EFiled: Mar 18 2026 10:20AM EDT
Filing ID 78767397
Case Number 425,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALTON CANNON, Defendant Below-Appellant, v. STATE OF DELAWARE, Plaintiff Below-Appellee.	)	No. 425, 2025 ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE ID Nos. 1704012804, 2111008670

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

OPENING BRIEF OF *AMICUS CURIAE*

COLLINS PRICE WARNER WOLOSHIN

Patrick J. Collins, ID No. 4692
8 East 13th Street
Wilmington, DE 19801
(302) 655-4600

Amicus Curiae

Dated: March 18, 2026

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

NATURE OF PROCEEDINGS

Alton Cannon, a Tier III sex offender from a long-ago conviction, was convicted of two counts of Failure to Register after a bench trial last year. Although not ordered to do so by the Court, Probation and Parole placed a GPS ankle monitor on Mr. Cannon. In a motion for sentence modification, he argued that 11 *Del. C.* § 4121(u), which requires GPS monitoring for Tier III sex offenders during "their probation," does not apply to the probation he is currently serving.

This *amicus* brief asserts that 11 *Del. C.* § 4121(u) requires a GPS locator during the term of probation following the offense placing the offender on the registry, not every probationary sentence in the offender's future.

Procedural history leading to this appeal

Mr. Cannon is a Tier III sex offender by way of a guilty plea to Unlawful Sexual Contact First Degree in 1998.[1] His sentence of five years in prison has long been completed.[2]

In 2007, the Governor signed into law a new subsection of our sex offender registration statute. 11 *Del. C.* § 4121(u) states, "notwithstanding any provision of this Section or Title to the contrary, any Tier III sex offender being monitored at

[1] *State v. Cannon*, 2000 WL 1610746 at *1 (Del. Super. Oct. 24, 2000).
[2] *Id.*

Level IV, III, II, or I, shall, as a condition of their probation, wear a GPS locator paid for by the probationer."[3]

A grand jury indicted Mr. Cannon on August 21, 2017 on a single count of Failure to Properly Report as Registered Sex Offender.[4] On June 5, 2023, another grand jury indicted him for the same offense.[5]

On February 26, 2025, after a thorough hearing, the trial judge granted Mr. Cannon's request to proceed *pro se* with standby counsel on both cases.[6] Mr. Cannon then waived his right to a jury trial.[7]

On June 23, 2025, the trial judge found Mr. Cannon guilty in both cases.[8] The Court sentenced him to Level II probation for each offense.

Mr. Cannon files a motion to modify his sentence.

On September 10, 2025, Mr. Cannon filed a motion for modification of sentence.[9] Shorn of its sovereign citizen surplusage, the motion asked for credit time to be applied to his sentence. More relevantly to this appeal, Mr. Cannon sought removal of the GPS monitoring device placed on him by Probation and Parole.

---

[3] 11 *Del. C.* § 4121(u).
[4] A25.
[5] A26.
[6] A3; D.I. 17; A16; D.I. 42.
[7] A4; D.I. 22; A17; D.I. 46.
[8] A7; D.I. 42; A20; D.I. 63.
[9] A31-52.

The State filed a response to the motion on September 22, 2025.[10] The State took no position on Mr. Cannon's GPS issue, deferring instead to the discretion of Probation and Parole.[11]

The Superior Court denied Mr. Cannon's motion on September 23, 2025.[12] As to the GPS monitoring, the Court found that § 4122(u) "required DOC to employ a GPS device to supervise Cannon for the duration of his probation."[13]

Mr. Cannon appeals to this Court.

Mr. Cannon appealed the Superior Court's denial of his motion. He applied to represent himself; this Court remanded for a hearing on his request.[14] On January 23, 2026, the Superior Court, after a hearing, found that Mr. Cannon's request to represent himself was made knowingly, intelligently, and voluntarily.[15]

The State filed a motion to affirm.[16] According to the State, the plain language of the statute mandating GPS monitoring requires only that the offender be a Tier III sex offender and be on probation.[17]

---

[10] A53-56.
[11] A55.
[12] A57-58.
[13] A58.
[14] A66-69.
[15] A9-11; D.I. 63; A22-23; D.I. 86.
[16] A59-65.
[17] A61-62.

