STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-08

Authority of Community Corrections Officers to Conduct Searches

Question

Do community corrections officers have authority to conduct searches of individuals sentenced to community corrections? If not, may a court grant those officers authority to conduct searches of an individual sentenced to probation or community corrections as a condition of the offender's sentence?

Opinion

No. The Tennessee Department of Correction has the sole authority to supervise and direct the community corrections program and establish standards according to which community corrections grantees and their employees must operate. Under the current standards, community corrections officers do not have authority to conduct searches. A court may impose conditions on an individual who is sentenced to community corrections, including requiring the individual to consent to searches of his home or property. But a court may not order or authorize a community corrections officer to conduct a search of an offender if the officer lacks authority to do so.

ANALYSIS

The Community Corrections Act of 1985 established an alternative to incarceration for non-violent felony offenders and other felony offenders who have "special needs" that "could be best served in the community, rather than in a correctional institution." Tenn. Code Ann. § 40-36-106(a),(c). The "primary purpose" of the Act was to establish a means to punish these offenders "in front-end community based alternatives to incarceration, thereby reserving secure confinement facilities for violent felony offenders." State v. Griffith, 787 S.W.3d 340, 341 (Tenn. 1990) (quoting Tenn. Code Ann. § 40-36-103(1)). Under the Act, a court may sentence a defendant who meets the eligibility requirements to community corrections as an alternative to incarceration, and may prescribe any additional terms and conditions with which the individual must comply. Tenn. Code Ann. § 40-36-106(e).

The Tennessee Department of Correction (TDOC) administers the community corrections program across the state. Id. § 40-36-105(1). TDOC "[d]evelop[s] minimum standards, policies and administrative rules . . . for the statewide implementation" of community corrections. Id. § 40-36-105(5). Local communities apply for funds to implement a proposed community corrections plan pursuant to a process established by TDOC, id. § 40-36-304(a),(b), and TDOC reviews these plans and provides the local community with grant funding, which may be used only as specified in the Act, id. §§ 40-36-105(7), 40-36-302, 40-36-303. TDOC must "[c]onduct an annual program evaluation of all programs once per year or as often as needed to ensure program accountability," id. § 40-36-105(8), and, to remain eligible for continued funding, "a recipient must substantially

comply with the standards and administrative regulations of [TDOC] defining program effectiveness," *id.* § 40-36-305(a). If TDOC determines that a participating community is not complying with its local plan or the minimum standards established by TDOC, then TDOC can require the grant recipient to correct the deficiencies in the program. *Id.* § 40-36-305(d). TDOC may suspend all or part of the funding to a local program if it fails to correct these deficiencies. *Id.* The local body may hire staff to administer the community corrections program, but all employees must "meet minimum qualifications as set forth by [TDOC] in statewide administrative regulations." *Id.* § 40-36-202(b),(c).

The 1985 Act thus gives TDOC the authority and responsibility to establish the standards to which local community corrections programs—and their employees and officers—must adhere. Accordingly, the authority of an employee of a local community corrections program to conduct a search of an offender's home or property depends on the standards and regulations established by TDOC.

Under the current standards, TDOC requires grantees administering supervision programs to "have a written policy and procedure relative to searches which clearly states" that the grantee is "precluded from searching an offender's home or property." Tenn. Dep't of Correction Community Corrections Program Standards S4.03 (May 1, 2017). Employees and staff of local community corrections programs are not provided any independent statutory authority under the Act.

In short, under the controlling standards established by TDOC pursuant to its statutory authority, community corrections employees and officers do not have authority to conduct searches of the homes or property of offenders under their supervision.

A court may, under the applicable statute, require individuals sentenced to community corrections to consent to regular searches of their person or property as a condition of their sentence. Tenn. Code Ann. § 40-36-106(e)(1) (authorizing the court to sentence an eligible defendant to community corrections "under the additional terms and conditions as the court may prescribe"). The U.S. Supreme Court and the Tennessee Supreme Court have concluded that offenders sentenced to parole or probation have a reduced expectation of privacy and may be required to consent to searches of their person and property as a condition of their probation or parole. *See Samson v. California*, 547 U.S. 843 (2006); *United States v. Knights*, 534 U.S. 112 (2001); *State v. Turner*, 297 S.W.3d 155 (Tenn. 2009). A "community corrections sentence, as a practical matter, closely resembles that of probation." *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). Accordingly, offenders sentenced to community corrections may be required to submit to searches in the same way as offenders sentenced to probation and parole.

The court, however, does not have authority to require such searches to be conducted by community corrections officers or to empower local community corrections officers to conduct searches of individuals sentenced to community corrections or probation. Community corrections officers, unlike the TDOC officers who supervise probationers and parolees, are not necessarily "law enforcement officers" and are not required to undergo the same training as TDOC officers. *See* Tenn. Code Ann. § 4-3-609(a) (permitting the TDOC Commissioner to designate department employees as law enforcement officers who have the authority to carry weapons and perform law enforcement duties); *id.* § 40-28-301(6) (defining "probation and parole officer" as including only

those appointed or employed by TDOC); *id.* §§ 40-28-602 to 40-28-605 (defining the qualifications and authorities of probation and parole officers). The legislature granted TDOC, not the judiciary, the authority and responsibility to administer the community corrections program statewide and to establish the rules that govern the operation of each local community corrections program.

TDOC has determined that local grantees supervising offenders should not be permitted to conduct searches of those offenders' homes and property. The court lacks the authority to alter TDOC's determination or to make exceptions to it. The court has statutory authority only to determine the appropriate sentence and conditions to be imposed on an individual offender; it lacks authority to direct how that sentence shall be administered by law enforcement or the local community correction program.

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