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In re Tyrell J.: Children and Their Reasonable Expectations of Privacy

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NOTE

IN RE TYRELL J.: CHILDREN AND THEIR REASONABLE EXPECTATIONS OF PRIVACY

I. INTRODUCTION

In the latter part of the nineteenth century, a group of people who called themselves the "child savers" started a movement which resulted in the reformation of the juvenile justice system.[1] Their primary goal was to eliminate the punitive aspects of juvenile sentencing; replacing punishment with rehabilitation and training.[2] Now, after 100 years of this "different look," what remains of an admirable attempt at modification is a juvenile justice system which often confuses the people charged with its operation.[3] Today, reformation efforts are perceived as attempts at justification. Modern courts construe the phrase "best interests of the minor" so broadly that judicial reasoning is regularly infused with psychological rhetoric[4] and basic constitutional liberties undergo idiosyncratic interpretations.[5]

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1. Roger B. McNally, *Nearly a Century Later: the Child Savers - Child Advocates and the Juvenile Justice System*. 33 JUV. & FAM. CT. J. 47 (1982). The author compares the child savers of the nineteenth century to present day child advocates.

2. *Id.* at 50.

3. *See* Claudia Worrell, *Pretrial Detention of Juveniles: Denial of Equal Protection Masked by the Parens Patriae Doctrine*, 95 YALE L.J. 174, 175 (1985). The author states, "[The parens patriae] doctrine, based on false assumptions and impracticable aims, justifies a juvenile court process that lacks clear goals and guidelines." *Id.*

4. *Id.* at 186 n.53.

5. *See generally* William S. Geimer, *Juvenileness: A Single-Edged Constitu-*

In re Tyrell J.[6] examines the parameters of warrantless searches of juvenile probationers. In *Tyrell*, the California Supreme Court limited the use of the exclusionary rule[7] as applied to unconstitutional searches.[8] This note will discuss the history of the exclusionary rule and the probation search exceptions. The note will then examine the court's reasoning in *Tyrell*. The note will conclude by contending that the *Tyrell* majority disregarded the constitutional protections afforded adult citizens,[9] and in effect reinterpreted the United States Supreme Court's "reasonableness standards."[10]

II. FACTS

On October 3, 1991, at a high school football game, two police officers approached a trio of boys who they believed to be gang members.[11] One of the police officers discovered that one of these boys was carrying a large hunting knife.[12] After finding the knife, the officers detained the boys.[13] One of the officers noticed that Tyrell J.'s pants were partially unzipped.[14] This seemed "unusual" to the officer, so he conducted a pat search of the crotch of Tyrell J.'s pants.[15] As a result of the

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tional Sword, 22 GA. L. REV. 949 (1988) (discussing the many ways in which the constitutional rights of children are interpreted differently than the same rights as applied to adults).

6. *In re* Tyrell J., 876 P.2d 519 (Cal. 1994) (Per Lucas, C.J., with Arabian, J., Baxter, J., George, J., and Strankman, Presiding J., concurring. Separate dissenting opinion written by Kennard, J., with Mosk, J., joining), *modified*, 94 C.D.O.S. 8056 (1994).

7. The exclusionary rule "commands that where evidence has been obtained in violation of the search and seizure protections guaranteed by the U.S. Constitution, the illegally obtained evidence cannot be used at the trial of the defendant." BLACK'S LAW DICTIONARY 564 (6th ed. 1990).

8. *Tyrell*, 876 P.2d at 532. The court denied the motion to suppress the evidence, despite the fact that the officer was ignorant of the probation search condition.

9. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting). "I cannot agree to this startling departure from settled principles underlying the Fourth Amendment, which guarantees '[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures . . . .'" *Id.*

10. *Id.* at 536-37 (arguing that the majority's holding creates a "search first and ask questions later" policy).

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

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

search,[16] the officer recovered a small bag of marijuana from Tyrell J.'s pants.[17]

The officer subsequently filed a petition alleging that Tyrell J. came within the provisions of California Welfare and Institutions Code Section 602, which provided that a minor holding marijuana for sale was punishable by probation or physical confinement.[18] Tyrell J. was already on probation, and a ward of the court due to a prior conviction for battery while on school grounds.[19] Tyrell J. was aware that, under the terms of his probation,[20] he would have to submit to a search of his person or property, with or without a warrant, by any law enforcement officer.[21] Because of Tyrell J.'s status as a juvenile on probation, the marijuana seized was admitted into evidence in the juvenile court hearing, despite a defense motion to suppress.[22]

III. BACKGROUND

A. THE FOURTH AMENDMENT AND THE EXCLUSIONARY RULE

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures by law enforcement officers and other government officials.[23] Deciding whether or not a search is reasonable often requires after-the-fact analysis.[24] Indeed, officers who try to ensure that they have

16. *Tyrell*, 876 P.2d at 522. The officer's in court testimony included the fact that even prior to the search, the officer did not believe the object to be a weapon.

17. *Id.*

18. CAL. WELF. & INST. CODE §§ 725, 726 (Deering Supp. 1994)

19. *Tyrell*, 876 P.2d at 521.

20. *Id.*

21. *Id.* Individuals entitled to search Tyrell J. included law enforcement officers, probation officers, and school officials.

22. *Id.* at 532.

23. *See* U.S. CONST. amend. IV; *see also* New Jersey v. T.L.O., 469 U.S. 325, 335 (1985) (expanding the category of persons who could conduct a reasonable search without warrant or probable cause to include school officials); Mapp v. Ohio, 367 U.S. 643, 655 (1960) (extending the protection of the exclusionary rule to the states); Wolf v. Colorado 338 U.S. 25, 26-27 (1949) (extending the fourth amendment protection against unreasonable search and seizures to the states through the Due Process Clause of the Fourteenth Amendment).

24. United States v. Leon, 468 U.S. 897 (1984).

probable cause when conducting searches can be found, at a suppression hearing, to have made unconstitutional searches.[25] In practice, the protections granted in the Fourth Amendment are usually enforced by the exclusion of any evidence obtained in violation of this constitutional limitation.[26]

The exclusionary rule has been applied to juvenile proceedings brought under the Welfare and Institutions Code Section 602.[27] This area of juvenile law provided protections parallel to the constitutional protections afforded adults.[28]

B. "SPECIAL NEEDS" EXCEPTIONS TO THE EXCLUSIONARY RULE

In order for the government to comply with the requirements of the Fourth Amendment and to perform essential law enforcement and judicial functions, the law recognizes certain circumstances where the fourth amendment's warrant and probable cause requirements will not apply.[29] Generally, these exceptions exist "when special needs, beyond the need for law enforcement, make the warrant and probable cause requirement impracticable."[30]

An example of a recognized exception to the warrant requirement is the search of the home of an adult probationer when an officer has information that there are guns contained within the premises.[31] In such a case, the United States Supreme Court validates the search, provided that: (a) the probation officer assigned to the defendant performs a search pre-ap-

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25. *See* Illinois v. Gates, 462 U.S. 213 (1983) (holding that searches made pursuant to anonymous tips can be later invalidated due to insufficient probable cause).