This Court denied the State's motion to affirm.[18] This Court appointed the undersigned attorney as *amicus curiae* to file briefs in support of Mr. Cannon's position that § 4121(u) applies only to the probationary sentence for the offense that resulted in the registry requirement.[19] This is *amicus curiae's* opening brief.

[18] A71-72.
[19] A71.

SUMMARY OF ARGUMENT

I. THE SUPERIOR COURT ERRED IN FINDING THAT THE GPS TRACKING REQUIREMENT IN 11 *DEL C.* § 4121(u) APPLIES TO A SUBSEQUENT SENTENCE AFTER THE OFFENDER HAS COMPLETED THE PROBATION FOR THE UNDERLYING SEX OFFENSE.

Since the enactment of 11 *Del. C.* § 4121(u) in 2007, Tier III sex offenders have been fitted with GPS trackers upon release from prison to probation. Fair enough. But Delaware Probation and Parole and the Superior Court go farther than that by requiring GPS tracking of these offenders for any probationary sentence in the future.

For example, Mr. Cannon was never GPS-tracked for his long-ago sex offense that put him on the registry. When he was sentenced to probation after conviction for two Failure to Register charges, Probation and Parole placed a tracker on him despite the Superior Court not ordering it to do so. The Superior Court then denied Mr. Cannon's motion to remove the GPS tracker, giving rise to this appeal.

This brief presents three bases for this Court to hold that § 4121(u)'s GPS tracking requirement applies only to the qualifying sex offense and not subsequent offenses.

First, the plain language of the subsection, when read in the context of the entirety of the statute, makes clear that the General Assembly intended § 4121(u) to apply only to the probation arising from the qualifying sex offense.

Second, if the subsection is ambiguous, it should be interpreted by this Court in a manner that does not yield absurd or unreasonable results. It makes no sense for an offender to be untracked for years or decades only to have tracking imposed for an unrelated subsequent offense.

Third, GPS tracking for sex offenders for later, unrelated offenses is an unreasonable search that violates the Fourth Amendment. While the Chancery Court (with this Court affirming) has held that GPS tracking sex offenders upon release from prison for their sex offense is constitutionally permissible, the same cannot be said of GPS tracking for unrelated offenses that occur years later.

This Court should find that § 4121(u) applies only to the initial release to probation for the qualifying sex offense and not any later offense. Such a holding would reverse the Superior Court's denial of Mr. Cannon's motion.

Finally, this brief asserts that even if Mr. Cannon's sentence concludes while this appeal is ongoing, that this Court should nevertheless decide this appeal. This issue is not only capable of repetition yet evading review but also is a matter of public importance.

STATEMENT OF FACTS

Enactment of House Bill 100 in 2007

On March 28, 2007, sponsors of H.B. 100 introduced the bill. It was assigned to the Judiciary Committee in the House.[20] The bill amended 11 *Del. C.* § 4121 by moving subsection (u) to (v) and inserting a new subsection (u):

> (u) Notwithstanding any provision of this Section or Title to the contrary, any Tier III sex offender being monitored at Level IV, III, II, or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer.[21]

The Synopsis stated, "this Bill provides for GPS tracking for Tier III sex offenders while they are on probation supervised by the Department of Correction."[22]

On May 2, 2007, the House Judiciary Committee released the bill with five members voting on its merits and no unfavorable votes.[23] The minutes of the committee meeting are brief; the general discussion was that Tier III offenders are the worst offenders and that the GPS tracking will provide information as to where the offenders are.[24] Representative Wagner, the primary sponsor, stated that the

---

[20] A73.
[21] *Id*. The subsection was amended to make the payment requirement inapplicable to juvenile Tier III sex offenders. 11 *Del. C.* § 4121(u).
[22] *Id.*
[23] A80.
[24] *Id.*

purpose of the tracking was not to arrest offenders if they neared a prohibited area, but rather to act as a deterrent.[25]

No discussion occurred about whether the tracking was intended for the probation immediately following the offender's sex offense or whether it applied to any offense for the rest of the offender's time on the registry.

