

78715-8

No. 33808-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

FILED  
APR 11 2005  
CLALLAM COUNTY  
SUPERIOR COURT

JOHN P. ANDERSON

&

FRANK R. NORDLUND,

Appellant's,

vs.

STATE DEPARTMENT OF CORRECTIONS,

Respondent.

ON APPEAL FROM THE CLALLAM COUNTY SUPERIOR COURT  
CAUSE NO. 05-2-00446-3

THE HONORABLE KENNETH WILLIAMS, JUDGE

APPELLANT'S OPENING BRIEF

JOHN P. ANDERSON, DOC#811192  
FRANK R. NORDLUND, DOC#912173  
CLALLAM BAY CORRECTIONS CENTER  
1830 Eagle Crest Way  
CLALLAM BAY, WA 98326-9723

TABLE OF CONTENTS

	<u>PAGE</u>
A. ASSIGNMENTS OF ERROR . . . . .	1
No. 1. THE TRIAL ERRED IN ENTERING THE OCTOBER 28, 2005, FINAL ORDER DISMISSING APPELLANT'S WRIT OF REVIEW FOR DECLARATORY AND INJUNCTIVE RELIEF AND CORRESPONDING COMPLAINT FOR DAMAGES BASED ON ITS MEMORANDUM OPINION FILED AUGUST 29, 2005.	
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR . . . . .	1
1. Did the trial court error when it found that RCW 72.11.020 was newer and more recent than RCW 72.09.480?	
2. Did the trial court error when it found that RCW 72.11.020 was more specific than RCW 72.09.480(2) & (7)?	
3. Is there a conflict between RCW 72.09.480(2) & (7) and Chapter 72.11 RCW requiring them to be harmonized so as to give effect to each provision?	
4. Does RCW 72.09.480(2) provide an 'exception' for inmates sentenced to life without parole (LWOP) which specifically prohibits the Department of Corrections from applying a 20% LFO deduction and LFO priorities from Chapter 72.11 RCW to subsection (7) inmates (i.e., inmates sentenced to death or LWOP in RCW 72.09.480(7))?	
C. STATEMENT OF THE CASE . . . . .	1
D. SUMMARY OF ARGUMENT . . . . .	5
E. ARGUMENT . . . . .	9
F. CONCLUSION . . . . .	23
CERTIFICATE OF SERVICE/MAILING PROOF OF SERVICE . . . . .	24

TABLE OF AUTHORITIES

PAGE

STATE CASES:

Berger v. Sonneland,  
144 Wn.2d 91, 26 P.3d 257 (2001) . . . . . 19

Biggs v. Vail,  
119 Wn.2d 129, 830 P.2d 350 (1992) . . . . . 20

Bravo v. Dolsen Cos.,  
125 Wn.2d 745, 888 P.2d 147 (1995) . . . . . 20

Burton v. Lehman,  
153 Wn.2d 415, 103 P.3d 1230 (2005) . . . . . 20

Citizens for Clean Air v. City of Spokane,  
114 Wn.2d 20, 785 P.2d 447 (1990) . . . . . 10

Davis v. Dep't of Licensing,  
137 Wn.2d 957, 977 P.2d 544 (1999) . . . . . 20

Dep't of Ecology v. Campbell & Gwinn, LLC,  
146 Wn.2d 1, 43 P.3d 4 (2002) . . . . . 16

Smith v. N.Pac.Ry.Co.,  
7 Wn.2d 652, 110 P.2d 857 (1941) . . . . . 20

State ex rel. Graham v. San Juan County,  
102 Wn.2d 311, 686 P.2d 1073 (1984) . . . . . 10

State v. J.P.,  
149 Wn.2d 444, 69 P.3d 318 (2003) . . . . . 11

State v. Keller,  
143 Wn.2d 267, 19 P.3d 1030 (2001) . . . . . 20

State v. Landrum,  
66 Wn.App. 791, 832 P.2d 1359 (1992) . . . . . 10

State v. McCraw,  
127 Wn.2d 281, 898 P.2d 838 (1995) . . . . . 18

State v. S.P.,  
110 Wn.2d 886, 756 P.2d 1315 (1988) . . . . . 16

TABLE OF AUTHORITIES

PAGE

STATE CASES: (Continued)

W. Telepage, Inc. v. City of Tacoma Dep't of Fin.,  
140 Wn.2d 599, 998 P.2d 884 (2000) . . . . . 19

STATUTORY PROVISIONS:

RCW 72.09.111(2) . . . . . 7

RCW 72.09.480 . . . . . 1

RCW 72.09.480(2) . . . . . 1

RCW 72.09.480(2)(a-e) . . . . . 12

RCW 72.09.480(3) . . . . . 8

RCW 72.09.480(7) . . . . . 1

RCW 72.09.480(8) . . . . . 8

RCW 72.11.020 . . . . . 1

Chapter 72.11 RCW:  
 72.11.010; 020; 030 & 040 . . . . . 1

LEGISLATIVE HOUSE & SENATE BILLS:

ESHB 1542, Ch. 252 Laws of 1989 [RCW 72.11]  
 New Sections 22, 23, 24, 25 & 26 . . . . . 9

SSB 6402, Ch. 126 § 1, Laws 2002:  
 Amending RCW 72.11.020 . . . . . 9

Final Bill Report,  
 SSB 6402, Ch. 126 § 1, Laws 2002 . . . . . 9

SE2SHB 2010, Ch. 19, Laws 1995  
 New Section 8 [Creating RCW 72.09.480] . . . . . 10

SB 5283, Ch. 165 § 1, Laws 1997  
 Amending RCW 72.09.480 . . . . . 10

TABLE OF AUTHORITIES

PAGE

LEGISLATIVE HOUSE & SENATE BILLS: (Continued)

ESSB 5936, Ch. 261 § 2, Laws 1998 Amending RCW 72.09.480 . . . . .	10
E2SHB 1143, Ch. 325 § 1, Laws 1999 Amending RCW 72.09.480 . . . . .	10
SHB 1571, Ch. 271 § 3, Laws 2003 Amending RCW 72.09.480 . . . . .	10
Final Bill Report, SHB 1571, Ch. 271 § 3, Laws 2003 . . . . .	10

OTHER AUTHORITIES:

DOC Policy 200.000 [Effective 11/03/2003] . . . . .	3
DOC Policy 200.000a1 [Deductions] . . . . .	3
DOC Policy 200.000a2 [Deduction Matrix] . . . . .	3
DOC Policy 200.000a3 [Sub Accounts] . . . . .	3

