



ALAN WILSON  
ATTORNEY GENERAL

August 19, 2014

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Dear Mr. James:

We are in receipt of your letter requesting an opinion regarding the interpretation of Section 7-5-120(B)(3) of the South Carolina Code.<sup>1</sup> Specifically, you explain that, pursuant to the terms of Section 7-5-120(B)(3), a Fairfield County resident who was convicted of a felony was removed from the active voting rolls. Continuing, you explain that individual has now “completed his sentence and supposedly his probation but will be required to submit to tracking and monitoring for life.” In light of this you ask if “the requirement for lifetime tracking and monitoring [could] be considered as probation/parole and result in the individual’s disqualification for registering to vote, and voting?” Our response follows.

#### Law/Analysis

Section 23-3-540 of the South Carolina Code requires individuals “convicted of certain sex-related offenses” to “submit to electronic monitoring for the duration of the time the individual is required to remain on the sex offender registry.” In re: Justin B., 405 S.C. 391, 393, 747 S.E.2d 774, 775 (2013) (citing S.C. Code Ann. § 23-3-540(A)-(H) (Supp. 2012)). In some cases, such as the one mentioned in your letter, this results in electronic tracking and monitoring for life. E.g. In re: Justin B., 405 S.C. at 394, 747 S.E.2d at 775. As explained by our Supreme Court, the intent in drafting and passing this legislation, which as a whole is known as Jessica’s Law, is to “promote the state’s fundamental right to provide for the public health, welfare, and safety of its citizens” in light of the fact that “statistically, sex offenders pose a high risk of reoffending.” In re: Justin B., 405 S.C. at 405, 747 S.E.2d at 781 (citing S.C. Code Ann. § 23-3-400 (2007)); State v. Dykes, 403 S.C. 499, 507, 744 S.E.2d 505, 510 (2013) (concluding the “likelihood of re-offending” serves as the “core” of South Carolina’s electronic monitoring legislation). On multiple occasions our Supreme Court explained Section 23-3-540’s electronic tracking and monitoring requirements are, like sex offender registries, civil in nature. State v. Nation, 408 S.C. 474, ---, 759 S.E.2d 428, 432 (2014) (“Electronic monitoring is *not a*

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<sup>1</sup> Section 7-5-120(B)(3) of the Code explains “[a] person is disqualified from being registered or voting if he is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.” S.C. Code Ann. § 7-5-120(B)(3) (2013 Supp.).

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*punishment*, but a civil requirement.”) (internal quotations omitted) (emphasis added); In re: Justin B., 405 S.C. at 409, 747 S.E.2d at 783 (“[S]ection 23-3-540 is a civil remedy.”); Dykes, 403 S.C. at 506, 744 S.E.2d at 509 (“[S]atellite monitoring is predominantly civil.”); Smith v. Doe, 538 U.S. 84, 93 (2003) (holding that the imposition of restrictive measures on sex offenders adjudged to be potentially dangerous is a legitimate non-punitive governmental objective); see also Williams v. State, 378 S.C. 511, 515-16, 662 S.E.2d 615, 618 (Ct. App. 2008) (explaining sex offender registration laws do not constitute a criminal penalty) In re: Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003) (finding lifelong sex offender registry is non-punitive); State v. Walls, 348 S.C. 26, 30, 558 S.E.2d 524, 526 (2002) (concluding that sex offender registration is non-punitive in purpose). Stated differently, electronic tracking and monitoring is non-punitive and “does not impose an affirmative disability or restraint.” In re: Justin B., 405 S.C. at 406, 747 S.E.2d at 782.

With this in mind, we now return to your question—whether a requirement of lifetime tracking and monitoring, authorized pursuant to Section 23-3-540, could, like “probation or parole,” be considered part of an individual’s sentence for purposes of Section 7-5-120(B)(3). We believe it cannot.

