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STATE OF WASHINGTON
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NO. 90068-0

RECEIVED BY E-MAIL

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

RYAN PEELER,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

RESPONDENT'S ANSWER TO AMICUS BRIEF
FILED BY WASHINGTON ASSOCIATION OF PROSECUTING
ATTORNEYS

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ORIGINAL

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A. ARGUMENT

To construe RCW 9.98.010, WAPA asks the Court to rely on portions of different statutes that are not part of RCW 9.98.010 and this purposeful legislative omission undermines WAPA's argument

1. *The rarely enacted "uniform mandatory disposition of detainer act" has no bearing on this state's intrastate detainer act*

WAPA's amicus brief begins with the proposition that the Uniform Mandatory Disposition of Detainer Act (UMDDA) is a standard-bearer for intrastate detainer laws. But only "a handful" of states have adopted this law and Washington is not one of them, as WAPA concedes. WAPA Amicus, at 2. One adopting state, Alabama, voided this act's application to intrastate detainees. *McConico v. State*, 84 So. 3d 159, 161 (Ala. Crim. App. 2011) ("Uniform Mandatory Disposition of Detainers Act applies to interstate detainees, not intrastate detainees"). A second state, Utah, repealed its provisions. Utah Code Ann. § 77-29-1 (repealed by Act of Feb. 14, 2007, ch. 14, § 1, 2007 Utah Laws 101). WAPA's reason for lauding the UMDDA is to claim there is a nationally used standard for applying state-specific intrastate detainer laws. But given the few states that have ever adopted the UMDDA and the differences among the states in how they manage

the details of their intrastate transfers, there is no overarching national standard that dictates how this Court construes a law enacted by our Legislature.

Furthermore, the portions of the Colorado statute on which WAPA's brief primarily relies are substantially different from RCW ch. 9.98 as well as the UMDDA. It is neither a model for this state's law nor does it show national standards for an in-state inmate who seeks to be brought to court to resolve a pending charge when the prosecution has not made its own efforts to bring the prisoner to court.

2. The Interstate Agreement on Detainers does not control the different terms in the intrastate detainer act.

WAPA's amicus brief also rests on cases construing on the Interstate Agreement on Detainers (IAD), codified at RCW 9.100.010, Article I-IX. Washington is a signatory to this compact but it was written by Congress and is a federal statute subject to federal construction. *Alabama v. Bozeman*, 533 U.S. 146, 148-49, 121 S. Ct. 2079, 150 L. Ed. 2d 188 (2001); *State v. Morris*, 126 Wn.2d 306, 310, 892 P.2d 734 (1995). The IAD sets rules by which prisoners being held in another state or by the federal government may be brought to trial, based on a national committee's efforts to ease prisoner transfers

among different states. *United States v. Mauro*, 436 U.S. 340, 351, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978).

The intrastate detainer act, RCW ch. 9.98, gives state prisoners a procedure for requesting a trial on pending charges within the state. Some portions of the IAD and intrastate detainer act use “parallel language.” *Morris*, 126 Wn.2d at 310. Both laws are intended to aid prisoners who are otherwise unable bring themselves to court. *See Mauro*, 436 U.S. at 351); *State v. Pair*, 5 A.3d 1090, 1092 (Md. 2010). But the Legislature did not incorporate verbatim the model language of the IAD into the intrastate act.¹ The IAD contains substantial provisions absent from the intrastate detainer law and it serves other purposes.

One basic difference between the IAD and the intrastate detainer act is that the IAD contains a broad tolling provision that is not in RCW ch. 9.98. Article VI(a) of the IAD states that the duration and expiration of its time periods for bringing a case to trial “shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by

¹ While the IAD was formally adopted in Washington in 1967, its origins date to 1948 and its draft form was approved and disseminated nationally in 1956. *Mauro*, 436 U.S. at 351. As a federal compact, Washington adopted the IAD without state-specific revisions, while the intrastate detainer act was enacted in a state-specific fashion.

the court having jurisdiction of the matter.” RCW 9.100.010 (Art. VI(a)). The intrastate detainer act does not have a similar tolling provision.