A. ASSIGNMENTS OF ERROR

- No. 1. THE TRIAL ERRED IN ENTERING THE OCTOBER 28, 2005, FINAL ORDER DISMISSING APPELLANT'S WRIT OF REVIEW FOR DECLARATORY AND INJUNCTIVE RELIEF AND CORRESPONDING COMPLAINT FOR DAMAGES BASED ON ITS MEMORANDUM OPINION FILED AUGUST 29, 2005.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court error when it found that RCW 72.11.020 was newer and more recent than RCW 72.09.480?
2. Did the trial court error when it found that RCW 72.11.020 was more specific than RCW 72.09.480(2) & (7)?
3. Is there a conflict between RCW 72.09.480(2) & (7) and Chapter 72.11 RCW requiring them to be harmonized so as to give effect to each provision?
4. Does RCW 72.09.480(2) provide an 'exception' for inmates sentenced to life without parole (LWOP) which specifically prohibits the Department of Corrections from applying a 20% LFO deduction and LFO priorities from Chapter 72.11 RCW to subsection (7) inmates (i.e., inmates sentenced to death or LWOP in RCW 72.09.480(7))?

C. STATEMENT OF THE CASE

Procedural Facts

On May 9, 2005, Appellant's filed a WRIT OF REVIEW FOR DECLARATORY AND INJUNCTIVE RELIEF AND COMPLAINT FOR DAMAGES FOR UNLAWFUL SEIZURE OF MONEY AND VIOLATION OF STATE LAWS. CP 192. Appellant's also filed MOTION FOR ORDER GRANTING CLASS CERTIFICATION AND MEMORANDUM IN SUPPORT,

which has not yet been heard by the court.

On May 9, 2005, the Honorable Kenneth Williams, Judge, ordered the Respondent to show cause. At a motion hearing on June 10, 2005, Judge Williams ordered briefing from each party on the merits of the statutory violation claim. Each party filed memorandums regarding their respective positions. CP 34, 37, 42, 134 & 139.

On August 29, 2005, Judge Williams issued a MEMORANDUM OPINION denying Appellant's statutory violation claim and dismissing the complaint. CP 22. Appellant's filed a timely NOTICE OF APPEAL and MOTION FOR COURT TO ISSUE FINAL ORDER. CP 7. On October 28, 2005, Judge Williams entered a FINAL ORDER DISMISSING ACTION. CP 5.

#### Material Facts

On May 6, 2004, the Department of Corrections (DOC) notified "All Offenders" that its Trust Account System (TAS) was updated to comply with 2003 legislative changes made to RCW 72.09.480 that require collection of LFO's. CP 42 - APPENDIX B, p. 16-23.

On May 7, 2004, the DOC's notified "All CBCC Inmates" that a recent improvement to the TAS enabled the system to deduct LFO's required by RCW 72.09.480. CP 42 - APPENDIX B, p. 15.

On May 20, 2004, the DOC's delayed the collection of LFO's from "other deposits" (money received from family and friends) until September 1, 2004. The delay was made so the DOC's could "conduct a review of [its] statutory obligations" under the statute. CP 42 -

APPENDIX B, p. 14.

On July 27, 2004, the DOC's notified its 'OCO Extended Management Team' that the collection of LFO's under RCW 72.09.480 would resume September 1, 2004. CP 42 - APPENDIX B, p. 12-13. On September 1, 2004, the DOC's re-instituted its LFO collection policy pursuant to RCW 72.09.480. (DOC Policy 200.000 (a1-a3) / Effective 11/03/2003).

On September 16, 2004, Appellant Nordlund grieved the DOC's for unlawfully collecting LFO's under RCW 72.09.480. On appeal the DOC's investigated and determined the funds were unlawfully collected. CP 42 - APPENDIX D, p. 30-31. The DOC's arranged for the funds to be refunded. Id. On appeal to DOC Headquarters, the DOC's assigned an Offender Trust Account Specialist to review the grievance. The Specialist's response indicates Nordlund's "LFO profile within the trust accounting system was modified to comply with RCW 72.09.480." CP 42 - APPENDIX D, p. 32. Accordingly, the DOC's discontinued collecting LFO's from Nordlund's 'other deposits.'

On January 4, 2005, in response to numerous similar grievances, Crystal Corliss, Financial Analyst II, of inmate accounts at Clallam Bay Corrections Center (CBCC), e-mailed Daniel M. Lewis, Financial Analyst V, at DOC Headquarters, asking whether a decision had been made concerning LFO's and LWOP offenders. Victoria Barshaw, DOC Trust Accounting Manager, responded to the e-mail in the following manner:

From the AG - yes we have. But OCO [DOC Office of Correctional Operations] management will make no move. So here is how you answer all of them as they come through:

As per RCW 72.11.020 mandates deductions for legal financial obligations without exception. Collections will continue until LFO is paid in full.

CP 42 - APPENDIX A, p. 2.

After this e-mail the DOC's developed a boiler-plate response for all offender grievances on the subject. In relevant part, the boiler-plate response reads:

The information gathered indicates that we have an Attorney General's Opinion that LFO's will be taken from all offenders who owe them. Attached is a copy of RCW 72.11.020 that they are using for the authorization for such deductions. It specifically states that LFO's will be taken "without exception."

CP 42 - APPENDIX A, p. 5-6. See also CP 42 - APPENDIX A, p. 3-10; APPENDIX F, p. 36-37; and APPENDIX H, p. 44 (responses are all similar and undoubtably taken from the January 4, 2005, V.Barshaw e-mail).

Once the Barshaw e-mail was issued, the Respondent began to allege the complained of funds were seized pursuant to RCW 72.11.020 -- instead of RCW 72.09.480, which is the statute the deduction policy was implemented under. CP 42 - APPENDIX B, p. 12-23.

The DOC's reversed it position in Nordlund's original grievance that the funds were not to be seized (CP 42 - APPENDIX D, p. 31-32), and began a statewide practice of seizing 20% of 'other deposits' (funds in addition to wages and gratuities) from LWOP offenders for the purpose of LFO's. CE 192 - APPENDIX G, p. 36-75; CP 145 & 179; CP 42 - APPENDIX A, p. 1-10; APPENDIX F, p. 35-38; and APPENDIX H, p. 43-44.

Appellant's Anderson and Nordlund filed suit on behalf of all

similarly situated individuals in the Clallam County Superior Court, and this appeal followed.