On June 5, 2007, the House took up the bill. Debate was brief. Representative Wagner stated that Tier III sex offenders are the most dangerous sex offenders.[26] There were only a few questions, regarding payment for the trackers and how the GPS data would be used. Representative Wagner responded that sometimes the offenders are homeless, and authorities do not know where they are.[27] Finally, Representative Wagner noted that Representative Schwartzkopf and she had discussed the bill; Representative Schwartzkopf's understanding is that very few Tier III sex offenders ever get out of jail – "but if they do, this is the way we can track them."[28]

Again, no discussion occurred as to the scope of the bill and whether it applied to Tier III sex offenders who had completed their sentences and were on probation for some other case.

---

[25] *Id.*
[26] A84.
[27] *Id.*
[28] A85.

The House voted 39-0 in favor of H.B. 100, with two not voting.[29]

The Senate took up the bill on June 30, 2007. Debate lasted only a few minutes. One senator asked whether there should be a fiscal note with the bill; Senator Sokola explained that the probationer is required to pay for the GPS.[30] Senator Sokola noted that the GPS requirement may get some of the unnecessary prison population out of the prisons while still protecting the public.[31]

No discussion occurred as to the scope of the bill and whether it applied to probationers serving the sentence for their sex offense or whether the GPS requirement applied to any subsequent probationary sentence.

The Senate voted 20-0 in favor of the bill, with one senator absent.[32]

The Governor signed the bill into law on July 12, 2007.[33]

---

[29] A74.
[30] A87.
[31] *Id.*
[32] A74.
[33] *Id.*

ARGUMENT

I. THE SUPERIOR COURT ERRED IN FINDING THAT THE GPS TRACKING REQUIREMENT IN 11 *DEL C.* § 4121(u) APPLIES TO A SUBSEQUENT SENTENCE AFTER THE OFFENDER HAS COMPLETED THE PROBATION FOR THE UNDERLYING SEX OFFENSE.

A. Question Presented

Whether the Superior Court erred in finding that the GPS tracking requirements for Tier III sex offenders extends beyond the original sentence and to any subsequent sentence for the offender. This question was preserved when Mr. Cannon filed a Motion for Reduction and Modification of Sentence on May 26, 2021.[34]

B. Scope of Review

This Court reviews questions of law, including the interpretation of statutes, *de novo*.[35] When interpreting a statute, this Court attempts to ascertain and give effect to the General Assembly's intent.[36]

---

[34] A288-293.
[35] *Rehoboth Bay Homeowners' Association v. Hometown Rehoboth Bay, LLC*, 252 A.3d 434, 441 (Del. 2021).
[36] *ACW Corp. v. Maxwell*, 242 A.3d 595, 599 (Del. 2020).

C. Merits of Argument

Applicable legal precepts

If a statute is not ambiguous, then the plain meaning of the statutory language controls.[37] A statute is ambiguous if it is "reasonably susceptible to different interpretations, or if giving a literal interpretation to the words of the statute would lead to an unreasonable or absurd result that could not have been intended by the legislature."[38] The United States Supreme Court and this Court have held, "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed."[39]

This Court has had occasion to consider legal issues regarding 11 *Del. C.* § 4121(u). In *Smith v. State*, this Court held that the sex offender registration requirement itself did not violate the *ex post facto* clause because the community notification provisions are not punitive in nature.[40] In 2011, this Court applied that same reasoning to find the GPS tracking requirement did not violate the *ex post facto* clause, either.[41]

---

[37] *Wiggins v. State*, 227 A.3d 1062, 1066 (Del. 2020).
[38] *Arnold v. State*, 49 A.3d 1180, 1183 (Del. 2012).
[39] *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011).
[40] *Smith v. State*, 919 A.2d 539, 541 (Del. 2006).
[41] *Hassett v. State*, 2011 WL 446561, at *1 (Del. Feb. 8, 2011).