As a basic rule of statutory construction, courts must rely upon the plain language of the statute. *State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003). Penal statutes are given “a strict and literal interpretation.” *Id.* at 727. The court “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *Id.*

Even when this Court believes the Legislature has inadvertently omitted a statutory provision, courts “do not have the power to read into a statute that which we may believe the legislature has omitted, be it an intentional or an inadvertent omission.” *State v. Martin*, 94 Wn.2d 1, 8, 614 P.2d 164 (1980). It is the court’s role “to carry out the legislative mandate.” *Id.* at 629; *see In re Pers. Restraint of Acron*, 122 Wn.App. 886, 891, 95 P.3d 1272 (2004) (“[a]ppellate courts do not supply omitted language even when the legislature’s omission is clearly inadvertent”).

The Legislature demonstrated its familiarity with and consideration of all portions of the model for the IAD by including

several parallel provisions, including those that nullify or excuse the state from complying with an inmate's request under certain circumstances. Like the IAD, RCW 9.98.010 voids a request made by a prisoner who escapes after making his request. *Compare* RCW 9.98.010(4), *with* RCW 9.100.010 (Article III(f)). It similarly excludes its application to a person adjudged to be mentally ill. *Compare* RCW 9.100.010 (Article VI (b)) ("No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill."), *with* RCW 9.98.030 ("The provisions of this chapter shall not apply to any person adjudged to be mentally ill.").

The Legislature was aware of the IAD's language and knew how to include its provisions in the intrastate detainer act. *See Delgado*, 148 Wn.2d at 728. It elected to enact some of its provisions into the intrastate law, but those provisions that are not included are presumed to have been intentionally excluded. *Id.* at 728-29.

Instead of enacting a tolling provision, the intrastate detainer law authorizes a judge to grant a "necessary or reasonable continuance" if the government makes a sufficient good cause showing "in open court, the prisoner or his counsel being present." *See* RCW 9.98.010;

RCW 9.100.010. (Article III(a)). The intrastate detainer act does not automatically exclude time periods if a person is “unable to stand trial.”

Under the intrastate detainer act, if the prosecution needs additional time because a person is unavailable, it must obtain a continuance from the trial court before the time expires, as the Court of Appeals recognized the State could have done in the case at bar. Opinion at 8-9; RCW 9.98.010(1). This Court placed the same obligation on the prosecution in *Morris*. “The intrastate detainers statute specifically allows for ‘any necessary or reasonable continuance’ of the 120-day period ‘for good cause shown.’” *Morris*, 126 Wn.2d at 314 (quoting RCW 9.98.010(1)). When the State does not request a “reasonable and necessary” length of time in which to prepare for trial, it has not met its obligations under RCW 9.98.010 and RCW 9.98.020 requires dismissal.

Other states have similarly refused to extend the tolling language of the IAD to prisoners held in other counties. *State v. Murphy*, 157 S.W.3d 773, 778 (Mo. Ct.App. 2005) (“the mere fact that a defendant is held in another county in the same state does not render the defendant ‘unable to stand trial’”); *People v. Torres*, 56 N.E.2d 497,

609-10 (N.Y. 1983) (detention in another county for pending charges did not make defendant “unable to stand trial” under detainer law).

3. *The IAD serves different purposes than the intrastate detainer act.*

The automatic tolling provision of the IAD exists because the IAD has an unforgiving requirement that the receiving jurisdiction must complete a case in its jurisdiction before returning an inmate. Called the “anti-shuttling” doctrine, the IAD mandates that a receiving state must resolve all pending charges. *Bozeman*, 533 U.S. at 150 (“trial must be ‘had ... prior to the prisoner’s being returned to the original place of imprisonment’; otherwise, the charges ‘shall’ be dismissed with prejudice. Art. IV(e).”). When a state has received a prisoner under the IAD, it “must not return the prisoner to his ‘original place of imprisonment’ prior to that trial” or it loses jurisdiction over the pending charges. *Id.* at 151 (quoting Art. IV(e)).