D. SUMMARY OF ARGUMENT

Appellant's Anderson and Nordlund are prisoners incarcerated at the Clallam Bay Corrections Center in Clallam Bay, Washington, pursuant to criminal sentences of life without the possibility of parole or release (LWOP). Thus, by definition, they are 'subsection 7 inmates' as the term is used in RCW 72.09.480(2) & (7). Appellant's contend the State Department of Corrections has unlawfully collected legal financial obligations from funds they received in addition to wages or gratuities in violation of RCW 72.09.480(2) and (7).

Appellant's contend that RCW 72.09.480 is plain and unambiguous, is newer and more specific than RCW 72.11.020 and, thus, prevails over the LFO priorities established in Chapter 72.11 RCW. Additionally, Appellant's contend the inclusion of Chapter 72.11 in RCW 72.09.480(2), which provides an "exception" for subsection (7) inmates, eliminates application of Chapter 72.11 to RCW 72.09.480(7). See attached FLOW CHART summarizing argument. Moreover, the inclusion (i.e., actual reference) of Chapter 72.11 RCW in RCW 72.09.480(2) harmonizes the statutes, giving effect to each provision without conflict.

The Legislature created two classes of inmates. Inmates with release dates (All Other <sup>non-LWOP</sup>Inmates) -- and inmates without release dates (LWOP Inmates). RCW 72.09.480(2) applies to 'All Other <sup>non-LWOP</sup>Inmates' and

includes a 20% LFO deduction and the LFO priorities established in Chapter 72.11 RCW. So much is plain from the statute's language. RCW 72.09.480(7) applies to 'LWOP Inmates' and DOES NOT include a 20% LFO deduction or the LFO priorities established in Chapter 72.11 RCW. Again, so much is plain from the statute's language. The fact that the Legislature created an exception and separate subsection for 'LWOP Inmates,' with different statutory language which DOES NOT include a 20% LFO deduction or the LFO priorities established in Chapter 72.11 RCW, evinces a distinction between the classes and a clear intent to exclude 20% LFO deductions from funds received "in addition to wages or gratuities" by LWOP inmates.

The distinction between each class is equally clear. The first class, "All Other <sup>non-LWOP</sup> Inmates," fall under RCW 72.09.480(2) and have release dates. Therefore, a mandatory 20% LFO deduction is in their best interest. Being released debt free, or owing less, is an advantage that will significantly reduce the chance of recidivism. Moreover, those being released can obtain gainful employment which provides a foreseeable method of paying the LFO debt off. The second class, "LWOP Inmates," fall under RCW 72.09.480(7) and they do not have release dates. Therefore, there is no actual interest in paying the LFO debt. Moreover, because they are imprisoned for life, they have no ability to obtain gainful employment leaving no foreseeable method of ever paying the LFO debt off. And any nominal funds received "in addition to wages or gratuities" from a family member or friend on a periodic

basis would likewise not provide a foreseeable method of paying the LFO debt off. Additionally, it would be unreasonable to expect that a nominal sum sent from a family member or friend on a periodic basis would operate as a source for paying the LFO debt.

This reasoning makes sense in that the statute targets "funds in addition to wages or gratuities," because these funds are usually a nominal amount sent from an "outside source," i.e., a family member or friend on a periodic basis for the purpose of purchasing hygiene products from an inmate store. For example, compare RCW 72.09.111 which conversely targets "wages and gratuities," where the only deduction LWOP inmates are not subject to is a 10% deduction for an inmate savings account. See RCW 72.09.111(2)(Any person sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, shall be exempt from the requirement under subsection (1)(a)(ii),(b)(ii), or (c)(ii)). Obviously, if your an LWOP inmate "earning at least minimum wage," the Legislature believed you are capable of paying your LFO debt. See RCW 72.09.111(1)(a)(iv)(20% LFO deduction applies to all inmates earning at least minimum wage). The Legislature obviously believed there is a distinction between funds received "in addition to wages or gratuities" from an 'outside source' on a periodic basis under RCW 72.09.480(7), and "wages and gratuities" earned under RCW 72.09.111. So much is plain from the separate statutes dealing with each subject, because the 20% LFO deduction applies under one statute (RCW 72.09.111),

but not the other (RCW 72.09.480(7)).

Moreover, this reasoning is supported by 72.09.480(3), (7) and (8) -- dealing with "funds from a settlement or award resulting from a legal action." Note that the LFO priorities from Chapter 72.11 RCW are included in and apply to "All Other Inmates" under subsection (3), but not to "LWOP Inmates" under subsection (7). Instead, subsection (8) applies to "LWOP Inmates," which, again, DOES NOT include the LFO priorities from Chapter 72.11 RCW. The intent to exclude LWOP inmates from the LFO priorities established in Chapter 72.11 RCW is clearly expressed in the plain and unambiguous language of the statute.

Consequently, the DOC's application of the LFO priorities established in Chapter 72.11 RCW and 20% LFO deduction to Appellant's funds which were received "in addition to wages or gratuities" violated RCW 72.09.480(2) and (7), and this Court should reverse the trial court's dismissal of this action.

#### Terms Not Defined By Statute

1. "Funds in addition to wages or gratuities." (RCW 72.09.480 §§ (2) & (7)). While not specifically defined by statute the term means: "Funds received by inmates sent from a family member or friend (incoming funds from an outside source), such as a check or money order sent directly to the inmate through the mail." Additionally, under DOC Policy 200.000 the term is considered under "Other Deposits" for account deductions.

See Final Bill Report, SHB 1571, C 271 L 03, p. 2.

2. "Other Deposits." Under DOC Policy 200.000 & Deductions Matrix 200.000a2, means: "Money received from family and friends."

See CP 42 - APPENDIX B, p. 12-14 & 22.

E. ARGUMENT

(Issue Nos. 1 & 2)

- 1/2. RCW 72.09.480 IS NEWER AND MORE SPECIFIC THAN RCW 72.11.020, AND THE TRIAL COURT ERRED WHEN IT FOUND RCW 72.11.020 WAS THE NEWER AND MORE SPECIFIC STATUTE.

RCW 72.11.020 was enacted in 1989 under ESHB 1542, Ch. 252, Laws of 1989, New Sections 22, 23, 24, 25 & 26, p. 21-22. The trial court incorrectly found that RCW 72.11.020 was enacted in the year 2002 and was the Legislature's most recent statement on the issue.<sup>1</sup> CP 22, p. 2 & 10. From this incorrect finding, the court reasoned that the rules of construction generally require the court to look to the language of the latest legislative enactment to determine the intent of the legislature. CP 22, p. 10. Using this standard, the court found RCW 72.11.020 was the Legislature's most recent statement on the issue, specifically giving the DOC's authority to disperse funds from inmate accounts for satisfying legal financial obligations. Id. To support this finding the court went on to state that the statute in its last words indicates clearly that "court ordered legal financial obligations shall be paid." Id.