In 2016, § 4121(u) survived a Fourth Amendment challenge. In *Doe v. Coupe*,[42] plaintiff sex offenders asserted that the mandated GPS monitoring amounted to an unreasonable search prohibited by the federal and Delaware constitutions.[43] Applying the "special needs" rubric applicable to probationers, the Chancery Court found that § 4121(u) did not violate either constitution.[44] This Court affirmed.[45]

All three *Doe* defendants were probationers or parolees serving a term of probation after release from incarceration on their qualifying sex offenses.[46] As such, no Delaware Court has decided a constitutional challenge to the applicability of § 4121(u) to subsequent probationers like Mr. Cannon.

When read in context with the entire statute, § 4121(u) is not ambiguous; it requires GPS monitoring for Tier III sex offenders only during the term of their qualifying sentence, not all sentences into the future.

The subsection requiring GPS monitoring states, in relevant part,

> (u) Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer.[47]

---

[42] 143 A.3d 1266 (Del. Ch. 2016).
[43] *Id.* at 1268.
[44] *Id.* at 1279-1280.
[45] *John Doe No. 1 and John Doe No. 2 v Coupe*, 2017 WL 837689 (Del. Mar. 3, 2017).
[46] *Id.* at 1269.
[47] 11 *Del. C.* § 4121(u).

Although perhaps inelegantly worded, the phrase "their probation" clearly refers to the probation for the offense that resulted in the registry requirement. The meaning of a statute must, in the first instance, be sought in the language in which the act is framed.[48] A review of the entire statute makes clear that the subsection refers only to the probation for the sex offense.

The section first defines a sex offender by establishing what offenses qualify for sex offender status.[49] Next, the statute requires the sentencing court to inform the offender of the tier level to which the offender is assigned.[50]

The statute establishes that an offender who pleads guilty to a lesser included offense of a qualifying offense is still designated a sex offender.[51] The statute provides that if the person "has violated the terms of *that person's own probation or parole* as set forth in paragraph (a)(4)(f)," the offender shall be sentenced to the tier for the originally charged offense.[52]

The statute also permits application by Tier III offenders to reduce their risk assessment tier to Tier II, if 25 years have passed from their last day of Level V or IV time. However,

---

[48] *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011).
[49] 11 *Del. C.* § 4121(a)(4).
[50] 11 *Del. C.* § 4121(b).
[51] 11 *Del. C.* § 4121(a)(4)(e).
[52] 11 *Del. C.* § 4121(c)(emphasis added).

> If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred.[53]

This subsection makes clear that the only penalty imposed on Tier III offenders who subsequently commit unrelated offenses is that it restarts the clock on their ability to petition for a tier reduction. This demonstrates that the General Assembly had a clear intent to impose a sanction for Tier III offenders who commit new offenses – restarting the clock for any future tier designation petition.

The fact that the General Assembly imposed a specific sanction for future offenses in § 4121(e)(2)(a) but not in § 4121(u) is strong evidence that the General Assembly did not intend GPS monitoring to be applied to future probationary sentences.

As the foregoing demonstrates, when read in the context of the sex offender registration statute, the GPS requirement for Tier III offenders applies only during "their probation" – that is to say, the probation for their qualifying sex offenses. The entire statute imposes requirements on the offender *for the qualifying sex offense* and not for anything else. Moreover, the statute elsewhere never imposes

[53] 11 *Del. C.* § 4121(e)(2)(a).

any other sanction on those Tier III offenders who subsequently commit non-qualifying offenses, other than a delay of when they can apply for tier reduction.

The Delaware statute contains no language imposing GPS monitoring on future probation sentences; only one state does so in specific situations, while other states apply their statute to the qualifying offense only.