26. *See Leon*, 468 U.S. 897; *see also* Mapp v. Ohio, 367 U.S. 643 (1960); *In re* Lance W., 694 P.2d 744 (Cal. 1985).

27. *In re* William G., 709 P.2d 1287 (Cal. 1985). A petition filed under California Welfare and Institutions Code § 602 required a judicial determination of whether a juvenile violating any ordinance, other than one which creates an age-based curfew, should become a ward of the court. *Id.* at 1298 n.17.

28. *Id.* at 1298 n.17.

29. New Jersey v. T.L.O., 469 U.S. 325, 351 (1985) (Blackmun, J., concurring in the judgment).

30. *In re* Tyrell J., 876 P.2d 519, 523 (Cal. 1994) (quoting *T.L.O.*, 469 U.S. at 351 (Blackmun, J., concurring in the judgment)).

31. Griffin v. Wisconsin, 483 U.S. 868 (1987).

proved by his supervisor; and (b) reasonable grounds exist to believe that the defendant possesses contraband.[32] A second exception validated the search of a student's purse by school officials after a teacher discovered the student smoking cigarettes in a school restroom in violation of school rules.[33] A third exception covered blood and urine tests required of railroad employees following on-the-job accidents.[34]

These exceptions illustrate the broad range of rationales under which the United States Supreme Court has found "special needs."[35] Factors such as the location,[36] status of the individual,[37] or the area searched,[38] were not singularly determinative in this context.[39] Instead, the United States Supreme Court has balanced the privacy interests guaranteed by the Fourth Amendment against the promotion of various legitimate governmental interests.[40]

The United States Supreme Court has applied this test to a variety of factual situations. The relaxation of warrant and

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32. *Id.* at 870-71.

33. *T.L.O.*, 469 U.S. at 336. In denying a student's motion to suppress marijuana discovered in a student's purse after it was searched by school officials looking for cigarettes, the Court created an exception to the probable cause and warrant requirements, based on the need to maintain order on school premises. *Id.* at 341. Furthermore, the United States Supreme Court held that the Fourth Amendment safeguard against unreasonable searches applies to school officials. *Id.* at 336-37.

34. Skinner v. Railway Labor Exec. Assn., 489 U.S. 602 (1989). The Court created another exception, where workers in public transportation, because of public safety issues, could be required to provide blood or urine for drug testing following on-the-job accidents.

35. *See supra* notes 31-34 and accompanying text.

36. *See Griffin*, 483 U.S. 868 (the location of the search was a private home); *see also T.L.O.*, 469 U.S. 325 (the location of the search was a public school).

37. *See T.L.O.*, 469 U.S. 325 (the person searched was a student); *see also Skinner*, 489 U.S. 602 (the person searched was an adult). *Griffin*, 483 U.S. 868 (the person searched was an adult).

38. *See Skinner*, 489 U.S. 602 (the area searched was the bodily fluids of the drivers); *T.L.O.*, 469 U.S. 325 (the area searched was the detached handbag of a student).

39. *See supra* notes 31-34 and accompanying text.

40. *See Griffin*, 483 U.S. 868 (the interests were the need to rehabilitate probationers while keeping the public safe from convicted criminals out of custody). *See also T.L.O.*, 469 U.S. 325 (the interests were the need for safety and control on public school sites); *Skinner*, 489 U.S. 602 (the interests were ensuring the safety of railway passengers).

probable cause requirements was justified by the need for supervision of adult probationers, to protect the community from non-incarcerated felons, and to ensure genuine rehabilitation.[41] A property search on public school grounds, once a reasonable belief of the existence of hidden contraband arises, is validated by the school's need to maintain an appropriate learning environment.[42] Mandated blood or urine tests of public transportation workers following a collision is authorized by the need to ensure the safety of the traveling public.[43] The United States Supreme Court requires clearly articulated, narrowly drawn governmental interests, before intrusion into areas of constitutional protection is allowed.[44]

IV. PROCEDURAL HISTORY

At a juvenile court hearing brought under California Welfare and Institutions Code section 602, a juvenile court referee denied the defendant's motion to suppress evidence discovered during the search of Tyrell J.'s pants.[45] Tyrell J. sought to suppress as evidence a small plastic bag of marijuana.[46] The defense argued that the search violated the Fourth Amendment's probable cause requirement.[47] The government claimed that Tyrell J.'s probation search condition justified introduction of the evidence, despite the officer's lack of knowledge of such condition.[48]

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41. *Griffin*, 483 U.S. at 875.

42. *T.L.O.*, 469 U.S. at 343.

43. *Skinner*, 489 U.S. at 618-21.

44. In various areas of constitutional analysis, courts will use different "tests" devised by the U.S. Supreme Court, whereby the protected interest receives a certain level of protection, and the governmental interests presented must be sufficient to meet the "rational basis test," or to meet "strict scrutiny." *See* Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987).

45. *In re* Tyrell J., 876 P.2d 519, 522 (Cal. 1994). The motion was denied and Tyrell J. was declared a ward of the court.

46. *Id.*

47. *Id.* The motion to suppress was made under California Welfare and Institutions Code § 700.1 (Deering Supp. 1994). In addition to making the motion to suppress, Tyrell J. denied the allegation that he possessed marijuana for the purposes of sale.

48. *Id.* at 522 n.1.

On appeal, the California Court of Appeal reversed the juvenile court's denial of the suppression motion.[49] The appellate court found that "the fortuity of the search condition did not validate the otherwise improper search."[50] The California Supreme Court heard the case following the State's petition for review.[51]

V. THE COURT'S ANALYSIS

A. THE MAJORITY OPINION

In *In re Tyrell J.*, the California Supreme Court ruled that the trial court properly denied the defendant's motion to suppress evidence obtained in the search of Tyrell J.'s pants.[52] The court reasoned that the police officer did not search an area that Tyrell could reasonably expect to remain private, therefore no Fourth Amendment rights were violated.[53]

The court identified two questions unresolved by previous courts. First, can a juvenile, like an adult, truly consent to the conditions of his probation.[54] California appellate courts had addressed the issue of whether juvenile probation was equivalent to adult probation.[55] However, the California Supreme Court had previously avoided the issue of juvenile consent to probation conditions.[56] Second, can a police officer conduct a warrantless search of *any* probationer without prior knowledge

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49. *Id.* at 522.

50. *Tyrell*, 876 P.2d at 522.

51. *Id.*

52. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994). Five out of seven justices joined in the majority opinion. Chief Justice Lucas wrote the majority opinion in which three other justices and a presiding justice (assigned by the Acting Chairperson of the Judicial Council) joined. Justice Kennard wrote a separate dissenting opinion in which Justice Mosk joined.