As noted in your letter, Section 7-5-120(B)(3) prohibits a person convicted of a felony or offenses against election laws from registering to vote or voting until such an individual has served their sentence. S.C. Code Ann. § 7-5-120(B)(3). By its terms, Section 7-5-120(B)(3) explains that an individual’s sentence includes “probation and parole time unless sooner pardoned.” Id. However, as noted in your letter, Section 7-5-120(B)(3)’s terms do not specifically address the question of whether electronic tracking and monitoring should be treated as part of an individual’s sentence for purposes of registering to vote and voting.

In determining whether electronic tracking and monitoring should, like probation and parole, be considered part of an individual’s sentence for purposes of registering to vote and voting, we first note the Legislature, by failing to address this question within Section 7-5-120(B)(3), may have already provided an answer. E.g. Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (explaining the rule of statutory construction known as “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*” meaning “to express or include one thing implies the exclusion of another, or of the alternative” applies when ascertaining legislative intent). Indeed, had the Legislature wanted electronic tracking and monitoring to be included as part of an individual’s sentence for purposes of Section 7-5-120(B)(3), it clearly could have done so as it did with parole and probation. As a result, it could certainly be argued that the Legislature, by failing to require individuals to complete electronic tracking and monitoring prior to registering to vote and voting, intended to permit individuals subject to such requirements to both register to vote and vote.

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Moreover, because our Supreme Court has already determined electronic tracking and monitoring is civil, non-punitive and does not constitute an affirmative disability or restraint, we believe these requirements, unlike both parole and probation, cannot be viewed as part of an individual's sentence for purposes of 7-5-120(B)(3). As noted above, our Courts have consistently explained electronic monitoring and tracking is civil in nature and unlike a criminal sentence, is "not a punishment." Nation, 408 S.C. at ---, 759 S.E.2d at 432 ("Electronic monitoring is *not a punishment*, but a civil requirement.") (internal quotations omitted) (emphasis added); In re: Justin B., 405 S.C. at 409, 747 S.E.2d at 783 ("[S]ection 23-3-540 is a civil remedy."); Dykes, 403 S.C. at 506, 744 S.E.2d at 509 ("[S]atelite monitoring is predominantly civil."). This is substantially different from parole, which our Courts have explained "means a leave of absence from prison during which the prisoner remains in legal custody" as well as probation, defined as "an act of grace or clemency" allowing a "convicted person" to avoid imprisonment. See Sanders v. MacDougall, 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964) ("The word parole . . . means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence."); see also 26 S.C. Jur., Probation, Parole, and Pardon, § 8 (citing Black's Law Dictionary (5th Ed.)). Accordingly, because South Carolina law does not treat electronic tracking and monitoring as part of an individual's sentence, as it does parole and probation, we believe electronic tracking and monitoring cannot be read as being part of an individual's sentence for purposes Section 7-5-120(B)(3) of the Code. As a result, an individual who has committed "a felony or offense against the election laws" but has served their sentence, including any probation or parole, would, consistent with the terms of Section 7-5-120(B)(3), not be disqualified from either registering to vote or voting.

### Conclusion

In conclusion, it is the opinion of this Office that because Section 7-5-120(B)(3) of the South Carolina Code does not include electronic tracking and monitoring as part of an individual's sentence, we believe, consistent with South Carolina law defining electronic tracking and monitoring as civil and non-punitive, that Section 7-5-120(B)(3)'s use of the phrase "probation and parole" does not include electronic tracking and monitoring. As a result, an individual subject to such a requirement, who has, as indicated in your letter, completed their sentence and any applicable terms of probation or parole, is not disqualified from either registering to vote or voting pursuant to Section 7-5-120(B)(3).

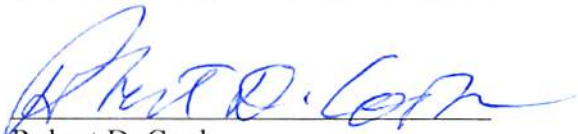
Sincerely,



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Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General