Robles*, 3 P.3d at 316.

¹²⁶ *See id.*

¹²⁷ *See id.*

¹²⁸ *See id.*

decisions from which she dissented—*Tyrell J.* and *Woods*.¹²⁹ Justice Kennard again expressed her disagreement with the constitutionally suspect rule announced in *Tyrell J.*¹³⁰ Justice Brown wrote a concurring opinion to address the People's argument that validating the instant search merely flows from the logical extension of precedent.¹³¹ Justice Brown found the People's argument illustrative of how far the California Supreme Court has strayed from protecting the constitutional guarantee against unreasonable searches and seizures.¹³² Justice Brown suggested the court should stop supporting and perpetuating the flawed reasoning of *Tyrell J.*¹³³

California Supreme Court decisions following *Tyrell J.*, particularly *Robles*, illuminate the flawed rationale of the *Tyrell J.* rule and provide convincing support for its abandonment. These subsequent cases raise doubts as to its continued constitutional viability because they illustrate how far California has departed from well-settled Fourth Amendment principles. With *Tyrell J.* and the later cases relying on the logic of *Tyrell J.*, the California Supreme Court not only failed to set forth a constitutionally viable standard for determining the legality of warrantless searches of juvenile probationers but began a dangerous trend threatening the constitutional rights of all citizens to be free from unreasonable searches and seizures.

*D. The California Supreme Court Declines to
Reconsider Tyrell J.*

On June 28, 2000, the California Supreme Court granted review to specifically determine whether the court should reconsider the holding of *Tyrell J.*¹³⁴ On January 16, 2002, the California Supreme Court dismissed the grant of review and remanded the case to the Court of Appeal, Fourth

¹²⁹ See *id.* at 319-20 (Kennard, J., concurring).

¹³⁰ See *id.* at 320 (Kennard, J., concurring).

¹³¹ See *id.* (Brown, J., concurring).

¹³² See *id.*

¹³³ See *id.* at 322 (Brown, J., concurring).

¹³⁴ See *People v. Moss*, No. S087478, 2000 Cal. LEXIS 5219 (Super. Ct. June 28, 2000).

Appellate District, Division Three.¹³⁵ Thus, the California Supreme Court missed an opportunity to restore the Fourth Amendment rights of juvenile probationers. While the *Robles* court recognized a limit to the extension of *Tyrell J.*, nonetheless, unless the California Supreme Court revisits this issue, California will continue to deprive juvenile probationers of the constitutional guarantees against unlawful searches and continue to extend the flawed rationale of *Tyrell J.* to other contexts.¹³⁶

III. Proposed Solutions to Restore the Fourth Amendment Rights of Juvenile Probationers

As *Robles* illustrates, the California Supreme Court must revisit the principle announced in *Tyrell J.* and adopt a rule that adequately safeguards the Fourth Amendment rights of juvenile probationers. To remedy its departure from established Fourth Amendment principles, it is essential that California adopt a constitutionally viable rule to govern searches where officers seek to rely on a probation search condition after the fact to justify a warrantless search. To this end, three possible solutions are suggested, any one of which California must implement to restore the Fourth Amendment rights of juvenile probationers.

First, California could adopt an advance knowledge requirement.¹³⁷ Under this approach, an officer could only seek to justify a warrantless search based on a search

¹³⁵ See *People v. Moss*, No. S087478, 2002 Cal. LEXIS 277 (Super. Ct. Jan. 16, 2002). The court dismissed the case pursuant to Rule 29.4(c) of the California Rules of Court, which provides that “the supreme court may dismiss review of a cause as improvidently granted and remand the cause to the court of appeal.” CAL. RULES OF CT. 29.4(c) (2001).

¹³⁶ See generally Stiglich, *supra* note 92, at 914 (suggesting that *Tyrell J.* “may be the beginning of a trend that allows government agents to act first and look for justification later”).

¹³⁷ See Kristin Anne Joyce, Comment, *Fourth Amendment Protections for the Juvenile Probationer After In re Tyrell J.*, 36 SANTA CLARA L. REV. 865, 896 (1996) (proposing that California impose a knowledge first requirement); May, *supra* note 35, at 338-39 (arguing that the *Tyrell J.* court erred in dispensing with a knowledge first requirement).

condition if the officer has advance knowledge of the search condition and relies on it to conduct the search.¹³⁸ If an officer lacks knowledge of a search condition, the search is arbitrary because it is conducted without legal justification and without any limits.¹³⁹