Additionally, the IAD involves transfers that are of a different magnitude than moving a person within the state penal system. States cannot expect prisoners to quickly move jurisdictions nationally, which makes it reasonable to restrict an inmate’s availability once transferred and to toll any time it takes for a receiving jurisdiction to resolve

pending charges. But there is no similarly significant transportation obstacle or anti-shuttling limitation for a person who is temporarily transferred within the state. *See, e.g., State v. Chhom*, 162 Wn.2d 451, 468, 173 P.3d 234 (2007) (courts may order transport of inmates facing charges, “effective statewide”).

The IAD is also different because prosecutors rely on it to bring incarcerated people to trial. *See Pair*, 5 A.3d at 1093. It is a “simple and efficient means of obtaining prisoners from other State.” *Mauro*, 436 U.S. at 356 n.23. But within Washington, the prosecution does not use the intrastate detainer act to transport a person to court. *See RCW 9.98.040.*² The separate tolling provision in the IAD serves purposes particular to the IAD that do not exist for intrastate cases.

In sum, the intrastate detainer law did not adopt the same provisions as the IAD. These differences must be construed as purposeful and intentional. *See Delgado*, 148 Wn.2d at 728. WAPA’s novel efforts to add a tolling provision of the IAD that the Legislature

² RCW 9.98.040 provides:
This chapter shall not be construed as preempting the right of the superior court on the motion of the county prosecuting attorney from ordering the superintendent of a state penal or correctional institution to cause a prisoner to be transported to the superior court of the county for trial upon any untried indictment, information or complaint.

did not enact in the intrastate detainer act should be disregarded. As the Court of Appeals ruled in the case at bar, the State could have sought a continuance of the time for trial due to Mr. Peeler's temporary unavailability, but it did not do so.

4. *CrR 3.3 does not override the intrastate detainer act.*

The intrastate detainer act exists independently from CrR 3.3, which applies only after a person is brought to court for an untried charge or new trial. Because Mr. Peeler had never been arraigned when he filed his request to be tried, the time limits in CrR 3.3 had not started. CrR 3.3(d)(1). CrR 3.3 does not supercede the intrastate detainer act.

As this Court explained in *State v. Welker*, 157 Wn.2d 557, 564, 141 P.3d 8 (2006) when addressing the IAD, a violation of the IAD means that time spent in another jurisdiction *is included* in the time for trial calculation regardless of whether it would be excluded under CrR 3.3. Furthermore, the IAD presumes a duty of "good faith and due diligence" on prosecutors to bring a defendant to trial. *Id.* at 564-65. The State may not ignore its obligations under the IAD by solely relying on CrR 3.3. *Id.* WAPA errs by contending that CrR 3.3

supercedes the intrastate detainer act. The statute may not be treated as superfluous and prosecutors are bound by its plain requirements.

5. If tolling applies, Mr. Peeler remains entitled to dismissal due to the State's delay.

WAPA proclaims that Mr. Peeler's time in court in King County should be tolled but does not calculate how that affects the case. WAPA Amicus at 10-11. Adding this tolling provision to RCW 9.98.010 introduces unwarranted complexity to the application of this statute and is unnecessary given the statute's plain language that the prosecution must seek court permission for necessary continuances. In any event, even if tolling applies, Mr. Peeler was not brought to trial within 120 days as required. RCW 9.98.010, RCW 9.98.020.

After receiving Mr. Peeler's request to be brought to trial in Skagit County on October 26, 2011, the prosecutor asked the Department of Corrections (DOC) to transport Mr. Peeler to court by November 17, 2011. 8/22/12RP 32; CP 26; CP 85 (Finding of Fact 6). The State never explained when it learned Mr. Peeler was in the King County jail, only that it happened by November 17, 2011. CP 23, 26. The period from when the State received Mr. Peeler's request until it sought to bring him to court on November 17, 2011 count in the 120

days the State had to bring him to court because it made no effort to bring him earlier and was not aware of his unavailability. *See e.g., Pair*, 5 A.3d at 1098 (IAD’s “unable to stand trial” provision applies from time requesting state learned inmate was unavailable due to pending charges). This 23 days counts against the State.