The court's finding is critically flawed because RCW 72.09.480

---

<sup>1</sup> RCW 72.11.020 was amended in the year 2002 to include the following language "Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception." SSB 6402, Ch. 126 § 1, Laws of 2002. However, the trial court correctly found that this "mandate is not at issue ... as it applies only to wages, gratuities, and benefits from prison employment ... [and] ... reimbursement of work release expenses to the Department." CP 22, p. 5; See also Final Bill Report SSB 6402, summary, p. 1.

was originally enacted in 1995, amended in 1997, 1998, 1999 & 2003, and is, therefore, the Legislature's newest and most recent statement on the issue. SE2SHB 2010, Ch. 19, Laws of 1995 New Section 8, p. 10; SB 5283, Ch. 165, Laws of 1997 § 1, p. 1-2; ESSB 5936, Ch. 261, Laws of 1998 § 2, p. 2; E2SHB 1143, Ch. 325, Laws of 1999 § 1, p. 1-3; and SHB 1571, Ch. 271, Laws of 2003 § 3, p. 5-7. The trial court was clearly wrong when it declared RCW 72.11.020 newer.

Applying the reasoning employed by the court to RCW 72.09.480, the Legislature's most recent statement on funds received "in addition to wages or gratuities," renders a diametric result.

Assuming there is a conflict between the statutes, the rules of statutory construction direct courts, if possible, to reconcile them so as to give effect to each provision. State v. Landrum, 66 Wn.App. 791, 796, 832 P.2d 1359 (1992). In Landrum the court recognized that the amendment to RCW 13.40.190(1) conflicted with the definition of 'restitution' in former RCW 13.40.020(17). Landrum, 66 Wn.App. at 795-96. The court applied two cannons of statutory construction to resolve the conflict: (1) 'the statutory provision that appears latest in order of position prevails unless the first provision is more clear and explicit than the last,' and (2) 'the latest enacted provision prevails when it is more specific than its predecessor.' Id. at 796-97 (citing State v. ex rel. Graham v. San Juan County, 102 Wn.2d 311, 320, 686 P.2d 1073 (1984); Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 37, 785 P.2d 447 (1990)). The court observed that the

amendment permitting restitution for counseling was later in position (i.e., because RCW 13.40.190 comes after RCW 13.40.020) and was 'clear and specific as to counseling'; moreover, the court noted, the 1987 amendment to RCW 13.40.190(1) had occurred later in time than the 1977 enactment of the definition. Landrum, 66 Wn.App. at 797. The Landrum court thus gave effect to the 1987 amendment to RCW 13.40.190(1), even though the definition section in effect in 1987 limited restitution to three categories of expenses, none of which included psychological counseling. A detailed account of the Landrum decision can be found in State v. J.P., 149 Wn.2d 444, 449-50, 69 P.3d 318 (2003).

In State v. J.P. the court applied the standard used in Landrum. The court in Landrum was able to say that RCW 13.40.190(1) was more specific because, unlike the pre-1990 definition of 'restitution,' RCW 13.40.190(1) specifically addressed counseling costs. In State v. J.P. the court reached an opposite conclusion, holding that "while RCW 13.40.190(1) addresses counseling costs, the 1990 amendment to the definition repeats the language from RCW 13.40.190(1) and then makes it more specific by narrowing the focus to counseling costs for sex offenders. Thus, because RCW 13.40.020(22) is more specific than RCW 13.40.190(1), the canon of statutory construction that grants deference to the higher-numbered provision did not apply. Applying the second canon of construction relied on in Landrum which says that the more recent provision prevails if it is more specific than its predecessor, the court noted that RCW 13.40.020(22) was enacted three

years after the amendment to 13.40.190(1) and, as discussed, is more specific. Consequently, under the principles of construction relied on in Landrum, the court held "The RCW 13.40.020(22) statement must prevail, limiting restitution for counseling to sex offenses." State v. J.P., 149 Wn.2d at 450-51.

To construe RCW 72.09.480(2) & (7) and Chapter 72.11 RCW, the canons of statutory construction utilized in Landrum and State v. J.P. must be applied. Under the first canon of construction, the provision coming later in the chapter (72.11) must prevail so long as it is more specific than the provision occurring earlier in the sequence (72.09). The initial step in applying this canon is determining which of the two provisions is more specific. State v. J.P., 149 Wn.2d at 450.

RCW 72.09.480(2) and (7) specifically target funds received "in addition to wages or gratuities," and distinguishes between inmates with and without release dates. Both subsections specify the purpose for each deduction and the exact percent to be deducted. CP 42 - APPENDIX B, RCW 72.09.480(2)(a-e) & (7), p. 17-18. Funds received by inmates in subsection (2) are subject to a 20% LFO deduction and the LFO priorities established in Chapter 72.11 RCW. RCW 72.09.480(2)(d). Subsection (2) also provides an "exception" for subsection (7) inmates, a separate provision dealing with LWOP inmates which does not contain a 20% LFO deduction or the LFO priorities established in Chapter 72.11 RCW. See the attached FLOW CHART.

RCW 72.11.020 targets "funds of a convicted person ... that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person." This provision does not distinguish between inmates with and without release dates; it does not distinguish between "wages and gratuities" or "funds in addition to wages and gratuities"; and nor does it specify a percent to be deducted.

While RCW 72.11.020 addresses funds "that are sent or brought ... or earned," the newer and more specific RCW 72.09.480(2)&(7) narrows the focus to funds received "in addition to wages or gratuities." The narrow focus also distinguishes between "All Other <sup>non-LWOP</sup> Inmates" and "LWOP Inmates," by providing an exception and separate subsection which eliminates application of a 20% LFO deduction and the LFO priorities established in Chapter 72.11 RCW. See attached FLOW CHART (Note that the statutory language subjecting subsection (2) inmates to the LFO priorities established in Chapter 72.11 and 20% LFO deduction is not present for subsection (7) inmates). Thus, because RCW 72.09.480(2)&(7) is more specific than RCW 72.11.020, the canon of statutory construction that grants deference to the higher-numbered provision cannot apply here.

