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NO. 78715-8

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN PHILLIP ANDERSON and FRANK REED NORDLUND,

Appellants

v.

STATE OF WASHINGTON, ET AL.,

Respondents

APPELLANTS' SUPPLEMENTAL BRIEF

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I. ISSUE ON APPEAL

RCW 72.09.480(7) directs the Department of Corrections to take particular deductions from funds sent to inmates sentenced to death or life without parole, and does not include a deduction for legal financial obligations (LFOs). RCW 72.09.480(2) sets forth the deductions from funds sent to all other inmates, and includes a deduction for LFOs. May the Department disregard the statute's plain language and take LFO deductions from funds sent to all inmates, regardless of their sentences?

II. SUMMARY OF ARGUMENT

This case involves one part of a larger legislative scheme for the collection of legal financial obligations (LFOs) from inmates incarcerated in Washington State. LFOs include restitution, court costs, fines, attorneys' fees and other obligations arising from conviction. RCW 72.11.010. Over the years, the Legislature has established a unified, comprehensive, and cohesive system for recouping LFOs and other financial obligations from the various funds of inmates. As part of that system, RCW 72.09.480 concerns "other funds" inmates receive, typically money from family and friends to cover in-prison expenses such as toiletries. *See* Appendix B to Appellant's Reply Brief (Memorandum from

Sandra Carter, Clallam Bay Corrections Center Superintendent). The statute states that a 20 percent LFO deduction applies to funds sent to all inmates except those sentenced to death or life without parole.

The plain meaning of RCW 72.09.480 gives no authority to the Department of Corrections (DOC) to deduct LFOs from the money that family and friends send to inmates sentenced to death or life without parole. RCW 72.09.480 unambiguously directs the DOC to take one set of percentage deductions from funds that friends and family members send to inmates sentenced to death or life in prison without parole, and another set of percentage deductions from the same type of funds sent to other inmates. DOC has chosen to ignore this statutory distinction and makes identical LFO deductions from funds sent to both types of inmates. This interpretation conflicts with basic statutory construction, which gives effect to the plain text of an unambiguous statute.

That the statute means what it says is supported by canons of construction, the statute's context, and the history of the Legislature's activity in this area. Under the canon "expressio unius est exclusio alterius," the Legislature's inclusion of particular items in a statutory section means the exclusion of other items. In addition, where the Legislature includes language in one section and excludes it from another section, the inclusion and exclusion are presumed intentional. The plain

text of the statute is also supported by its context—other statutes dealing with LFO payments—as well as the history of these enactments. Over time, the Legislature has moved toward a system of specified deductions from incoming funds.

The Department claims that an earlier statute, RCW 72.11.020, gives it discretion to deduct LFOs in whatever manner it chooses; discretion that overrides the specific directives in RCW 72.09.480. The DOC’s reading of RCW 72.11.020 is strained, and renders the more specific statute meaningless. The trial court nevertheless agreed with the DOC, but on the erroneous ground that RCW 72.11.020 is more recent than RCW 72.09.480 and therefore controls. In fact, RCW 72.09.480—which sets out the specific deductions—is the more recent and the more specific statute and, therefore, should take precedence. The DOC has apparently conceded the error of the trial court’s reasoning, as it does not rely on it in its appellate brief.

III. ARGUMENT

1. **The plain language of RCW 72.09.480 shows that the Legislature did not intend for the DOC to take LFO deductions from the “other funds” of inmates sentenced to death or life without parole.**

A court’s primary goal when interpreting a statute is to give effect to the Legislature’s intent and purpose. *See Advanced Silicon Materials,*

L.L.C. v. Grant County, 156 Wn.2d 84, 89, 124 P.3d 294 (2005). A statute's plain meaning conclusively establishes legislative intent. *Id.* at 89-90. A court derives plain meaning from a statute's text and context. *Id.*

RCW 72.11.010 defines an LFO as:

. . . a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

The Legislature provided, in chapters 72.09 and 72.11 RCW, for payment of inmate obligations, including LFOs, through a system of deductions from two main sources: (1) income earned by inmates as wages and gratuities and (2) income from other sources, most commonly money sent from friends and families. The plain meaning of the statutes demonstrates legislative intent not to impose LFO deductions on the second category of funds when received by those sentenced to death or life without parole.