53. *Id.*

54. *Id.* 526. The court, in discussing People v. Bravo, 738 P.2d 336 (Cal. 1987), questioned whether the adult probationer's consent to waiver of Fourth Amendment rights in exchange for avoidance of prison should be extended to juvenile probationers. *Id.*

55. *See In re* Ronnie P., 12 Cal. Rptr. 2d 875, 882 (Ct. App. 1992); *see also In re* Binh L., 6 Cal. Rptr. 2d 678 (Ct. App. 1992).

56. *Tyrell*, 876 P.2d at 527. The California Supreme Court stated that a resolution of the case issue by the "advance" consent rationale of *Bravo*, 738 P.2d 336, would be improper. *See also Binh L.*, 6 Cal. Rptr. 2d at 681-83. The California Court of Appeal avoided deciding the issue of consent.

of the probationer's status.[57] In *People v. Gallegos*, the California Supreme Court analyzed the validity of a warrantless search of adult parolees by officers who had no prior knowledge of the parole condition.[58] The court concluded that prior knowledge of parole status was necessary for a valid search in the absence of probable cause.[59] However, the California Supreme Court had not extended this rule to cover searches of juvenile probationers,[60] and did not do so in its *Tyrell* decision.[61]

1. *State Law Issues*

Since the passage of California's Proposition Eight,[62] various questions have surfaced concerning the interpretation of the Fourth Amendment protections provided by the United States Constitution.[63] In *Tyrell*, the court analyzed the possible impact of Proposition Eight on federal constitutional guarantees.[64] A state may provide, via its Constitution or legislature, greater protection against unreasonable searches and seizures than the Federal Constitution.[65] However, Proposition Eight appeared to limit, rather than expand, the

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57. *Tyrell*, 876 P.2d 519, 532 (Kennard, J., dissenting) (emphasis added).

58. People v. Gallegos, 397 P.2d 174 (Cal. 1964).

59. *Gallegos*, 397 P.2d 175. The court held that the search of an adult parolee's home was valid even through the officer searching the home was unaware of the defendant's parole status, since the detention was not made for reasons of parole violation. *See also In re* Martinez, 463 P.2d 734 (Cal. 1970). The searching office was not aware that the homeowner was on parole until after the arrest, when the defendant was at the police station. The court ruled that the evidence would be excluded from any criminal case based on the seizure, because no automatic search condition is imposed on parolees. *Id.*

60. *See Tyrell*, 876 P.2d at 521 (acknowledging that lower courts had reached contrary results on this issue).

61. *Id.* at 532.

62. The voters of California passed the "Victim's Bill of Rights" in 1982, which amended Article I Section 28(d) of the California Constitution. It provided in pertinent part that "relevant evidence shall not be excluded in any criminal proceedings including . . . a hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court." CAL. CONST. art. I § 28(d).

63. *See In re* Lance W., 694 P.2d 744 (Cal. 1985); *see also* Alicia T. v. County of Los Angeles, 271 Cal. Rptr. 513, 517 (Ct. App. 1990).

64. *Tyrell*. 876 P.2d at 524-25

65. Mapp v. Ohio, 367 U.S. 643, 666 (1960) (extending the exclusionary rule to the states, provided this extension not reduce any existing protections within the state).

protections of the Fourth Amendment by requiring that "no relevant evidence shall be excluded."[66] The application of this state law has resulted in remedies other than exclusion for evidence seized in an unreasonable search.[67] If there is no controlling United States Supreme Court decision on a federal question, a state court can adopt its own interpretation.[68]

The United States Supreme Court had not ruled regarding the exclusion of evidence obtained in the manner of that in *Tyrell*.[69] Thus, in *In re Tyrell J.*, the California Supreme Court interpreted the Fourth Amendment guarantees without the benefit of controlling United States Supreme Court precedent.[70]

2. *Juvenile Probation versus Adult Probation*

The *Tyrell* court noted that adult probation involves a consensual waiver of certain Fourth Amendment rights in exchange for the opportunity to avoid serving a state prison term.[71] Advance waiver of Fourth Amendment rights is permissible under the United States Constitution[72] because state probation services present "special needs" beyond law enforce-

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66. *See* CAL. CONST. art. I, § 28(d).

67. *See, e.g.*, People v. Johnson, 209 Cal. Rptr. 78 (Ct. App. 1984) (providing that evidence obtained in violation of the Fourth Amendment can be used for certain purposes, such as impeachment); People v. West, 201 Cal. Rptr. 63 (Ct. App. 1984) (allowing improperly obtained evidence to be admitted for purposes of sentence enhancement).

68. *See* Alicia T. v. County of Los Angeles, 271 Cal. Rptr. 513, 517 (Ct. App. 1990).

69. *Id.* at 521. *See In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard J., dissenting). "My research has not disclosed, nor has the majority cited, any decision, whether from a federal or a sister state court, that has relied on a search condition to uphold a search by an officer who did not know of the condition's existence." *Id.* at 534.

70. *See Alicia T.*, 271 Cal. Rptr. 513. The California Court of Appeal stated that without direct guidance form United States Supreme Court precedent, any other court is free to interpret federal constitutional protections. *Id.*

71. *Tyrell*, 876 P.2d at 526-27. *See also* People v. Bravo, 738 P.2d 336, 341 (Cal. 1987). The California Supreme Court held that consent to probation requires that an adult probationer also give informed consent to a warrantless search of their person or property without a necessary showing of probable cause. *Id.*

72. *See id.* at 341 (adult probationer consented to an advance waiver of Fourth Amendment rights in exchange for the opportunity to avoid serving a prison term).

ment that may justify departures from the usual warrant and probable cause requirement.[73]

The *Tyrell* court next discussed the juvenile justice system. The court noted that the juvenile court, in making a minor a ward of the court under California Welfare and Institutions Code section 602, has a variety of options for disposition.[74] Furthermore, the unique functions and purposes of the juvenile system give rise to results which are different than those in the adult system.[75] The court stated "[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor's reformation and rehabilitation."[76]

In light of these differences, the *Tyrell* court reasoned that conditions of probation which would be "unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court."[77] Juvenile probation conditions would not be so broad as to infringe on constitutional rights if they are "tailored specifically to meet the needs of the juvenile."[78]

The *Tyrell* court concluded that these fundamental differences, in both the purpose and enforcement of the law, create

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73. Griffin v. Wisconsin, 483 U.S. 868, 873-74 (1987).