The second canon of construction says that the more recent provision prevails if it is more specific than its predecessor. RCW 72.09.480 was enacted six years after RCW 72.11.020 and, as discussed, is clearly more specific. Consequently, under the principles of

statutory construction used by the trial court, the RCW 72.09.480(2)&(7) provision must prevail, limiting the Department's authority to collect from funds received 'in addition to wages and gratuities' to that which is specified in each provision. Under RCW 72.09.480(2)(a-e), when an <sup>non-LWOP</sup> inmate receives funds "in addition to wages or gratuities," the Department can collect 20% for LFO's and subject the funds received to the LFO priorities established in Chapter 72.11 RCW. Under RCW 72.09.480(7), when an LWOP inmate receives funds "in addition to wages or gratuities," the Department can, likewise, collect only what the provision allows, i.e., 5% for crime victims compensation; 20% for cost of incarceration; and 15% for child support payments; the Department CANNOT collect 20% for LFO's, 10% for an inmate savings account, or subject the funds received to the LFO priorities established in Chapter 72.11 RCW, because subsection (7) simply does not allow it. Consequently, the Department's application of RCW 72.11.020 and 20% LFO deduction to Appellant's funds received "in addition to wages and gratuities" violated RCW 72.09.480(2)&(7), and this Court should reverse the trial court's opposite ruling.

(Issue No. 3)

3. THERE IS NO CONFLICT BETWEEN RCW 72.09.480(2)&(7) AND CHAPTER 72.11 RCW, BECAUSE EACH PROVISION INTERNALLY AND EXTERNALLY REFERENCES EACH OTHER, HARMONIZING THEM AS A WHOLE.

While not directly announcing there was a conflict, the trial court noted that "The rules of statutory construction direct Courts,

if possible, to reconcile statutes so as to give effect to each provision." As previously discussed, the court cited State v. Landrum, a case dealing with the resolution of conflicts. CP 22, p. 10.

The enactment of RCW 72.09.480 created two subsections which specifically target funds received "in addition to wages or gratuities," and distinguishes between inmates with and without release dates, i.e., "All Other <sup>non-LWOP</sup> Inmates" and "LWOP Inmates." RCW 72.09.480(2)&(7); E2SHB 1143, Ch. 325 Laws 1999, § 1, p. 2-3; SHB 1571, Ch. 271 Laws 2003, § 3, p. 5-7. Essentially, two classes of inmates were created.

RCW 72.09.480(2) targets the first class and the statutory language includes the LFO priorities established in Chapter 72.11 RCW and a 20% LFO deduction. RCW 72.09.480(2)(d); See also attached FLOW CHART. Inmates in subsection (2) are subject to the deductions mandated therein, "except as provided in subsection (7) of this section." Id. FLOW CHART - Italicized & Underlined Language. This statutory language eliminates subsection (7) inmates from the deductions mandated in subsection (2), and provides a separate subsection governing deductions for LWOP inmates (i.e., the second class). RCW 72.09.480(7).

RCW 72.09.480(7) likewise targets funds received "in addition to wages and gratuities," but the statutory language DOES NOT mandate (include) a deduction for the LFO priorities established in Chapter 72.11 RCW or a 20% LFO deduction. See attached FLOW CHART; Cf. RCW 72.09.480(2) & (7). Because the Legislature factored Chapter 72.11 RCW into RCW 72.09.480(2) and then eliminated subsection (7) inmates

from the mandates of subsection (2), there is no conflict between RCW 72.09.480(2)&(7) and Chapter 72.11 RCW.

Harmonization requires "every provision [to] be viewed in relation to other provisions and harmonized if at all possible to [e]nsure proper construction of every provision." State v. S.P., 110 Wn.2d 886, 890, 756 P.2d 1315 (1988); Department of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Here, the statutory language in subsection (2) which states "except as provided in subsection (7) of this section" harmonizes each provision. Internally RCW 72.09.480(2) & (7) are harmonized with each other because subsection (2) provides an "exception" for inmates in subsection (7), which eliminates application of the mandates in subsection (2) to subsection (7) inmates. Externally RCW 72.09.480(2)&(7) are harmonized with Chapter 72.11 because subsection (2) simultaneously includes Chapter 72.11 and creates an exception that eliminates subsection (7) inmates from the mandates of subsection (2). So much is plain from the unambiguous language of RCW 72.09.480(2)&(7) because one "includes" Chapter 72.11 and the other does not (subsection (7)).

Other provisions within the same statute also demonstrate harmonization. For example, RCW 72.09.480(3) targets funds received "from a settlement or award resulting from legal action," but nevertheless provides the exact same statutory language eliminating subsection (7) inmates from the deductions mandated in subsection (3). The language is plain and unambiguous, <sup>non-LWOP</sup> inmates in subsection (3) who

receive funds resulting from a legal action are subject to the 'priorities established in chapter 72.11 RCW.' However, LWOP inmates from subsection (7), who receive funds resulting from a legal action, are governed by RCW 72.09.480(8) and they are only subject to "Deductions of 5% for crime victims compensation and 20% for cost of incarceration"; they ARE NOT subject to the LFO priorities established in Chapter 72.11 RCW. Again, so much is plain from the language of RCW 72.09.480(3), (7) & (8), because subsection (3) "includes" chapter 72.11, whereas subsection (8) does not.

Had the Legislature intended Chapter 72.11 to apply to subsection (7) it would have added the statutory language "and the priorities established in chapter 72.11 RCW" to subsection (7) -- like it appears in subsections (2) and (3). Or, better yet, the Legislature could have eliminated the language "except as provided in subsection (7)" from subsection (2), and deleted subsection (7) altogether; making subsection (2) and the LFO priorities in Chapter 72.11 apply to "ALL INMATES" without a distinction.

However, implicit in the language "except as provided in subsection (7)" and creation of a separate subsection, which does not contain chapter 72.11 RCW or a 20% LFO deduction (i.e., the same statutory language), is the fact that the Legislature intended a distinction. Campbell, 146 Wn.2d at 11 (the court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, the court must give effect to that plain

meaning as an expression of legislative intent). Moreover, in judicial interpretation of statutes, the first rule is 'the court should assume that the legislature means exactly what it says. Plain words do not require construction.' State v. McCraw, 127 Wn.2d 281, 288, 898 P.2d 838 (1995).