RCW 72.09.480 defines the mandatory deductions from sources other than wage and gratuity earnings that inmates might receive. Money from other sources is subject to deductions as follows:

(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) Five percent to the public safety and education account for the purpose of crime victims' compensation;
- (b) Ten percent to a department personal inmate savings account;
- (c) Twenty percent to the department to contribute to the costs of incarceration;
- (d) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and
- (e) Fifteen percent for any child support owed under a support order.

....

(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 settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation, twenty percent to the department to contribute to the costs of incarceration, and fifteen percent to child support payments.

Subsection (2) identifies five deductions to be taken from non-wage and gratuity funds received by inmates, including a twenty percent deduction for LFOs. However, subsection (2) explicitly does not apply to inmates sentenced to death or life without parole.

Instead, subsection (7) identifies the deductions to be taken from non-wage funds received by inmates sentenced to death or life without parole. As in subsection (2), the DOC is to take a deduction for the public safety and education account for the purpose of crime victims' compensation, a deduction to contribute to the costs of incarceration, and a deduction for child support payments. But unlike subsection (2), subsection (7) does not authorize deductions for a personal inmate savings account or for payment of LFOs.

The Legislature could have included LFO deductions in subsection (7), but it chose not to. Under the canon of *expressio unius est exclusio alterius*, "to express or include one thing implies the exclusion of the other, or of the alternative." Black's Law Dictionary 620 (8th ed.2004); *See State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003); *Starr v. Washington State Dept. of Employment*, 130 Wn. App. 541, 549, 123 P.3d 513 (2005). Exclusion of language from one portion of a statute when the language is included in other parts indicates intent by the Legislature to exclude that language. *Delgado*, 148 Wn.2d at 729. In *Delgado*, this Court compared the language of a two-strike sentencing statute, which contained no clause including comparable crimes as strikes, with the language of the immediately preceding three-strike statute, which included such a clause. *Id.* at 728. This Court declined to read a comparability clause into the two-

strike statute. *Id.* at 728-29. This Court presumed that the absence of such language in the two-strike statute was intentional. *Id.* at 729-30 (noting that courts will not “add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.”)

The Legislature clearly expressed the types of deductions to be taken in RCW 72.09.480(7). An LFO deduction is not included. It can be presumed, then, that the absence of an LFO deduction in subsection (7) was intentional. LFO deductions cannot be taken from non-wage and gratuity sources for inmates sentenced to death or to life without parole.

2. Other LFO collection statutes provide a context that supports the plain language of RCW 72.09.480.

The plain language of RCW 72.09.480 is supported by its context—the other sections of Title 72 that deal with the deduction of LFOs. Courts look to context as part of a plain meaning analysis of a statute. *See Wash. Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). Contextual analysis consists of reading the statute as a whole, referring to other provisions of the same act, and consulting related statutes. *Id.* at 10. Statutes relating to the same subject matter are in *pari materia* and must be construed together to constitute a unified and harmonious whole that “maintains the integrity of the respective statutes.” *See Hallauer v. Spectrum Prop., Inc.*, 143 Wn.2d 126,

146, 18 P.3d 540 (2001) (quoting *State v. Wright*, 84 Wn.2d 645 , 650, 529 P.2d 453 (1974)). When RCW 72.09.480 is read together with RCW 72.11.020 and RCW 72.09.111, these sections form a complete, harmonized body that sets out the rules regarding LFO deductions.

First, RCW 72.11.020 lays out, in general, DOC authority over inmate funds and its ability to disperse such funds in compliance with other provisions of Title 72. It does not specify when, how, or in what percentage various financial obligations must be taken from various sorts of inmate funds. RCW 72.11.020 reads as follows:

The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or 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. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account . . . and the secretary shall have authority to disburse money from such person's personal account for the purpose of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

This section states that LFO deductions can never cause an inmate's account to be reduced to less than the defined level of indigency and that these deductions shall be made as stated in other sections of Title 72.¹ It never suggests these other sections are anything but binding. It does not say that there is an undefined discretion on the part of a state agency to make deductions other than those listed within Title 72. This provision is consistent with the rules regarding LFO deductions found in RCW 72.09.480. RCW 72.11.020 establishes that LFOs must be deducted, and RCW 72.09.480 explains how the deductions are to occur for non-wage and gratuity income.

