

**In re Ian C.**

(March 8, 2001) \_\_ Cal.App.4th \_\_

**ISSUE**

May a juvenile be searched as an incident to a . custodial arrest. if he will be transported to a curfew center?

**FACTS**

Just after midnight, a San Jose police officer saw Ian loitering with a group of minors in an area known for drug trafficking. When the officer determined that Ian was 16-years old. and, therefore, in violation of San Jose. s curfew ordinance. he transported him to a local curfew center where his parents would be notified to pick him up.

Upon arrival at the center, the officer conducted a . routine. cursory search of Ian and found four small bags of marijuana.

**DISCUSSION**

The People contended the search of Ian was a lawful search incident to arrest. Ian contended that because he was not technically under . arrest,. the search was unlawful. The court disagreed.

The United States Supreme Court has ruled that officers may conduct a search incident to an arrest if the suspect will be transported to a jail, police station, detox facility, or other place of detention.<sup>1</sup> California courts have ruled that, for purposes of determining whether a search incident to arrest is permitted, minors will be deemed under . arrest. if they have been taken into temporary custody for the purpose of driving them home or to school, or if they will be taken into protective custody.<sup>2</sup>

Consistent with these rulings, the court in Ian C. ruled that minors who have been lawfully detained for a curfew violation, and who will be transported to a curfew center, may also be searched as an incident to the . arrest.

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<sup>1</sup> United States v. Robinson (1973) 414 US 218, 235; Gustafson v. Florida (1973) 414 US 260, 265.

<sup>2</sup> See In re Demetrius A. (1989) 208 Cal.App.3d 1245, 1248; In re Humberto O. (2000) 80 Cal.App.4th 237; In re Charles C. (1999) 76 Cal.App.3d 420.