Here, RCW 72.09.480(2)&(7) is plain and unambiguous. When an inmate, except as provided in subsection (7), receives any funds 'in addition to wages or gratuities,' the funds shall be subject to the LFO priorities established in chapter 72.11 RCW and a 20% LFO deduction. RCW 72.09.480(2)(d). However, when an inmate in subsection (7) receives any funds 'in addition to wages or gratuities,' the funds shall be subject to deductions of 5% for crime victims compensation, 20% for cost of incarceration, and 15% for child support payments. The LFO priorities established in chapter 72.11 and a 20% LFO deduction "DO NOT" apply to subsection (7). RCW 72.09.480(7). Consequently, because subsection (2) includes chapter 72.11 and an exception which eliminates subsection (7) inmates from the deductions mandated in subsection (2), the statutes are 100% harmonized. CP 34.

(Issue No. 4)

4. THE STATUTORY LANGUAGE "except as provided in subsection (7) of this section," FROM RCW 72.09.480(2), PROHIBITS THE DOC FROM APPLYING THE MANDATES OF SUBSECTION (2) TO SUBSECTION (7), ELIMINATING APPLICATION OF CHAPTER 72.11 RCW TO FUNDS RECEIVED BY SUBSECTION (7) INMATES.

When comparing the statutes, the trial court recognized that "There

is no mandatory deduction of 20% for LFO's [in subsection (7)] as set out in subsection (2)." CP 22, p. 6-7. The trial court also noted that the statutes "[M]ake it clear that the DOC is not mandated to take a deduction for purposes of paying LFO's from the accounts of those serving sentences of life in prison without possibility of parole, or those under sentence of death." CP 22, p. 9; RCW 72.09.480(7). Additionally, the court noted there was no indication in the legislative history "which would indicate why the Legislature chose a different and additional mandatory deduction relating to LFO's for those inmates not within the definitions of Subsection (7)." CP 22, p. 9; Cf. RCW 72.09.480(2)&(7).

The dispositive question here is, "Does DOC Policy 200.000, requiring a 20% LFO deduction and application of Chapter 72.11 RCW, to funds received in addition to wages or gratuities by LWOP inmates, violate RCW 72.09.480(7), which specifically does not mandate application of Chapter 72.11 RCW or a 20% LFO deduction for LWOP inmates?"

Statutory interpretation is a question of law that court's review de novo. Berger v. Somneland, 144 Wn.2d 91, 104-05, 26 P.3d 257 (2001); W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wn.2d 599, 607, 998 P.2d 884 (2000). Where statutory language is plain and unambiguous, a court will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of a contrary interpretation by an administrative agency. Burton v. Lehman, 153

Wn.2d 416, 103 P.3d 1230 (2005)(citing Bravo v. Dolsen Cos., 125 Wn.2d 745, 752, 888 P.2d 147 (1995); Smith v. N.Pac.Ry.Co., 7 Wn.2d 652, 664, 110 P.2d 851 (1941)); See also Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 544 (1999)(because plain words do not require construction, courts do not construe an unambiguous statute).

In contrast, an ambiguous statute requires judicial construction. A statute is ambiguous only if susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable. State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). If a statute is subject to more than one reasonable interpretation, the court should construe the statute to effectuate the legislature's intent. Davis, 137 Wn.2d at 963. Only where the legislative intent is not clear from the words of a statute may the court 'resort to extrinsic aids, such as legislative history.' Biggs v. Vail, 119 Wn.2d 129, 134, 830 P.2d 350 (1992).

Throughout this litigation, the dispute has focused on the meaning of two subsections within RCW 72.09.480. Because the provisions are plain and unambiguous, Appellant's contend that a 'plain language analysis' of each provision is sufficient to dispose of the question presented. E.g., Burton v. Lehman, 153 Wn.2d 416, Part IV(A)(Analysis of Statutory Violation). Each provision reads:

(2) When an inmate, except as provided in subsection (7) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities

established in Chapter 72.11 RCW:

- (a) 5% [for crime victims' compensation];
- (b) 10% [for a personal inmates savings account];
- (c) 20% [for cost of incarceration];
- (d) 20% [for legal financial obligations]; and
- (e) 15% [for child support payments].

(7) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds in addition to his or her gratuities, except settlement or awards resulting from legal action, the additional funds shall be subject to: Deductions of 5% to the public safety and education account for the purpose of crime victims' compensation, 20% to the department to contribute to the cost of incarceration, and 15% to child support payments.

RCW 72.09.480(2)(a-e) & (7)(emphasis in underline added). (The underlined language is the subject of the controversy); See also attached FLOW CHART.

The Respondent claims the "DOC must make 20% LFO deductions from the incoming funds of non-LWOP and non-death penalty inmates [RCW 72.09.480(2)(d)], but is authorized to make additional LFO deductions from their accounts so long as the accounts are not taken below the indigency standard [RCW 72.11.020]. Similarly, while DOC is not required under RCW 72.09.480(7) to make LFO deductions from the incoming funds of LWOP and death penalty inmates, DOC is authorized to make LFO deductions from such funds, subject to the indigency standard, under RCW 72.11.020." CP 37, p. 2. In short, because 72.09.480(7) does not mandate a deduction from chapter 72.11, the DOC claims it can, at its discretion, apply a 20% LFO deduction to LWOP inmates'

incoming funds under chapter 72.11 RCW.

In contrast, the Respondent also claims the language 'except as provided in subsection (7) of this section,' in RCW 72.09.480(2) "means nothing more or less than that RCW 72.09.480(2) has no application whatever to LWOP and death penalty inmates and that these inmates' incoming funds are governed by the requirements of RCW 72.09.480(7)." CP 37, p. 3. Here, Appellant's agree with the Respondent that RCW 72.09.480(2) has no application whatever to RCW 72.09.480(7). Logically, if RCW 72.09.480(2) has no application to RCW 72.09.480(7), then Chapter 72.11 likewise has no application to RCW 72.09.480(7) -- because Chapter 72.11 is 'included' in RCW 72.09.480(2). A simple comparison of RCW 72.09.480(2)&(7) confirms this fact, because the statutory language in RCW 72.09.480(2) "includes" deductions from Chapter 72.11 for non-LWOP inmates. However, the statutory language in RCW 72.09.480(7) does not "include" deductions from Chapter 72.11 for LWOP inmates. CP 34, p. 1-2.