74. CAL. WELF. & INST. CODE § 730(b) (Deering Supp. 1994). "[T]he court may make any and all reasonable orders for the conduct of the ward . . ." *Id.* These options include placement of the juvenile in home detention, detention of the juvenile in the facilities of the California Youth Authority, or a requirement that the juvenile attend drug or alcohol rehabilitation programs. *Id.*

75. *See In re* Ronnie P., 12 Cal. Rptr. 2d 875, 882 (Ct. App. 1992). The California Court of Appeal clarified how violations of dispositional orders are treated differently in the juvenile and adult systems. *Id.* Unlike adult probation, where violation of conditions can result in an additional criminal charge, in juvenile probation, the result is a complete review of the order. *Id.*

76. *Id.* at 882.

77. *Tyrell*, 876 P.2d at 526. *See also In re* Binh L., 6 Cal. Rptr. 2d 678, 682 (Ct. App. 1992) (The California Court of Appeal reasoned that the purpose of rehabilitation allows juvenile probation conditions to fit the circumstances of the minor); *In re* Laylah K., 281 Cal. Rptr. 6, 7 (Ct. App. 1991) (an example of "gang terms and conditions of probation," included the following in the dispositional order: A requirement to be home between 8:00 p.m. and 5:00 a.m.; no presence at any known gang gathering; no association with known gang members; submission to chemical testing; and submission to warrantless search and seizure).

78. *Binh. L.*, 6 Cal. Rptr. 2d at 682.

disparate analyses of consent.[79] Because a minor has no choice whether or not to consent to certain conditions of probation, there can be no consent to a condition of probation subjecting him to a warrantless search.[80]

3. *A Reasonable Expectation of Privacy: The Katz Test*

The *In re Tyrell J.* court next moved to a discussion of whether or not Tyrell J. could have had a reasonable expectation of privacy.[81] They turned their attention to *Katz v. United States*,[82] where the United States Supreme Court created a two part test to determine whether a search is reasonable under the Fourth Amendment. The first inquiry is whether the individual being searched has manifested a subjective expectation of privacy.[83] The second prong questions whether society is willing to recognize that expectation as reasonable.[84]

Here, the *Tyrell* court found that the first prong of the *Katz* test was met when Tyrell J. tried to hide the marijuana in the crotch of his pants, clearly one of the most private places on the exterior of his body.[85] Thus, the court found that Tyrell J. manifested a subjective expectation of privacy.[86]

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79. *Tyrell*, 876 P.2d at 527 (citing the consent requirements discussed in People v. Bravo, 738 P.2d 336 (Cal. 1987)).

80. *Id.*

81. *Id.* The court moved on to reasonable expectations of privacy once the issue of consent was fully analyzed. *Id.*

82. Katz v. United States, 389 U.S. 347, 360 (1967).

83. *Id.* at 361 (Harlan, J., concurring).

84. *Id.* The second prong of the test requires an objective expectation by reasonable members of society that the area searched is private. The Court went on to distinguish the privacy of a home from objects, activities, or statements exposed to the "plain view" of outsiders.

85. *Tyrell*, 876 P.2d at 527; *see* People v. Pena Reyes, 273 Cal. Rptr. 61, 65 (Ct. App. 1992) (discussing clothing as an extension of the body). *Id.*

86. *Tyrell*, 876 P.2d at 527. The court equated the situation at bar with the facts of California v. Ciraolo, 476 U.S. 207, 211 (1986), in which a subjective expectation of privacy was found when the defendant tried to hide contraband in his coat.

The majority found problems, however, with the second prong of the *Katz* test. The court cited two lower court opinions which stated essentially that a juvenile probationer has "absolutely no reasonable expectation" to be free from a warrantless search of his person.[87] The *Tyrell* court compared these lower court holdings with cases involving adult probationers who have a "reduced expectation of privacy, therefore rendering certain intrusions by government authorities reasonable . . . to the extent that such intrusions are necessitated by legitimate governmental demand."[88] California statutory law[89] allows for various conditions of juvenile probation which create diminished expectations of privacy.[90]

While the *Tyrell* court recognized the differences in the purposes of the two systems, the court concluded that the controlling legal proposition remained the same whether the probationer was an adult or a juvenile. Thus, the relevant inquiry was whether the circumstances surrounding the challenged search reveal that the person's expectation of privacy is not " . . . one society is prepared to recognize as reasonable and legitimate."[91] Concerning adults, there exists a need to prove legitimate governmental interests.[92] In contrast, the fact of the juvenile's status as a probationer is strong evidence of a legitimate government interest, requiring no additional proof.[93]

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87. *In re* Marcellus L., 179 Cal. Rptr. 901, 908 (Ct. App. 1991). The California Court of Appeal held that a juvenile on probation was subject to a general search clause, and therefore a police officer unfamiliar with the youth was justified in performing a pat search after finding the minor sitting outside during school hours *Id.*; *see also In re* Binh L., 6 Cal. Rptr. 2d 678, 684-85 (Ct. App. 1992). The court upheld a warrantless search by a police officer without knowledge of the pre-existing search conditions. The officer observed the youth in a car under "suspicious circumstances" and concluded that he was a truant, performed a pat down, and uncovered a gun. *Id.*

88. People v. Burgener, 714 P.2d 1251, 1267 (Cal. 1986).

89. CAL. WELF. & INST. CODE § 730(b) (Deering Supp. 1994).

90. Conditions of probation include: counseling with parents (*Id.* § 729.2(b)); respect of curfew (*Id.* § 729.2(c)); submission to drug testing (*Id.* § 729.9); and participation in drug and alcohol rehabilitation programs (*Id.* § 729.10).

91. *Tyrell*, 876 P.2d at 528.

92. *See supra* note 40 and accompanying text; *see also Burgener*, 714 P.2d 1251, 1266-67, for a discussion of how the interests apply directly to the probationer's expectations of privacy. *Id.*

93. *See supra* note 79 and accompanying text. The *Tyrell* court made certain assumptions that, because of the "lesser" status of juveniles, there was little or no showing of governmental interests required to justify a warrantless search of a

Because Tyrell J., as a juvenile probationer, was subject to a valid search condition, the court presumed that he had sufficient awareness of the resulting limitations on his freedom.[94] Tyrell J. had no reason to believe that the officer would not search him.[95] Therefore, the court concluded that any expectation of privacy in the marijuana was "manifestly unreasonable.[96]

4. *Effectuation of Policy: Deterrent Effects*

The court in *Tyrell* found that the condition of juvenile probation permitting the police, government officials, and others,[97] to conduct warrantless searches, attached without violation of the United States Constitution.[98] Authorizing any law enforcement officer to stop and search a juvenile probationer was held[99] consistent with the rehabilitative objectives of the juvenile law.[100] The search is presumptively valid if it is not conducted for "reasons unrelated to the rehabilitative and reformative purposes of probation or other legitimate law enforcement purposes."[101] The *Tyrell* court reasoned that these searches were consistent with the overriding policy of the juvenile court system because they deter future misconduct.[102]

In *Tyrell*, the court distinguished *People v. Gallegos*,[103] where the California Supreme Court concluded that a search based upon insufficient information provided by an informant was improper, and excluded the evidence thereby obtained.[104]

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juvenile probationer. *Tyrell*, 876 P.2d at 526.

