

# Tennessee police have more power to search without warrants

## *State Supreme Court ruling affects parolees, probationers*

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Tennessee police officers now have more leeway to conduct warrantless searches of the 61,000 Tennesseans on probation or parole, attorneys say.

A state Supreme Court decision, handed down Thursday, represents the first firm ruling on the issue. At the heart of the case was a Union City parolee whose home was searched by police working on a hunch and a tip that she was selling drugs.

Legal observers say the court has eased the burden on law enforcement to justify searches of people who are not in jail but still under judicial oversight.

"On balance, as long as it is used in a reasonable way, I think it is a good decision," said David Raybin, a Nashville criminal defense attorney and former prosecutor. "Properly used, it's a good tool for law enforcement."

In the state Supreme Court ruling, Justice Cornelia Clark wrote that people on probation or parole should not expect the same degree of legal privacy enjoyed by private citizens who have not been convicted of a crime. Exactly how the ruling will affect other cases probably won't be known until other counties start applying it, said Jeff Henry, executive director of the Tennessee District Public Defenders Conference.

"We're concerned about any case that appears to limit the rights people have" under the federal and state constitutions, Henry said.

In the ruling, the Supreme Court noted that probationers are more likely than the average person to commit crimes. The opinion cites a 2005 Tennessee Department of Correction report that found half of Tennesseans on parole in 2000 wound up back in jail within three years. That does not mean they should be subjected to arbitrary or harassing searches, the ruling states.

Justice Sharon G. Lee expressed concern in a dissenting opinion that the ruling takes too many rights away from people subject to searches that aren't based on reasonable suspicion of wrongdoing. She was the lone dissenter on the five-member court.

### **Case leads to decision**

Charlotte Yvonne Turner was convicted of drug charges and endangerment in Kentucky in 2002 and paroled in 2005. She moved to Obion County, Tenn., later that year.

In April 2007, an officer who knew Turner heard she was selling cocaine. Later that month, the officer pulled Turner over for not wearing a seat belt. He later admitted that the seat-belt violation was a pretext for pulling Turner over. His real concern was drugs.

He searched Turner during the stop and found no drugs, but \$975 in cash. Because they suspected she was selling drugs, officers searched her home without a warrant and found a loaded handgun. Turner was charged with being a felon in possession of a handgun, but a trial judge said the search of her home wasn't lawful, and the Court of Criminal Appeals upheld the ruling. The state Supreme Court ordered that ruling overturned and sent the case back to the trial court.