When statutory provisions are plain and unambiguous courts are to assume the legislature meant exactly what it said and decline to construe the statute otherwise. Keller, 143 Wn.2d at 276. Here, RCW 72.09.480(2) mandates application of Chapter 72.11 and a 20% LFO deduction for incoming funds received by non-LWOP inmates. RCW 72.09.480(2)(d). The statute also provides an exception for LWOP inmates referring them to a separate subsection (i.e., subsection (7)). The separate subsection governs funds received by LWOP inmates and

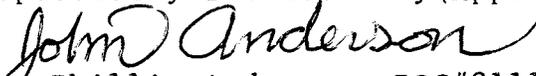
does not mandate a 20% LFO deduction or application of Chapter 72.11. RCW 72.09.480(7). Applying the 'plain language analysis' to each provision with the assumption that the legislature meant exactly what it said demonstrates the legislature's intent. Non-LWOP inmates incoming funds received under RCW 72.09.480(2) are subject to a 20% LFO deduction and the LFO priorities established in Chapter 72.11. However, incoming funds received by LWOP inmates under RCW 72.09.480(7) are subject only to deductions of 5% for crime victims' compensation, 20% for cost of incarceration, and 15% for child support payments; they are not subject to a 20% LFO deduction or the LFO priorities established in Chapter 72.11. Had the Legislature intended a 20% LFO deduction for LWOP inmates under subsection (7) it would have mandated it. Consequently, the DOC's 20% LFO deduction of Appellant's funds received in addition to wages and gratuities violated RCW 72.09.480(7).

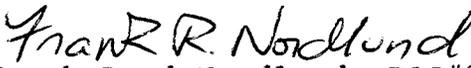
E. CONCLUSION

Based on the foregoing reasons this Court should reverse the trial court's dismissal of Appellant's complaint and remand the matter back to the trial court.

DATED this 15th day of December, 2005.

Respectfully Submitted by Appellant's,

  
John Phillip Anderson, DOC#811192

  
Frank Reed Nordlund, DOC#912173  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

John P. Anderson & Frank R. Nordlund, Appellant's,  
vs. State Department of Corrections, Respondent.  
COA No. 33808-4-II/Superior Ct. No. 05-2-00446-3

CERTIFICATE OF SERVICE/MAILING  
PROOF OF SERVICE

I, ARLIE D. NORDLUND, SR., certify that I served a copy of the attached APPELLANT'S OPENING BRIEF on all parties or their counsel of record, as follows:

US Mail First Class Postage Prepaid  
Delivery Confirmation Requested/Mail Receipt Number:

0305-2200-0000-3986-6107

- United Parcel Service, Next Day Air  
 ABC/Legal Messenger  
 Inter-Institutional Mail/CBCC  
 Hand Delivered By:

TO: DOUGLAS W. CARR, WSBA #17378  
AAG/COUNSEL OF RECORD  
WASH ST ATTNY GENERAL'S OFFICE  
CRIMINAL JUSTICE DIVISION  
P.O. BOX 40116  
OLYMPIA, WA 98504-0116

FILED  
COURT OF APPEALS  
6:10:00 AM 11-04  
STATION  
BY  
TERMINY

I, the undersigned, certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 19<sup>th</sup> day of December, 2005, at  
Tacoma, Washington, Pierce County.



Arlie D. Nordlund, Sr.  
4046 East 'I' Street  
Tacoma, WA. 98404-2930  
(253) 474-8518

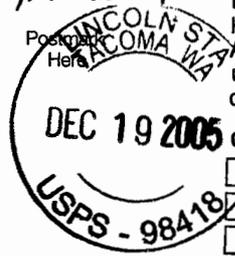
**U.S. Postal Service™ Delivery Confirmation™ Receipt**

DELIVERY CONFIRMATION NUMBER:  
0305 2200 0000 3986 6107

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Douglas W. Carr, WSBA # 17378  
(Please Print Clearly)  
HAG/Council of Records/WSAGC  
CJD - P.O. Box 40116  
Olympia, WA 98504-0116



**POSTAL CUSTOMER:**

Keep this receipt. For Inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)<sup>®</sup>  
or call 1-800-222-1811

**CHECK ONE (POSTAL USE ONLY)**

- Priority Mail™ Service
- First-Class Mail® parcel
- Package Services parcel

PS Form 152, May 2002

(See Reverse)

# FLOW CHART

## ALL OTHER INMATES

non-LWOP

RCW 72.09.480(2)

(2) When an inmate, except as provided in subsection (7) of this section, receives any funds in addition to his/her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(d) [20% for payment of LFO's].

[1995 1<sup>st</sup> sp. s. ch. 19 sec. 8]

Exception

RCW 72.09.480(7)

(7) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds in addition to his/her gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of [5% for crime victims' compensation], [20% for cost of incarceration], and [15% for child support payments].

[1995 1<sup>st</sup> sp. s. ch. 19 sec. 8]

## Chapter 72.11 RCW / LFO PRIORITIES

RCW 72.11.010      RCW 72.11.020

RCW 72.11.030      RCW 72.11.040

[1989 ch. 252 sec. 22, 23, 24 & 26]

Here, inmates in subsection (2) are subject to the LFO priorities established in Chapter 72.11 RCW and a 20% LFO deduction.

## LWOP / SUBSECTION 7 INMATES

20% LFO's NOT INCLUDED.

LFO priorities from Chapter 72.11 RCW NOT INCLUDED..

Here, inmates in subsection (7) are not subject to a 20% LFO deduction or the priorities established in Chapter 72.11 RCW. Hence, the 'exception.'

The LFO priorities established in Chapter 72.11 RCW are not applicable to subsection (7) inmates. The DOC's unlawfully collected the funds and the trial court's order of dismissal should be reversed.

# FINAL BILL REPORT

## E2SHB 1143

C 325 L 99

Synopsis as Enacted

**Brief Description:** Authorizing deductions from inmate funds.

**Sponsors:** By House Committee on Criminal Justice & Corrections (Originally sponsored by Representatives O'Brien, Ballasiotes, Tokuda, Cairnes, Lovick, Kagi, Koster, Constantine, K. Schmidt, Kastama, Fisher, Quall, Kenney, Veloria, Eickmeyer, Kessler, Lantz, Ogden, Murray, Lambert, Dunn, Rockefeller and Conway).

House Committee on Criminal Justice & Corrections  
House Committee on Appropriations  
Senate Committee on Human Services & Corrections

### Background:

Local Jail Booking Fee. Although municipalities and counties are authorized to establish inmate fines and require reimbursement for the cost of incarceration, they are not authorized to require any person who is booked in a county or municipal jail to pay a booking fee to the sheriff's department or police chief's department.