After Mr. Peeler was transported to King County for a hearing on pending charges, he pled guilty on December 9, 2011 to resolve all pending charges, and was sentenced on December 23, 2011.³ Once he pled guilty, he no longer faced pending charges and was available to be transported to another county. *See Pair*, 5 A.3d at 1101 (construing IAD as tolling only time other jurisdiction “is actively prosecuting the inmate on current or pending charges”); *State v. Barefield*, 110 Wn.2d 728, 733-34, 756 P.2d 731 (1988) (ruling IAD applies to prisoner with “*criminal charges* pending against him,” not awaiting sentencing after conviction (emphasis in original)).⁴ Indeed, one purpose of the IAD is

³ His pending King County cases that were jointly resolved are: King Co. 10-1-06152-1 SEA; King Co. 10-1-06849-6 SEA; King Co. 11-1-00161-6 SEA; King Co. 11-1-00217-5 SEA. CP 39-42.

⁴ *See also State v. Tate*, 2 Wn. App. 241, 245, 469 P.2d 999 (1970) (“plea of guilty, entered and then accepted, constitutes a conviction” for cross-examination); *State v. Pirtle*, 127 Wn.2d 628, 669, 904 P.2d 245 (1995) (adjudications of guilt legally distinct from charges, regardless of when sentencing occurs).

to improve the possibility of concurrent sentencing, thus the State's obligation for bringing a person to court is sensibly triggered by settling the pending charges, rather than waiting for a final sentencing order. *See Chhom*, 162 Wn.2d at 470. This excludes 22 days.

Under WAPA's tolling theory, the 120-day deadline for bringing Mr. Peeler to trial restarted when Mr. Peeler was no longer facing pending charges in King County. That deadline expired on March 15, 2012, which is 120 days from when the State received his request, excluding the period that the State tried to bring Mr. Peeler to court but was unable to do so due to his presence in King County for pending charges. Yet Mr. Peeler was not brought to trial by that date as required by RCW 9.98.020.

After filing his second request to be tried under the intrastate detainer act, Mr. Peeler was arraigned on the Skagit County charge on February 16, 2012. CP 85. At that time, the court set a trial date of April 16, 2012. CP 56. On March 15, 2012, the court continued the omnibus hearing set for that date and postponed the trial until May 28, 2012. CP 56-57. The record contains no explanation for the continuance, but the order form shows Mr. Peeler objected initially, then his objection is crossed out and the court marked a box that the

parties agreed to the continuance. CP 57 (copy attached as Appendix A). He did not check the box indicating he was waiving his speedy trial rights. *Id.* The continuance was sought by the prosecution and the defense, as the State conceded. CP 27. There is no evidence that Mr. Peeler agreed to the continuance with an understanding he might waive his rights under the intrastate detainer act as it expired.

WAPA relies on Colorado's purportedly comparable intrastate detainer act as a model. Colorado requires any waiver of the required time for trial occur "on the record after full advisement by the court" of the rights being waived. CRS 16-14-104(2) (attached to WAPA's brief as App. A). Mr. Peeler did not agree to a continuance on March 15, 2012 after full advisement by the court on the record as Colorado would require under the model advanced by WAPA.

The State did not comply with its obligation to bring Mr. Peeler to trial within 120 days of receiving his request under the intrastate detainer act. Mr. Peeler was in custody for over one year before he was even arraigned in Skagit County, and the prosecution showed little interest in bringing him to trial until he filed two requests under the intrastate detainer act. The delay exceeds the requirements of RCW 9.98.010. The Court of Appeals decision should be affirmed based on

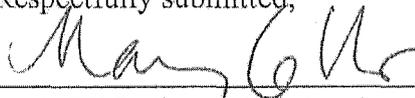
the plain language and clear requirements of RCW 9.98.010, and the convoluted tolling notion WAPA introduces should be rejected.

B. CONCLUSION

The Court of Appeals correctly construed the clear language of RCW 9.98.010 and concluded that the State's failure to act on Mr. Peeler's request for final disposition under the time limits set forth by statute requires dismissal of the prosecution.