Section 4121(u) does not contain language specifying that the offender must wear a GPS monitor during any subsequent probation in the future. Certain other states address this issue head on by including such language in the statutory scheme. For example, in Florida, a sex offender of the highest category must wear a GPS monitor while on probation. If the offender is later convicted of a felony, the judge is not required to impose GPS monitoring. But if that offender violates that probation and is sentenced to a new term of probation, the Court must order GPS monitoring for the new probationary sentence.[54]

As such, in *Fields v. State*,[55] a sex offender who had completed her sentence was rearrested for a felony driving charge. She was placed on probation for that offense but then violated her probation.[56] The judge kept Fields on probation but imposed GPS monitoring. Fields appealed, arguing that a non-sexual offense

[54] Fla. Stat. § 948.063.
[55] 968 So. 2d 1032 (Fla 5th DCA 2007).
[56] *Id.* at 1033.

felony should not trigger monitoring. Applying the statute, the appellate court held that the statute applied squarely to Fields' case.[57]

Many states impose GPS monitoring as a condition of probation or parole, but it does not appear that any state court or probation office interprets their statutes as requiring GPS monitoring for future offenses.

For example, Tennessee imposes GPS monitoring as a "mandatory condition of release" for any person convicted of a serious sexual offense "for the full extent of that person's term of parole."[58]

In Massachusetts, the statute ties the GPS requirement directly to the sexually violent offense by requiring monitoring "at all times for the length of probation for any such offense."[59] The statute is not currently in effect, however, as the Massachusetts Supreme Court found it unconstitutional as applied.[60]

Other states have monitoring statutes that are like Delaware's, but those statutes are not interpreted to apply to future offenses. For example, West Virginia requires sexual predators to be monitored "as a condition of probation, parole, or unsupervised release."[61] In California, "a person who is required to register as a sex offender" must report to the parole office "within one working day following

---

[57] *Id.* at 1033-1034.
[58] Tenn. Code. Ann. § 40-39-303.
[59] Mass. Gen. Laws ch. 265 § 47.
[60] *Commonwealth v. Feliz*, 119 N.E. 3d 700 (Mass. 2019)
[61] W. Va. Code § 62-11-D-3(a) (2026).

release from custody" to have a GPS monitor installed.[62] Idaho law provides that "any person placed on probation or parole and who has been designated as a violent sexual predator" shall be GPS-monitored "for the duration of the person's probation or parole period."[63]

The statutes in West Virginia, California, and Idaho are like Delaware's in that they contain two elements: a high tier of sex offender status and being on probation. But there is no case or decision – at least that *amicus* can find – applying the statutes automatically to probations resulting from future convictions.

As such, it appears that Delaware is an outlier in its application of the GPS monitoring requirement to future terms of probation. Notably, as occurred in Mr. Cannon's case, GPS monitoring is not often ordered by the sentencing judge. Monitoring occurs because that is how Probation and Parole interprets the statute. In the *Doe v. Coupe* litigation, the director of Probation and Parole testified that he has "never given great thought to…whether it makes sense or doesn't make sense or whether we should or shouldn't [monitor all Tier III sex offenders using GPS]. It's a requirement, therefore, we do it."[64]

As a review of other state statutes and case law demonstrates, however, Delaware appears to be unique in its interpretation of the GPS monitoring statute.

---

[62] Cal. Penal Code § 3010.10.
[63] Idaho Code § 20-219.
[64] *Doe v. Coupe*, 143 A.3d 1266, 1270 (Del. Ch. 2016).

What little debate there was on § 4121(u) in the General Assembly tends to establish that it had no intent for the law to apply to future offenses.

During the debates on this bill, no senator or representative indicated that the new law would apply to terms of probation for future offenses. Indeed, the sponsor of the bill, Representative Wagner, made no mention of such applicability. According to Rep. Wagner, who had discussed the bill with Representative Schwartzkopf, "very few of them [Tier III sex offenders] will ever get out. But if they do, this is the way we can track them."[65]

This comment demonstrates that the sponsor of the bill believed that the vast majority of Tier III sex offenders never get out of prison and the few that do get released need to be tracked. The only reasonable inference is that the General Assembly never intended § 4121(u) to be applicable to future offenses committed by a Tier III sex offender.

Senator's Soloka's comment also indicates that the General Assembly never intended the statute to be interpreted as it currently is. Senator Sokola stated, "hopefully, we'll get some of our…unnecessary prison population away from the prisons and still protect the public."[66] Obviously, the senator was referring to Tier III sex offenders serving lengthy prison sentences for their original sex offense and not to offenders who are sentenced to probation for later, unrelated offenses.