94. *Tyrell*, 876 P.2d at 529-30.

95. *Id.*

96. *Id* at 530.

97. Others holding the privilege to conduct warrantless searches include probation officers (*In re* Thomas M., 18 Cal. Rptr. 2d 710, 711 (Ct. App. 1993)) and school officials (New Jersey v. T.L.O., 469 U.S. 325, 336 (1985)).

98. *Tyrell*, 876 P.2d at 532.

99. *Id.*

100. CAL. WELF. & INST. CODE § 202(b) (Deering Supp. 1994). The purposes of juvenile court law include providing care, treatment and guidance consistent with the best interests of the minor and of the public. *Id.*

101. *Tyrell*, 876 P.2d at 530 (citing People v. Bravo, 738 P.2d 336, 342 (Cal. 1987)).

102. *Id.*

103. People v. Gallegos, 397 P.2d 175 (Cal. 1964).

104. *Id.* at 177.

The *Tyrell* court found distinguishable the fact that Mr. Gallegos first admitted, then actively denied that he was on parole.[105] Because there was no official validation of the defendant's status, the *Gallegos* court decided that the statements of the searchee, when paired with a lack of probable cause, created an insufficient basis for the search.[106]

Like other courts, juvenile courts are charged with the responsibility of explaining the ramifications of probation to prospective probationers.[107] Courts must not mislead juvenile probationers into believing that only officers aware of the pre-existing conditions of probation will conduct searches.[108] Absent evidence of misrepresentation, the *Tyrell* court was not troubled by the lack of prior knowledge by the searching officer.[109]

The search itself was a necessary component of rehabilitation in that it provided a strong deterrent against the temptation to return to antisocial ways.[110] The *Tyrell* court stated

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105. *Id.* at 176-78. When awakened at 1:00 am, the defendant first told the arresting officers that he was on parole, and then denied the existence of the parole condition. *Id.* The California Supreme Court excluded evidence of drugs obtained by the officers because there was no corroboration of the defendant's status as a parolee. *Id.*

106. *Gallegos*, 397 P.2d at 176-77. The court stated that a search following an illegal arrest cannot produce evidence necessary to justify the arrest. *Id.* Because the officers arrested Mr. Gallegos based solely upon drugs discovered during an illegal search, the non-corroborated parole status was insufficient for search or arrest. *Id.* In light of this, the *Tyrell* court found *Gallegos* distinguishable because the arrest resulting from the illegal search was for parole violation, not for possession. *Tyrell*, 876 P.2d at 531.

107. CAL. WELF. & INST. CODE § 700 (Deering Supp. 1995). "[T]he judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences." *Id.*

108. *See In re* Bacon, 49 Cal. Rptr. 322 (Ct. App. 1978). A court order imposing weekend incarceration as a manual labor camp was unsuccessfully challenged. The California Court of Appeal held " . . . in imposing conditions of probation, the court is vested with a broad discretion in order to best serve the interests of the minors within its jurisdiction, and its exercise of that discretion will not be disturbed in the absence of a manifest abuse of discretion." *Id.* at 337.

109. *Tyrell*, 876 P.2d at 530. The court discussed the idea that so long as the search is not conducted in order to harass the juvenile, the lack of prior knowledge should not make the search presumptively invalid. *Id.*

110. *Id.*

that expanding the number of persons privileged to search increases the deterrent effect on juvenile probationers.[111]

Based on its analysis of reasonable expectations of privacy and possible deterrent effects, the court in *Tyrell* affirmed the lower court's denial of the motion to suppress the marijuana discovered in the search.[112] The court concluded that Tyrell J.'s expectation of privacy was unreasonable because "society is unwilling to recognize it as legitimate," given his status as a juvenile probationer.[113]

B. THE DISSENT

The two dissenting justices[114] in *In re Tyrell J.*, focused on two questions. First, they considered the issue of reliance on a search condition of which the searching officer was unaware.[115] Second, they analyzed whether, even if this reliance can be justified, there should be a requirement that the searching officer prove a "reasonable suspicion" that the juvenile is in violation of either a general law or the terms of the probation.[116]

In discussing the validity of the "later validated" search, the dissent found *People v. Gallegos*[117] and in *In re Martinez*[118] to be dispositive. Unlike the *Tyrell* majority, the dissent compared juvenile probationers to adult parolees and concluded that "a search may not be justified by a . . . search condition of which the searching officer is unaware."[119]

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111. *Id.*

112. *Id.* at 532.

113. *Tyrell*, 876 P.2d at 532. The court analyzed Tyrell J.'s belief that the crotch of his pants was too private to be searched. *Id.* Because of the probation search condition, Tyrell J. should have understood that he was continually subject to search. *Id.* Due to this "continual search provision," any expectation that he could hide contraband in his pants does not fit within society's reasonableness standards. *Id.*

114. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting; Mosk, J., concurring in the dissent).

115. *Id.* at 532.

116. *Id.*

117. *Gallegos*, 397 P.2d 174 (Cal. 1964).

118. *Martinez*, 463 P.2d 734 (Cal. 1970).

119. *Tyrell*, 876 P.2d at 536. The dissent found the purposes underlying search

Despite their refusal to validate any search by an officer unaware of the juvenile's probationary status, the *Tyrell* dissent considered the showing of proof necessary to justify such a search.[120] The dissenting justices found the majority's conclusion, that the officers needed no reasonable suspicion of the violation of either a law or of probation conditions, to be a "startling departure from settled principles underlying the Fourth Amendment."[121] The dissent challenged as unsupported the majority's application of the "special needs" policy of *Griffin v. Wisconsin*.[122] The dissenting justices disagreed with the majority's assumption that the rehabilitation implications of juvenile probation create a situation where reasonable suspicion has no place.[123]

VI. CRITIQUE

A. IGNORANCE AS TO THE STATUS OF THE DEFENDANT

"[T]here is no rational basis upon which to uphold otherwise illegal police searches of persons only later determined to be on probation or parole."[124] In all areas of government activity, reasonable people are not willing to tolerate an "act now, explain later" policy.[125] Nevertheless, courts regularly allow admission of evidence based on after-the-fact discovery of probation search conditions,[126] basing justification on the de-

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conditions imposed for juvenile probationers as indistinguishable from those justifying imposition of search conditions on adult parolees. *Id.* Based upon this conclusion, the dissenting justices could find no support for a search where the officer was aware of the search conditions only after-the-fact. *Id.*

120. *Id.* at 537-38.

121. *Id.* at 532.

122. Griffin v. Wisconsin, 483 U.S. 868 (1987). The court held that the "special needs in operating a probation system allow for ongoing supervision" of the probationers, which can include warrantless searches when certain conditions are met. *Id.* at 875.