DATED this 9th day of January 2015.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Respondent

APPENDIX A

SUPERIOR COURT OF WASHINGTON - COUNTY OF SKAGIT

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
2012 MAR 15 PM 12:01

Case No. 11-1-02090-6

Clerk's Action required

STATE OF WASHINGTON,

PLAINTIFF,

VS.

ORDER RE:

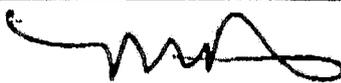
- CONTINUANCE
- TRIAL CONTINUANCE
- PRESENTENCE REPORT
- CORRECTING NAME/DOB
- WAIVER SPEEDY TRIAL (DEFENDANT)
- WAIVER SPEEDY SENTENCING (DEFENDANT)
- BAIL (SHERIFF'S ACTION REQUIRED)
- QUASHING WARRANT (SHERIFF'S ACTION REQUIRED)
- SETTING HEARING DATE
- SETTING SENTENCING DATE
- OTHER

Ryan Peeler
DEFENDANT.

The Court, being fully advised and good cause having been shown, Now, Therefore, ORDERS:

- CONTINUANCE: This matter is continued to 4/26/12 at 9:30 am/pm for omnibus
Reason: _____
- BAIL: Bail is set at \$ _____
- WARRANTS: Outstanding warrants in this cause are quashed. Next hearing date is: _____
- CORRECTING NAME/DOB: To: _____
- SENTENCING DATE: The defendant (waiving below if necessary) shall appear for sentencing on _____
- PRESENTENCE: Presentence investigation pursuant to CrR7.1 (a) Defendant is in custody at the Skagit County Jail.
 Defendant is not in custody and resides at _____
- SETTING NEW DATES: The court hearing dates at which the defendant's presence is required are: _____
OMNIBUS 4/26/12 3.5/3.6 HEARING _____ TRIAL CONFIRMATION 5/24/12 1:30 pm
- TRIAL CONTINUANCE: by agreement of the parties; by motion of party/court the trial date is continued to 5/28/12 resulting in speedy trial of 6/27/12 (30 days after trial date).
- OTHER: The Court finds good cause to continue trial over the objection of Defendant

DATED: 3/15/12


Judge of the above-entitled court

WAIVERS BY DEFENDANT

- SPEEDY ARRAIGNMENT: The undersigned, having been advised by my Attorney of Record of my right to arraignment as determined by CrR 4.1, hereby waive my right to have my arraignment within that time period.
- SPEEDY TRIAL: The undersigned, having been advised by my Attorney of Record that I have the right to be brought to trial within 60/90 days of the commencement date, hereby requests that trial in this matter be re-set. I am aware of and wish to waive my right to speedy trial as provided in CrR 3.3 by resetting a commencement date of: _____ resulting in a new speedy trial date of: _____ (60/90 days after commencement date).
- SENTENCING: The undersigned, having been advised of my right to be sentenced within 40 court days from the date of guilty plea or conviction, and being aware of and hereby waive the right to a speedy sentencing pursuant to RCW 9.94A.500. Further, I acknowledge that this waiver is my personal request and that I will not be prejudiced by this continuance.

DATED: 3/15/12

Ryan Peeler
Defendant

C. W. DeWitt-Richards
Attorney for Defendant 11946

Timothy Dyer
Prosecuting Attorney 35588

Original: Clerk's Office
PA-8

Canary Copy - Defendant-

Pink Copy - Attorney for Defendant

Goldanrod Copy - Prosecuting Attorney

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Petitioner,)	
)	NO. 90068-0
v.)	
)	
RYAN PEELER,)	
)	
Respondent .)	

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 9TH DAY OF JANUARY, 2015, I CAUSED THE ORIGINAL **ANSWER TO AMICUS CURIAE BRIEF** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 9TH DAY OF JANUARY, 2015.

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OFFICE RECEPTIONIST, CLERK

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To the Clerk of the Court:

Please accept the attached document for filing in the above-subject case:

Respondent's Answer to Amicus Brief

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By

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