---

[65] A85.
[66] A87.

As these comments demonstrate, the General Assembly had no intention to impose GPS monitoring on offenders who are sentenced to probation for later, unrelated convictions.

If the phrase "their probation" is ambiguous, it should be interpreted to mean the probation from the original qualifying sex offense; any other interpretation would lead to unreasonable and absurd results.

The phrase "their probation" within § 4121(u) is arguably ambiguous because it is reasonably susceptible to two different meanings. The statute could mean just the probation for the qualifying sex offense, or it could mean any probation in the future while the offender remains a Tier III offender.

A statute is ambiguous if it is reasonably susceptible to different interpretations or if a literal interpretation of its words would lead to an absurd or unreasonable result.[67] If one interpretation produces an unreasonable result, this Court may reject that interpretation in favor of one that produces a reasonable result.[68] The letter of the law must be strictly construed, but not "where the adherence to the letter would result in absurdity or injustice."[69]

One interpretation of the statute is that a Tier III sex offender must wear a GPS monitor during "their probation" – meaning the probation after serving prison time for a qualifying sex offense. The interpretation urged by the State is that the

---

[67] *Cornette v. State*, --- A.3d --- , 2026 WL 309253 at *4 (Del. Feb. 5, 2026).
[68] *Id.*
[69] *Reddy v. PMA Ins. Co*., 20 A.3d 1281, 1288 (Del. 2011).

subsection has only two requirements: the person is a Tier III sex offender, and the person is on probation.[70] As such, asserts the State, whenever those two elements are met, the probationer must be GPS-tracked.

The State's interpretation (which is the same as Probation and Parole's) should be rejected because it leads to absurd, unreasonable, and unjust results.

Tier III offenders, "the most dangerous of offenders," according to the bill's sponsor,[71] are not GPS-tracked at all after they complete probation. They have reporting requirements and face criminal liability for violating those requirements. But the authorities are not tracking their movements by satellite. However, if subsequently placed on any level of probation for any non-sex offense, they are GPS-tracked anew. This is an absurd and unreasonable result. The Tier III offender does not become more dangerous *as a sex offender* by being placed on probation for an unrelated offense.

Mr. Cannon's case provides a good example. He was never GPS-tracked when released from prison on his sex offense, because § 4121(u) did not yet exist. So, Mr. Cannon was not GPS-tracked for decades. He did not suddenly become more dangerous to the public as a sex offender in 2025 when he was convicted of new offenses that were not sex offenses.

---

[70] A62.
[71] A381.

The interpretation currently in use yields an absurd and unreasonable result and is not reflective of the General Assembly's intent. Had it been the intent, the bill would have been crafted to ensure that any subsequent offense resulting in probation would require GPS monitoring. The General Assembly declined to include such language in the bill. It would not have been logical anyway. There is no nexus or relationship between the dangerousness of a Tier III sex offender and whether they subsequently commit unrelated offenses. The offender's danger to the community is the same as before the unrelated offense – when the offender was not being tracked.

To the extent § 4121(u)'s "their probation" phrasing is ambiguous, it should be resolved to define "their probation" as the probation directly following to the underlying sex offense that created Tier III status. The Superior Court erred in finding otherwise and should be reversed.

Section 4121(u), as currently interpreted in Delaware, is unconstitutional as applied to Mr. Cannon and similarly situated probationers.