123. *Tyrell*, 876 P.2d at 537-38.

124. 4 LA FAVE, SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, § 10.10(e), at 154-55 (2d ed. 1987). While the case law cited involved adult probationers/parolees, it can be reasonably inferred that since this statement is based solely on the Fourth Amendment, it applies equally to juveniles as well.

125. *See* Bill Kisliuk, *Police Given More Power to Search Juvenile Suspects; Court OKs Illegal Search, Youth was on Probation*, THE RECORDER, July 29, 1994, at 1. In discussing reaction to the *Tyrell* decision, the reporter included comments from attorneys such as "[i]t's the installment plan of the Fourth Amendment," and "[i]t's a troubling decision because it offers that after-the-fact justification . . . " *Id.*

126. *See* United States v. Leon, 468 U.S. 897 (1984). *Leon* held that the "good

terrent effect on the probationer.[127] In the area of juvenile law, this evidentiary trend takes on new meaning[128] primarily because of the lack of a true comparison between juvenile probation and adult probation.[129]

In *People v. Bravo*,[130] the California Supreme Court differentiated between adult probation and parole, noting that only the adult probationer voluntarily waives certain Fourth Amendment rights in order to avoid prison.[131] The adult parolee, in contrast, has no right to reject release on parole.[132] Like the adult parolee, the juvenile probationer lacks the option of declining his or her probation.[133] Therefore, the California Supreme Court's prior decisions regarding adult parolees should be relevant in analyzing cases such as *Tyrell*.[134]

In *People v. Gallegos*[135] and *In re Martinez*,[136] searches

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faith exception" to the exclusionary rule allows for admission of evidence which may only be admissible based upon some discovery after the initial search so long as the officer acts in "good faith" on a magistrate's authorization. *Id.*

127. *See generally In re* Marcellus L., 279 Cal. Rptr. 901 (Ct. App. 1991); *In re* Binh L., 6 Cal. Rptr. 2d 678 (Ct. App. 1992); *In re* Laylah K., 281 Cal. Rptr. 6 (Ct. App. 1991), for the California Court of Appeal view on the broad discretion given to analysis of evidentiary matters when juvenile probationers are involved.

128. *See* Charles W. Thomas & Shay Bilchik, *Criminal Law: Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis*, 76 J. CRIM. L., 439 (1985). The authors state "[j]uvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." *Id.* at 459.

129. *In re* Tyrell, 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting). "The purposes underlying search conditions imposed for juvenile probationer, as described by the majority are indistinguishable from those justifying the imposition of search conditions on adult *parolees*." *Id.* at 536. (emphasis added).

130. People v. Bravo, 738 P.2d 336 (Cal. 1987).

131. *Id.* at 341.

132. *Id.*

133. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting). In analysis of the consent issue, the dissent stated that juveniles cannot choose not to be placed on probation. *Id.* at 536-37.

134. *Id.* at 532.

> Unless they can be distinguished from the situation here, this court's decision in People v. Gallegos, 396 P.2d 174 (Cal. 1964), and *In re* Martinez, 463 P.2d 734 (Cal. 1970), are dispositive of the case at hand: they establish a rule now decades old, that the prosecution may not rely on a defendant's express or implied search condition when the police officer conducting the search did not know of its existence.

Id.

135. *Gallegos*, 397 P.2d 174.

of adult parolees by officers lacking knowledge of the searchees' status were hold to be unconstitutional.[137] Arguably, the juvenile probationer's situation is analogous to that of an adult parolee. Thus, the evidence discovered in *In re Tyrell J.* should have been excluded since it was illegally[138] obtained from an individual whose status was equivalent to that of an adult parolee.[139]

B. "REASONABLE BELIEF"

The Fourth Amendment to the United States Constitution requires that a search be based on probable cause, and that a proper warrant be issued prior to the search.[140] The warrantless search of probationers is widely recognized as an exception to these requirements.[141] The *In re Tyrell J.* court expanded this particular exception to include juvenile probationers.[142]

The officer who filed the petition[143] first observed Tyrell J. adjusting his pants.[144] The officer assumed that Tyrell J. was trying to conceal something, conducted a pat search and felt a soft object approximately three by twelve inches.[145]

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136. *Martinez*, 463 P.2d 734.

137. *See supra* note 59 and accompanying text.

138. *See Tyrell*, 876 P.2d at 522. The defendant argued that a lack of awareness of probation conditions at the time of the search could cause the search to be declared illegal. *Id. See also In re* Tyrell J., 876 P.2d 519, 535-36 (Cal. 1994) (Kennard, J., dissenting). In the amendment to the original dissent, this interpretation of both *Gallegos*, 396 P.2d 174 and *Martinez*, 463 P.2d 734 was fully articulated.

139. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting). "Even when the person searched has voluntarily accepted an express or implied search condition, that condition cannot justify a warrantless search by an officer engaged in general law enforcement duties who has no knowledge of the search condition." *Id.* at 536.

140. *See supra* note 23 and accompanying text.

141. *See supra* note 31 and accompanying text.

142. *In re* Tyrell J., 876 P.2d 519, 521 (Cal. 1994). In holding that Tyrell J. had no reasonable expectation of privacy, the California Supreme Court validated the admission of evidence uncovered in a warrantless search of a juvenile probationer, even when the searching officer is unaware of the search conditions.

143. In juvenile proceedings under the California Welfare and Institutions Code §§ 602 and 603, an officer has the option of filing a petition in juvenile court alleging that the minor is a person who could be declared a ward of the court. *Id.*

144. *Tyrell*, 876 P.2d at 522.

145. *Id.* at 75.

While the officer did not believe it was a weapon, he retrieved the object and found it to be marijuana.[146]

Assuming arguendo, that the factors applicable to the search of an adult probationer applied equally to a juvenile, the rule from *Griffin v. Wisconsin*[147] requires "reasonable grounds to believe in the presence of contraband," before a warrantless search can be conducted.[148] An officer must consider a variety of factors in determining whether reasonable grounds exist.[149] The factors include: information from an informant, the need to verify compliance with rules of supervision of state and federal law, and the officer's own experience with the probationer.[150]

In *Tyrell*, no informant gave any information, and the officer lacked awareness of the need for supervision of the minor.[151] Therefore, one can only assume that the officer relied on his limited experience with Tyrell J. to justify this warrantless search.[152] This experience appears to have consisted of observing a teen-age boy, in the company of other teenagers, repeatedly adjusting the crotch of his trousers.[153]

The officer then conducted a valid pat search, ordinarily done in order to detect the presence of any weapon, and when he felt a "soft object," he "reasonably believed" it to be contraband.[154] Compare this situation to that in *Minnesota v.*

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146. *Id.*

147. *Griffin v. Wisconsin*, 483 U.S. 868 (1987).