Although the California Supreme Court explicitly rejected an advance knowledge requirement in *Tyrell J.*,¹⁴⁰ the court nonetheless recognized that an advance knowledge requirement is not “undesirable.”¹⁴¹ An officer’s advance knowledge “helps ensure that the resulting search is not conducted ‘for reasons unrelated to the rehabilitative and reformatory purposes of probation or other legitimate law enforcement purposes.’”¹⁴² A warrantless search cannot be reasonably related to probationary purposes where an officer has no knowledge of a search condition prior to conducting the search.¹⁴³ In addition, a knowledge first requirement would protect a juvenile probationer’s Fourth Amendment rights without significantly eroding the deterrent effect of a search condition or impeding the goals of the juvenile probation system.¹⁴⁴ The fear of being subject to a warrantless search will exist regardless of whether officers are required to have advance knowledge of the search condition.¹⁴⁵ Lastly,

¹³⁸ No courts, whether federal or state, have relied on a search condition to justify an unlawful search by an officer who did not have prior knowledge of the condition. See *In re Tyrell J.*, 876 P.2d 519, 534 (Cal. 1994) (Kennard, J., dissenting). See also *People v. Gallegos*, 397 P.2d 174, 176 (Cal. 1964) and *In re Martinez*, 463 P.2d 734, 738 (Cal. 1970), two adult parolee cases in which the California Supreme Court established that the prosecution may not rely on a search condition when the searching officer did not have prior knowledge of its existence.

¹³⁹ See *People v. Robles*, 3 P.3d 311, 316 (Cal. 2000).

¹⁴⁰ See *Tyrell J.*, 876 P.2d at 530.

¹⁴¹ *Id.*; see also May, *supra* note 35, at 338-39 (noting that since a search must be reasonable based on facts at the time of the search, the *Tyrell J.* court erred in dispensing with a knowledge first requirement).

¹⁴² *Tyrell J.*, 876 P.2d at 530 (citation omitted).

¹⁴³ See *Robles*, 3 P.3d at 316; *Tyrell J.*, 876 P.2d at 537 (Kennard, J., dissenting) (noting that where a search is conducted without prior knowledge of a search condition it is not conducted to satisfy the needs of the probation system).

¹⁴⁴ See *id.* at 896-97.

¹⁴⁵ See Joyce, *supra* note 137, at 893.

contrary to the *Tyrell J.* court's assertion that its rejection of a knowledge first requirement will not encourage police to conduct warrantless searches,¹⁴⁶ the *Tyrell J.* rule does create an incentive for police officers to perform warrantless searches on the chance that the person is a probationer subject to a search condition.¹⁴⁷ Adopting a knowledge first requirement eliminates any such possible incentive.

Alternatively, California courts could follow federal case law, which supports limiting the use of search conditions to those searches that promote the purposes of the probation system.¹⁴⁸ Federal courts have limited the use of a search condition to a greater extent than California, holding that "even when the searching police officer knows of the existence of a search condition, reliance on the condition is improper when . . . the search was conducted for purposes of law enforcement, rather than for purposes related to probation."¹⁴⁹

Following this more restrictive approach, a search conducted pursuant to a search condition must be conducted for probationary purposes and not law enforcement purposes.¹⁵⁰ Thus, searches pursuant to a search condition

¹⁴⁶ See *Tyrell J.*, 876 P.2d at 532.

¹⁴⁷ See *Robles*, 3 P.3d at 322 (Brown, J., concurring); *Tyrell J.*, 876 P.2d at 532 (Kennard, J., dissenting) (concluding that the majority's decision "encourages police officers to embark on a practice of 'search first and ask questions later'"); Davis, *supra* note 37, at 413; May, *supra* note 35, at 340; Stiglich, *supra* note 92, at 913.

¹⁴⁸ See *Tyrell J.*, 876 P.2d at 534 (Kennard, J., dissenting); *People v. Bravo*, 738 P.2d 366, 342 (Cal. 1987). In *Knights*, however, the United States Supreme Court declined to examine whether the Fourth Amendment limits the scope of searches conducted pursuant to a search condition to those conducted for probation purposes. See *United States v. Knights*, 534 U.S. 112, 121-22 (2001); discussion *supra* Part I.C.1.

¹⁴⁹ *Tyrell J.*, 876 P.2d at 534 (Kennard, J., dissenting) (citations omitted). For a more detailed explanation of the federal approach, see for example, *United States v. Harper*, 928 F.2d 894, 897 (9th Cir. 1991), *United States v. Richardson*, 849 F.2d 439, 441 (9th Cir. 1988), and *United States v. Merchant*, 760 F.2d 963, 968-69 (9th Cir. 1985).