Second, RCW 72.09.111 lays out an elaborate system of minimum deductions from inmates' wages, gratuities, and worker's compensation benefits. RCW 72.09.111. Unlike RCW 72.09.480, this section gives considerable discretion to the DOC to vary from statutorily-mandated base deductions. RCW 72.09.111 reads, in part, as follows:

¹ RCW 72.11.020 specifically requires that the DOC make the LFO deductions listed in RCW 72.09.111 and 72.65.050 "without exception." RCW 72.11.020 does not mention RCW 72.09.480, which only began requiring LFO deductions from the "other funds" of most inmates in 2003 (Laws of 2003, ch. 271, § 3). The Legislature added the reference to RCW 72.09.111 and RCW 72.65.050 in 2002. *See* Laws of 2002, ch. 126, § 1.

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32. RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. . . .

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

. . . .

(iv) Twenty percent for payment of legal financial obligations

(b) The formula shall include shall include the following minimum deductions from class II gratuities:

. . . .

(iv) Twenty percent for payment of legal financial obligations

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

. . . .

(iv) An amount equal to any legal financial obligations owed by the inmate . . . up to the total amount of the award.

LFO deductions are included among the minimum deductions from wages and gratuities. All inmates—regardless of sentence—who earn certain types of wages or gratuities are subject to corresponding LFO deductions.

This section does not conflict with RCW 72.09.480's directives for money inmates receive from sources *other* than wages and gratuities. The two sections are distinct, and, although they are worded differently, their schemes are complimentary. Courts are required to give effect to every word in a statute. *City of Olympia v. Drebeck*, 156 Wn.2d 289, 294, 126 P.3d 802 (2006). Where the Legislature plainly reveals its intent through statutes on two related subjects, the court "will not disturb the Legislature's deliberate choice to treat the two types of [funds] differently." *Pub. Util. Dist. No. 1 of Pend Oreille County v. Dep't of Ecology*, 146 Wn.2d 778, 792, 51 P.3d 744 (2002).

A comparison of RCW 72.09.480, RCW 72.09.111 and 72.11.020 shows that the Legislature developed a far more restrictive system of deductions for money that is sent to inmates by friends and family. Instead of authorizing the DOC to develop a formula consisting of certain "minimum" deductions from this particular source of inmate funds as RCW 72.09.111 did with income from wages and gratuities, RCW 72.09.480 states that money received by inmates from other sources "*shall* be subject to the following deductions. . . ." RCW 72.09.480(7) (emphasis added). The omission of the word "minimum" as well as DOC authority to devise its own deduction formula in RCW 72.09.480(7) reveals clear legislative intent to treat deductions from wages and gratuities differently

from the funds sent to an inmate by friends and family. The “omission of a similar provision from a similar statute usually indicates a different legislative intent.” See *Clallam County Deputy Sheriff's Guild v. Bd. of Clallam County Com'rs*, 92 Wn.2d 844, 851, 601 P.2d 943 (1979) (citing 2A C. Sands, *Statutes and Statutory Construction* § 51.02, at 290-91 (4th ed. 1973)). Likewise, “the legislature is deemed to intend a different meaning when it uses different terms.” *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005).

The plain meaning of RCW 72.09.480 gives no authority to DOC to deduct LFOs from the money that family and friends send to inmates sentenced to death or life without parole. The plain meaning of this section is clear, and is perfectly consistent with the other sections of chapter 72.09 RCW and chapter 72.11 RCW. An examination of the related statutes demonstrates that the Legislature “meant exactly what it said” when it omitted LFO deductions from the “other funds” of inmates sentenced to death or life without parole. See *Roggenkamp*, 153 Wn.2d at 625.

3. Historical analysis of the LFO collection statutes supports the plain language of RCW 72.09.480

Not only do the current versions of other LFO collection statutes support the plain language of RCW 72.09.480, but the history of the enactments and amendments of these statutes demonstrates that the

Legislature has over time constructed a cohesive, coherent, and comprehensive scheme governing deductions from inmate funds to pay the various financial obligations of inmates. When confronted with potential conflicts between statutes, courts will consider "the sequence of all statutes relating to the same subject matter." *See Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000). Here, this sequence evinces legislative intent to treat inmates sentenced to death or life without parole differently from other inmates when collecting LFOs.

a. History of RCW 72.11.020 and RCW 72.09.111

The Legislature created LFOs in 1989. *See* Laws of 1989, ch. 252. The Offenders' Legal Financial Obligations Act gave sentencing courts authority to order LFOs, and to establish a monthly payment amount. *Id.* at § 3. The Act also established what would become RCW 72.11.020, giving the DOC control of inmate funds and requiring that the Department disburse money to pay outstanding LFOs. *Id.* at § 23. No other provision then governed the disbursal of LFOs. Thus, the DOC was required to pay such money as existed in an inmate's account toward the monthly amount established by the court.