In *Grady v. North Carolina*,[72] the United States Supreme Court confirmed that the nonconsensual placement of a GPS monitor on a person's body effects a search within the meaning of the Fourth Amendment.[73] The *Grady* Court stopped short of determining whether such a search was unreasonable and instead

[72] 575 U.S. 306 (2015).
[73] *Id.* at 310.

remanded for further proceedings.[74] But years before *Grady*, in *Griffin v. Wisconsin*, the Supreme Court held that warrantless searches of probationers fall within an exception to the warrant requirement.[75] The *Griffin* Court recognized an exception when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."[76] According to the Court, a state's operation of a probation system falls within the special needs doctrine.[77]

In *Doe v. Coupe*, the Chancery Court embraced the special needs doctrine in its assessment of whether mandatory GPS monitoring of Tier III sex offenders serving the probationary portion of their sentences was reasonable.[78] The Court applied a three-part rubric set forth by the United States Supreme Court in *Vernonia School District 47J v. Acton*.[79] The *Vernonia* test is a means of considering the totality of the circumstances in a context-specific manner.[80] The Court must assess:

---

[74] *Id.*
[75] *Griffin v. Wisconsin*, 483 U.S. 868 (1987).
[76] *Id.* at 873 (internal citations omitted).
[77] *Id.* at 873-874.
[7878] *Doe v. Coupe*, 143 A.3d 1266, 1274 (Del. Ch. 2016).
[79] 515 U.S. 646 (1995)(holding that randomized drug testing as a condition of participation in scholastic athletics is reasonable under the Fourth Amendment).
[80] *Doe v. Coupe*, 143 A.3d at 1274.

- The nature of the privacy interest upon which the search at issue intrudes;
- The character of the intrusion complained of; and
- The nature and immediacy of the government concern at issue and the efficacy of the means for meeting it.[81]

The *Doe* Court held that GPS-monitoring is constitutionally acceptable for Tier III offenders released from prison and serving the probationary period of their sentences. Each of the plaintiffs were serving probation or parole after being released from prison for their sex offenses.[82] But as applied to Tier III offenders who have completed their sentences and are on probation for unrelated offenses, 11 *Del. C.* § 4121(u) does not pass constitutional muster.

The nature of the privacy interest intruded upon

The *Doe* Court found relevant that the plaintiffs "voluntarily accepted Section 4121(u)'s GPS monitoring requirement as a condition of their probation and parole to avoid further prison time."[83] Because plaintiffs made this bargain, reasoned the Court, they did not have a legitimate expectation of privacy.[84]

But for Tier III sex offenders who have already completed their sentences, that exchange of prison time for onerous probation with GPS monitoring is in the past. Once the GPS bracelet is off, those offenders have much the same privacy

[81] *Id*., *citing, Vernonia School District 47J v. Acton*, 515 U.S. at 654-660.
[82] *Doe* at 1269.
[83] *Id*. at 1275.
[84] *Id.*

interests as anyone else. The only intrusion on their privacy interests, arguably, is a requirement to periodically report their addresses to the authorities. Otherwise, a Tier III sex offender who has completed his or her sentence has an expectation of privacy that society would recognize as legitimate.

Character of the privacy intrusion

The *Doe* Court recognized that GPS monitoring is a significant intrusion of privacy that causes embarrassment, shame, physical pain, and occupational problems.[85] Nevertheless, the Court found that, given all the other requirements of sex offender status, the "incremental imposition" of GPS monitoring is not unduly burdensome.[86] The Court again reasoned that being on probation with a GPS is less of an intrusion than being in prison.[87]

While the Court's rationale for finding the privacy intrusion not overly burdensome for sex offenders serving their original sentences is sound and was affirmed by this Court, it makes no sense as applied to subsequent probations. The intrusion caused by GPS – constant 24 hour monitoring with all its attendant discomfort, shame, and employment challenges – is grossly disproportionate for any sentence other than the one originally imposed.

---

[85] *Id.*
[86] *Id.* at 1276.
[87] *Id.*

The nature and immediacy of the governmental concern

The *Doe* Court found that the defendants established that GPS monitoring "has at least some benefits" by reducing the risk of harm and recidivism by Tier III sex offenders.[88] Even though the Court noted that it was possible that sex offenders recidivate less frequently, the State is not required to use the least restrictive means of furthering its goal of reducing recidivism.[89]

The government has no immediate, or even legitimate, concern in monitoring Tier III sex offenders who have completed their probationary sentences. After all, once they complete those sentences, they are not GPS-tracked unless they commit a new offense, as the statute is currently interpreted. The fact that offenders can go untracked for years, decades, or forever after serving their original sentence negates any purported government interest in reducing recidivism through GPS tracking. Mr. Cannon's case provides a good example. He was never GPS-tracked, having completed his sentence before § 4121(u) was enacted. Decades passed. The government presumably had the same interest in reducing recidivism for all the years he was not GPS-tracked. No justification exists for placing him on a GPS tracker because he was sentenced to probation for a new,

[88] *Id.* at 1277.
[89] *Id.* at 1279.

unrelated offense. He is no more dangerous or likely to recidivate than he was before he was placed on probation in 2025.