148. *Id.* at 870-71.

149. *Id.* Wisconsin law, like that of a majority of states, requires a probation officer to prove to his supervisor that "reasonable grounds" exist to believe in the presence of contraband. *Id.*

150. *Id.* at 871. The United States Supreme Court was careful to explicitly state what would constitute reasonable grounds for a *probation officer* to conduct a warrantless search of a probationer. *Griffin*, 483 U.S. at 871 (emphasis added).

151. Officer Villemin testified that he was unaware of the minor's search condition at the time of the search. *Tyrell*, 876 P.2d at 522.

152. *See id.* at 521-22, where the facts state that Officer Villemin observed Tyrell J. with a group of boys identified to him as gang members. *Id.* With no knowledge of the search condition or the identity of Tyrell J., and no search warrant, it seems clear that Officer Villemin relied on his experience in that very short period of time in deciding to search Tyrell J. *Id.*

153. *Id.*

154. *Tyrell*, 876 P.2d at 522.

Dickerson, where an officer prodded and manipulated the clothed area of a suspect during a weapons search and discovered crack cocaine.[155] The cocaine was excluded at trial when the United States Supreme Court found the search and seizure without probable cause, as the officer was able to determine that there was no weapon before the extended manipulation of the clothing.[156]

While the *Tyrell* court's analysis of *Griffin v. Wisconsin*[157] upholds the validity of the *Tyrell* search, the United States Supreme Court's holding in *Minnesota v. Dickerson*[158] indicates a different result. Due to the *Tyrell* officer's ignorance of Tyrell J.'s status, the *Griffin v. Wisconsin* reasonable grounds requirements, which rest on the special needs associated with supervising probationers, are inapplicable.[159] However, absent support for Tyrell J.'s detention, and relying on the need to supervise probationers, the *Minnesota v. Dickerson* analysis posits an interesting scenario.[160] The officer in *Minnesota v. Dickerson* only determined there was contraband after manipulating the defendant's clothing during a weapons search "incident to the arrest."[161] In contrast, in *Tyrell*, there was no "search incident to arrest" because there was no arrest until after the marijuana was discovered.[162] Therefore, the officer

155. Minnesota v. Dickerson, 113 S. Ct. 2130 (1993).

156. *Id.* The Court found that the officer had gone beyond the parameters of a *Terry* stop. *Id.* A *Terry* stop requires reasonable suspicion that the person being searched is carrying a weapon. Terry v. Ohio, 392 U.S. 1 (1967).

157. 483 U.S. 868 (1987).

158. *Dickerson*, 113 S. Ct. 2120. *See supra* note 153.

159. *Griffin*, 483 U.S. at 875-80. Because the Court in *Griffin* specifically discussed probation and the special needs resulting from the supervision of probationers, the *Tyrell J.* searching officer (ignorant of Tyrell J.'s status) could hardly be held to have searched him in order to "supervise his probation."

160. *See Dickerson*, 113 S. Ct. 2130. The United States Supreme Court limited the scope of the "search incident to arrest."

161. *Id.* In *Dickerson*, a police officer stopped the defendant, who was seen adjusting his clothes. *Id.* The officer conducted a pat search, and felt a bulge. *Id.* He manipulated the bulge between his fingers, and only then did he find that it was a rock of crack cocaine. *Id.* Because he was able to ascertain that it was not a weapon *before* he determined that it was contraband, the Court held that the search, and therefore the arrest were unconstitutional. *Dickerson,* 113 S. Ct. 2130 (emphasis added).

162. *Tyrell*, 876 P.2d at 521-22. The facts state that the officers approached the three boys, asking them to "hold up." *Id.* Officer Villemin discovered the marijuana during a pat search *after* he had visually determined that it was not a weapon. *Id.* (emphasis added). Tyrell J. was not taken into custody until after the marijua-

in *Tyrell* had no basis for the search, because he knew there was no threat to his safety.[163]

C. STATUS OF THE INVESTIGATING OFFICIAL

The *Tyrell* majority decision, in large part, justified invoking an exception to the exclusionary rule due to the "special needs" of rehabilitation existing in juvenile probation.[164] Practically, both probation and parole rely on supervisory relationships between the probation/parole officers and the probationer/parolee.[165] The probation officer is one "who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer."[166]

The officer who searched Tyrell J. was a police officer, not a probation officer.[167] There was no ongoing supervisory relationship.[168] Using a *Griffin v. Wisconsin* analysis, the after-the-fact discovery of the probationary status was insufficient to uphold the validity of the search.[169] Morover, the "special needs" of the probation system cannot be extended to a search

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na was discovered. *Id.*

163. The facts state that Officer Villemin did not believe the object to be a weapon. *Tyrell*, 876 P.2d at 522. The *Tyrell* court, however, found that the officer did not conduct an unreasonable search because as a juvenile probationer subject to a search condition, Tyrell J. did not have a reasonable expectation of privacy. *Id.* at 529.

164. *See Griffin*, 483 U.S. at 873. The United States Supreme Court discussed in detail, the "special needs" of adult rehabilitation. *See also In re* Tyrell J. 876 P.2d 519, 530 (Cal. 1994) where the California Supreme Court analyzed the best methods for the effectuation of juvenile rehabilitation.

165. *See Griffin*, 483 U.S. at 876-77. Since both probation and parole allow individuals who have been convicted of crimes to live outside of prison, so long as they meet certain conditions, the government must be able to know with a high degree of certainty that the conditions are being met. *Id.* The way in which the government ensures that these conditions are met is through the close relationships between the probation/parole officers and the probationers/parolees. *Id.*

166. *Id.* (discussing the competing interests at work which justify the "probation exception" to the Fourth Amendment warrant requirements).

167. *Tyrell*, 876 P.2d at 521-22.

168. *Id.* The facts state that the second officer had to tell the searching officer that Tyrell J. was a member of the "U-Boys" gang. *Id.* It can be inferred from this that there was no ongoing supervisory relationship, as there appears to be no prior relationship at all.

169. *Griffin*, 483 U.S. at 876-77. The Court required approval of the search by the supervisor of the probation officer before the search was conducted. *Id.* Therefore, knowledge of the probationary status is a prerequisite for a valid search. *Id.*

by a police officer not involved in any supervision of the minor.[170]

There are no cases on record approving of a police officer, ignorant of the defendant's probation/parole status, searching an adult probationer/parolee without probable cause.[171] Furthermore, in the dissenting opinion in *Tyrell*, Justice Kennard stated:

> even when the searching police officer knows of the existence of a search condition, reliance on the condition is improper when the officer acted in the capacity of an agent of the police, and the search was conducted for purposes of law enforcement, rather than for purposes related to probation or parole.[172]

Therefore, some justification other than the mere existence of the search condition should be required to validate the search.[173]

D. RAMIFICATIONS FOR THE FUTURE

The *In re Tyrell J.* majority emphasized that its conclusion was "consistent with the primary purpose of the exclusionary rule."[174] The court carefully articulated this purpose as the deterrence of police misconduct.[175] Any juvenile who is not subject to a probation search condition could successfully have any evidence uncovered in a search excluded.[176] The majority

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170. *Id.* The Court was careful to discuss the need for rehabilitation within the probationary system. *Id.* This need relies on close supervision of the rehabilitation process. *Griffin,* 483 U.S. at 876-77.