Inmate Funds. The Department of Corrections (DOC) is responsible for establishing deductions to be made from an inmate's wages to contribute to the cost of incarceration and the development of the correctional industries program. For example, a 35 percent deduction is withdrawn from the wages of inmates participating in a class I correctional industry program (private sector businesses operated in the DOC). The deduction is then distributed as follows:

- 5 percent to the crime victims' compensation program;
- 10 percent to the inmate's savings account; and
- 20 percent to the cost of the inmate's incarceration.

All money received by an inmate from outside of the prison (regardless of the inmate's custody level), including money used solely for postage purposes, is subject to the same mandatory deductions as class I industry wages and is deposited into a non-interest bearing account.

Inmates' wages and outside contributions are subject to a mandatory deduction for costs of incarceration. These funds are deposited in an account to support correctional

industries but only until December 31, 2000. After that date they will be deposited in the general fund.

**Summary:**

Local Jail Booking Fee. Municipalities and counties are authorized to require any person who is booked in a county or municipal jail to pay a \$10 booking fee to the sheriff's department or police chief's department where the jail is located. The person may pay the booking fee from any money currently in the person's possession. If the person does not have any money in his or her current possession, then the sheriff must notify the court for assessment of the fee. If the defendant is acquitted, not charged, or if the charges are dismissed, then the sheriff or police chief must return the booking fee to the defendant at the last known address in the booking records.

Inmate Funds. Any funds received from outside the prison by an offender who is sentenced to life imprisonment without parole or the death penalty are subject to a 25 percent deduction. The deducted amount will be distributed as follows: 5 percent to the Crime Victims' Compensation program and 20 percent to the cost of the inmate's incarceration.

Any money sent to an inmate from outside sources and designated solely to pay for postage is exempt from the mandatory 35 percent deduction. These funds cannot be transferred for any other use and any unused postage funds at the time of the offender's release will be subject to the mandatory deductions.

The secretary of the Department of Corrections must prepare a plan for depositing inmate savings account funds into an interest bearing account. The plan must assume that the funds are to be deposited into a commingled account for all inmates and that the interest shall be paid in a manner pro rata to the inmate's share of the total deposits at a rate not less than the passbook savings rate. The plan must be presented to the Governor and the Legislature not later than December 1, 1999.

The deductions for the cost of incarceration continue to support correctional industries after December 31, 2000.

**Votes on Final Passage:**

House 94 1  
Senate 43 0 (Senate Amended)  
House 94 2 (House Concurred)

**Effective:** July 25, 1999

# FINAL BILL REPORT

## SHB 1571

---

---

### **PARTIAL VETO**

C 271 L 03

Synopsis as Enacted

**Brief Description:** Enhancing enforcement of child support obligations.

**Sponsors:** By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Holmquist, Dickerson, Delvin, Upthegrove, Pettigrew, Hinkle, Priest, Condotta, Kristiansen, Orcutt, Rockefeller, Bush, McCoy and Clements).

**House Committee on Juvenile Justice & Family Law**  
**Senate Committee on Children & Family Services & Corrections**

#### **Background:**

Some inmates in the Department of Corrections (DOC) facilities are employed in work programs. These programs are categorized into five classes:

Class I industries are generally operated and managed by for-profit or nonprofit organizations under contract with the DOC. Inmates in this classification earn wages for their work.

Class II industries are state-owned and operated industries that produce products and services that are only sold to public agencies and nonprofit organizations. Inmates in this classification earn "gratuities" rather than wages.

Class III industries are institutional support industries.

Class IV industries are community work industries where the inmate provides services to his or her resident community.

Class V programs are designed for the inmate to work off restitution which he or she owes to a victim.

The DOC is currently responsible for taking deductions from the gross wages and gratuities of each inmate working in class I through class IV correctional industry programs. The DOC is required by statute to take certain mandatory deductions:

For inmates working in class I industries (and others earning at least minimum wage), the DOC takes 55 percent of the inmates' income. The 55 percent is divided into:

- 5 percent for crime victims' compensation;

- 10 percent for an inmate savings account;
- 20 percent to the DOC for costs of incarceration; and
- 20 percent for any owed legal financial obligations (LFOs) which can also include restitution for the victim.

For inmates working in class II industries, the DOC takes 50 percent of the inmate's income. The 50 percent is divided into:

- 5 percent for crime victims compensation;
- 10 percent for an inmate savings account;
- 15 percent to the DOC for costs of incarceration; and
- 20 percent for any owed LFOs.

For inmates working in class III industries, the DOC takes 5 percent of the inmate's income for the purpose of crime victim's compensation.

For inmates working in class IV industries, the DOC takes 5 percent of the inmate's income to contribute to the cost of incarceration.

When an inmate receives any funds in addition to his or her wages or gratuities, such as when a family member or friend sends a check to the inmate directly through the mail or the inmate wins a monetary lawsuit, then the additional funds are subject to the same 55 percent deduction as those inmates working in class I industries, and the funds are divided into the same categories.

Child support payments may be deducted from an inmate's wages and from the inmate's DOC savings account, in two ways:

- In instances where an offender works for a class I industry, the Division of Child Support (DCS) has the authority to send a payroll deduction notice directly through the employer to have child support payments withdrawn from the inmate's paycheck each pay period prior to the inmate receiving the paycheck; or
- The DCS may issue an order to withhold and deliver child support payments from any inmate who owes child support. Once the DOC receives the order, the funds in the inmate's savings account are sent to the DCS.

**Summary:**

The DOC is required to deduct 15 percent from class II through IV gratuities earned by an inmate working in a correctional facility work program. The DOC is also required to deduct 15 percent from any funds an inmate receives other than from wages or gratuities, except for funds received as a result of a settlement or award resulting from legal action. Inmates who have been sentenced to life imprisonment without the possibility of parole, or death, are also subject to the 15 percent deduction from money received by an inmate,

except for funds received as a result of a settlement or award resulting from legal action.

The Legislature intends that, unless proscribed by federal law or court order, child support deductions go directly to the person or persons in whose custody the child is and who is responsible for the daily support of the child.

Nothing in the act limits the DCS from taking collection action against an inmate's moneys, assets, or property which it is otherwise authorized to do by statute, including the collection of moneys received as a result of a settlement or awards resulting from legal action.

**Votes on Final Passage:**

House 93 0  
Senate 47 0 (Senate amended)  
House (House refused to concur)  
Senate 46 0 (Senate amended)  
House 98 0 (House concurred)

**Effective:** July 27, 2003

**Partial Veto Summary:** The Governor vetoed the intent section.