An assessment of the special needs factors demonstrates that GPS tracking of Tier III sex offenders who commit subsequent offenses constitutes an unreasonable search. GPS tracking is a draconian measure that invades privacy interests in many ways. And there is no legitimate government interest in GPS tracking individuals who for years were left untracked. This constitutional violation is an independent basis for this Court to reverse the Superior Court's decision.

If Mr. Cannon completes his probation while this appeal is pending, this Court should nevertheless decide this issue.

The Superior Court sentenced Mr. Cannon to one year in prison followed by probation.[90] The Court gave him credit for 395 days previously served,[91] so Mr. Cannon was released to probation immediately. As such, there is a significant probability that this appeal may still be ongoing when Mr. Cannon completes his sentence.

This Court recognizes two exceptions to the mootness doctrine: an issue that is capable of repetition but evades review and an issue of public importance.[92] For

[90] A27. His sentence on the second case was one year of prison time with all that time suspended for probation.
[91] A57-58.
[92] *Burroughs v. State*, 304 A.3d 530, 539 (Del. 2023).

example, in *Burroughs v. State*, this Court considered an appeal regarding Delaware's statutory bail scheme even though the issue – pretrial cash bail – was mooted when Burroughs pled guilty and was sentenced. This Court nevertheless decided the appeal because the issues raised were of public importance and were capable of repetition yet evaded review.[93]

The interpretation of 11 *Del. C.* 4121(u) presents a similar timing problem. Many offenders, like Mr. Cannon, are sentenced to one year of probation from a suspended sentence or after prison time. By the time the defendant's motion is presented to Superior Court and denied, much of that year will have been used. Then, allowing for the typical time it takes to conduct briefing in this Court, it is highly likely that the appellant's sentence will be completed while the appeal is ongoing.

A case in point is the 2021 appeal in *Dammeyin Johnson v. State*.[94] Like Mr. Cannon, Mr. Johnson was a Tier III sex offender who was not being tracked. Then he was convicted of a drug dealing offense. When Mr. Johnson was released from prison to probation, Probation and Parole placed a GPS tracker on him. The Superior Court denied his motion to modify his sentence by removing the tracker.[95]

---

[93] *Id.*
[94] 269, 2021.
[95] ID No. 1609014541, D.I. 80.

On appeal, this Court ordered *en banc* argument for June 29, 2022.[96] But Mr. Johnson completed his sentence just before the argument. The day before the argument was to occur, the parties filed a stipulation of dismissal.[97]

In addition to evading review, the proper interpretation of § 4121(u) is a matter of public importance. It is of course important to the probationers who bear the burden and cost of GPS tracking. But it is also important for this Court to provide guidance to the State, the courts, and Probation and Parole so that this statutory issue can be conclusively resolved.

[96] 269, 2021, D.I. 22.
[97] D.I. 25.

CONCLUSION

Based on the foregoing, this Court should find that the GPS tracking required by 11 *Del. C.* § 4121(u) applies only to the probation for the offense resulting in the offender's placement on the sex offender registry and not to any offense in the future for which the offender is sentenced to probation. This Court should therefore find that the Superior Court erred in holding otherwise in Mr. Cannon's case and reverse the Superior Court's judgment.

COLLINS PRICE WARNER WOLOSHIN

/s/ Patrick J. Collins
Patrick J. Collins, ID No. 4692
8 East 13th Street
Wilmington, DE 19801
(302) 655-4600

Amicus Curiae

Dated: March 18, 2026