171. *In re* Tyrell J., 876 P.2d 519, 532 (Cal. 1994) (Kennard, J., dissenting). The dissent reports that a comprehensive search was conducted an no case law support was uncovered. *Id.* at 534.

172. *Id.* at 534 (citing United States v. Harper, 928 F.2d 894, 897 (9th Cir. 1991), United States v. Butcher, 926 F.2d 811, 815 (9th Cir. 1991), United States v. Richardson, 849 F.2d 439, 441 (9th Cir. 1985)).

173. *See id.*

174. *Tyrell*, 876 P.2d at 531.

175. *Id.* at 531 (citing Nix v. Williams, 467 U.S. 431, 442-43 (1984) as a good discussion of deterrence).

176. *Id.* at 531-32 ("If it had turned out that the minor was not subject to a search condition, any contraband found in the search of the minor would have been inadmissible in court.").

reasoned that because of this exclusion, police will continue to use great care to establish probable cause to search.[177]

This argument is misguided, particularly in light of the court's complete refusal to adopt the same kind of "knowledge first" rule for juvenile probation searches as exist with adults.[178] This "search first and ask questions later" policy[179] may in fact defeat the deterrent purpose that the majority relied upon in reaching its conclusion. The deterrent purpose will not be furthered by police and courts becoming involved with larger numbers of searches which result in inadmissible evidence. By bringing more cases to trial which are then dismissed because of insufficient evidence, after suppression, law breaking could be increased by individuals willing to take their chances with dismissal.

The majority's reasoning stressed the interests of police efficiency and judicial economy.[180] However, because police officers can now "get lucky" on a warrantless search, if the youth turns out to be on probation, police may be encouraged to make warrantless searches of juveniles.[181] Consequently, the number of suppression hearings could increase if prosecutors attempt to use this "later discovered" evidence.[182] Contrary to the court's proffered goal, this will increase rather than lessen police and judicial workloads.

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177. *Id.* at 531-32. The majority assumes that the possibility of exclusion of evidence when the juvenile is not subject to a search condition provided sufficient incentive to avoid improperly invading the privacy of other. *Id.*

178. *See* People v. Gallegos, 397 P.2d 174, 177-78 (Cal. 1964) (Schauer, J., dissenting), for a discussion of the dangers of allowing a "search first-ask later" policy.

179. *In re* Tyrell J., 876 P.2d 519, 537 (Cal. 1994) (Kennard, J., dissenting).

180. *See id.* at 531-32. The majority discusses the sufficiency of the incentives to law enforcement officers to try to avoid improper searches. *Id.*

181. *Id.* at 532. Justice Kennard states: "[t]oday's holding offers police officers and incentive to search any juvenile despite the lack of probable cause and a warrant, for if it later turns out that the juvenile has a probation search condition, the fruits of the search will be admissible in court." *Id.*

182. *Id.* "[The majority's] holding offers police officers an incentive to search any juvenile despite the lack of probable cause and a warrant . . ." *Id.* at 537. If this result is realized, the numbers of suppression hearings will clearly increase.

VII. CONCLUSION

In *In re Tyrell J.*, the California Supreme Court strayed from the United States Supreme Court's interpretation of the Fourth Amendment.[183] The California Supreme Court removed the requirement of "prior knowledge" of the searching officer when a juvenile is detained.[184] The court broadened the standards previously required to show proof of a "reasonable belief" in the presence of contraband.[185] Additionally, the *In re Tyrell J.* court reinterpreted existing protocol for probation searches by allowing searches by police officers uninvolved in the rehabilitation process.[186] The California Supreme Court thus moved closer to finding justification for limiting other rights of California citizens.[187] The broadening of the "special needs" exception created a situation whereby an exception can swallow the entire rule.[188]

Additionally, in *In re Tyrell J.*, the court was presented with a novel opportunity to clarify some of the ongoing confusion surrounding the juvenile justice system.[189] Instead of

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183. *See* U.S. v. Leon, 468 U.S. 897 (1984); *see also* Griffin v. Wisconsin, 483 U.S. 868 (1987); Mapp v. Ohio, 367 U.S. 643 (1960). These decisions involve reasoning whereby the United States Supreme Court carved out exceptions to the exclusionary rule found within the Fourth Amendment. The exceptions are very precisely worded and narrowly drawn. For discussion on these exceptions, *see supra* notes 126, 26, & 31-32 and accompanying text. In contrast, the California Supreme Court in *In re* Tyrell J., 876 P.2d 519 (Cal. 1994), painted an exception with a much broader stroke. They admitted evidence from a juvenile probationer's search conducted by an officer ignorant of the search conditions.

184. *Tyrell*, 876 P.2d at 521. The California Supreme Court acknowledged a split among lower courts as to whether an officer ignorant of the juvenile probationer's status was justified in conducting a warrantless search. *Id.* In validating Tyrell's search, the court removed any knowledge requirement.

185. *See supra* notes 149-52 and accompanying text. The *Tyrell* court sidestepped the *Griffin*, 483 U.S. 868, requirement that the police have a "reasonable belief" in the presence of contraband *before* the search is commenced. *Id.* (emphasis added). The result of this is a broadening of the "reasonableness standard." *See id.*

186. *See supra* notes 169-70 and accompanying text.

187. *See* Bill Kisliuk, *Police Given More Power to Search Juvenile Suspects; Court OKs Illegal Search, Youth Was on Probation*, THE RECORDER, July 19, 1984, at 1 ("You are not going to see any cases that extend the Fourth Amendment from the California Supreme Court at this point.").

188. *See id.* at 2 (stating the opinions of several San Francisco defense attorneys on the future ramifications of the *Tyrell* decision).

189. *See* Charles W. Thomas & Shay Bilchik, *Criminal Law: Prosecuting Juve-*

meeting that challenge, the court perpetuated the protective and ineffective program of the "child savers."[190] It appears that the children of California must look elsewhere for "justice."

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niles in Criminal Courts: A Legal and Empirical Analysis, 76 J. CRIM. L. 439 at 457 (1985). The authors discuss the substantial changes occurring within the juvenile justice system and the lack of clarity as to what direction is being taken. *Id.*

190. Roger B. McNally, *Nearly a Century Later: the Child Savers - Child Advocates and the Juvenile Justice System*, 33 JUV. & FAM. CT. J. 47 (1982).

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