¹⁵⁰ See *supra* note 149 and accompanying text; see also Joyce, *supra* note 137, at 896 (noting that federal courts restrict the use of a search condition to justify a warrantless search to those conducted for probation purposes).

must be reasonably related to probationary purposes.¹⁵¹ This approach inherently requires an officer to have advance knowledge of the search condition, since without such knowledge, the search is wholly unrelated to any proper probationary purpose.¹⁵² Limiting searches to probationary purposes recognizes that a probation search should further the goals of probation.¹⁵³ Accordingly, this approach protects against arbitrary searches by requiring searching officers to act within prescribed constitutional limits and furthers the underlying purpose of the probation system.

Finally, California could adopt a reasonable suspicion standard similar to that adopted by the United States Supreme Court in *Griffin* and in *Knights*.¹⁵⁴ The California Supreme Court adopted the same standard in *Burgener*,¹⁵⁵ but it was subsequently overruled in *Reyes*.¹⁵⁶ Under a reasonable suspicion standard, the search must be based on a reasonable suspicion that the juvenile has violated the law or a term of his probation.¹⁵⁷ A lesser standard than probable cause would be justified under the special needs exception because of the

¹⁵¹ See *Robles*, 3 P.3d at 316 (citations omitted).

¹⁵² See *Tyrell J.*, 876 P.2d at 537 (Kennard, J., dissenting).

¹⁵³ See *United States v. Ooley*, 116 F.3d 370, 372 (9th Cir. 1997).

¹⁵⁴ See *United States v. Knights*, 534 U.S. 112, 121-22 (2001) (holding that a warrantless search of a probationer pursuant to a search condition and supported by reasonable suspicion comported with the Fourth Amendment); *Griffin v. Wisconsin*, 483 U.S. 868, 875-76 (1987) (upholding a warrantless search of a probationer based on a reasonable grounds standard because the special needs of the state's probation system justified a departure from the probable cause requirement); see also discussion *supra* Part I.C.1.

¹⁵⁵ See *People v. Burgener*, 714 P.2d 1251, 1271 (Cal. 1986) (holding that a warrantless search of a parolee pursuant to the terms of his parole is unreasonable in the absence of reasonable suspicion that the parolee is engaged in criminal conduct or other violation of his parole).

¹⁵⁶ See *People v. Reyes*, 968 P.2d 445, 453 (Cal. 1998); see also discussion *supra* Part II.B.

¹⁵⁷ See, e.g., *Burgener*, 714 P.2d at 1271 (finding that the appropriate standard of reasonableness to justify a parole search is a reasonable suspicion that the parolee is engaged in criminal activity or has violated a term of parole).

government's interest in effectively operating its juvenile probation system.¹⁵⁸

A reasonable suspicion standard is rational considering that police officers can secure evidence of a probation violation or of a commission of a crime through normal law enforcement measures.¹⁵⁹ It is unwarranted to further strip the Fourth Amendment rights of juvenile probationers by giving police officers unfettered discretion to simply increase the number of violations actually detected.¹⁶⁰ Since the government could advance the goals of the probation system by less intrusive means, such as visitation and reporting requirements,¹⁶¹ rather than a more intrusive "search first and ask questions later" approach, adopting a reasonable suspicion standard strikes an appropriate balance between serving the needs of the government and protecting the constitutional rights of juvenile probationers.¹⁶²

Conclusion

California must abandon the constitutionally suspect principles justifying warrantless searches of juvenile probationers conducted without advance knowledge of a search condition or wholly unrelated to furthering the needs of juvenile probation system. Searches conducted pursuant to a search condition should further the rehabilitation of the juvenile probationer, thereby comporting with the motivating reasons for imposing the condition. Adopting one of the above approaches would further the purposes of the probation system while adequately safeguarding the Fourth Amendment rights of juvenile probationers. Adopting a rule that diminishes police discretion may result in some probation

¹⁵⁸ *See id.* at 1269 (adopting a reasonable suspicion standard to govern parolee searches because of the state's interest in effective parole supervision).

¹⁵⁹ *See Koshy, supra* note 10, at 476 (arguing that a probable cause standard is appropriate for probation searches).

¹⁶⁰ *See id.*

¹⁶¹ *See id.* at 477.

¹⁶² *In re Tyrell J.*, 3 P.3d 519, 538 (Cal. 1994) (Kennard, J., dissenting).

violations or crimes going undetected, but, as the rationale for the exclusionary rule teaches,¹⁶³ that just may be the price society has to pay to uphold the constitutional rights of all citizens.

¹⁶³ While the main purpose of the exclusionary rule is the deterrence of police misconduct, the exclusionary rule assures “all potential victims of unlawful government conduct . . . that the government [will] not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government.” *United States v. Calandra*, 414 U.S. 338, 357 (1974).