However, the Legislature has remained active in the area. Over time, it has established a system of deductions based on specified percentage deductions for each type of financial obligation from each

potential source of inmate funds. In each case, it has either clearly stated what deductions the DOC can take from any particular source of funds or explicitly given the DOC authority to devise its own system of deductions.

In 1993, the Legislature passed an act to expand correctional industries while “revising the deductions from inmate wages.” Laws of 1993, 1st Spec. Sess., ch. 20. This act established what would become RCW 72.09.111. *See id.* at §2. As it originally read, RCW 72.09.111 required the Department to deduct taxes and LFOs, up to the required monthly LFO amount, from wages and gratuities. *Id.* Only after those deductions were the remaining wages, if any, subject to further deductions for other obligations. *Id.*

In 1994, the Legislature amended RCW 72.09.111. *See* Laws of 1994, 1st Spec. Sess., ch. 7. It continued to require the DOC to deduct taxes and LFOs, but directed the DOC to create a formula using certain minimum deductions for various obligations. *Id.*

b. History of RCW 72.09.480

In 1995, six years after the creation of RCW 72.11.020, the Legislature passed what would become RCW 72.09.480, which authorized the DOC to take deductions from funds other than wages and gratuities received by an inmate. Laws of 1995, 1st Spec. Sess., ch. 19, § 7. The

Legislature specified that the deductions should be those of RCW 72.09.111(1)(a), the statute governing deductions from inmate wages.

In 1999, the Legislature first drew a distinction between most inmates and those sentenced to death or life without parole. Laws of 1999, ch. 325, § 1. While most inmates remained subject to the minimum deductions of RCW 72.09.111(1)(a), inmates sentenced to death or life without parole became subject to a specified list of “following” deductions. *Id.* LFO deductions were not listed. *Id.*

The Legislature reinforced the distinction in 2003, when it extensively revised RCW 72.09.480. Laws of 2003, ch. 271, § 3. Instead of being subject to the RCW 72.09.111(1)(a) deductions, most inmates became subject to a list of “following” deductions, which included a 20 percent LFO deduction. *Id.*

At the same time, the Legislature amended the subsection governing inmates sentenced to death or life without parole, to add a 15 percent deduction for child support payments. *See* Laws of 2003, ch. 271, § 3. Thus, the 2003 amendment *specifically* made most inmates subject to a 20 percent LFO deduction and concurrently amended the provision governing inmates sentenced to death or life without parole *without* adding an LFO deduction. Laws of 2003, ch. 271, § 3. The DOC’s assertion that the 2003 amendment was “unrelated to LFO deductions” is mistaken. *See*

Respondent's Brief, at 10. The amendment evinces intent to treat the two categories of inmates differently when collecting LFOs from the funds sent to inmates by friends and family.

The 2003 amendment's treatment of funds from legal settlements and awards further demonstrated the Legislature's differential treatment of inmates sentenced to death or life without parole. The Legislature made the settlements of most inmates subject to the 55 percent total deductions in RCW 72.09.111(1)(a). *See* Laws of 2003, ch. 271, § 3; RCW 72.09.480(3), (8). In contrast, the legal settlements of inmates sentenced to death or life without parole are subject to a 25 percent deduction. *See id.* The Legislature expressly chose to take lesser deductions from the legal settlements of inmates sentenced to death or life without parole.

Thus, where the Legislature has desired the DOC to take unspecified LFO deductions, it has said so, as in the early versions of RCW 72.09.111. Where it wanted the DOC to take minimum LFO deductions, it has done so. *See* RCW 72.09.111. Where the Legislature has wanted the DOC to take specific LFO deductions, it has done so. *See* RCW 72.09.480(2). Never has the Legislature evinced intent for the DOC to simply take LFO deductions whenever and however it desires. The history of the amendments to RCW 72.09.480 and RCW 72.09.111 reveals that the Legislature has carefully specified differing levels and kinds of

deductions for different sources of inmate funds. It does not reveal a system of unbridled DOC discretion to take LFOs.

4. The DOC’s construction of RCW 72.11.020 to grant itself unbounded discretion to take LFO deductions leads to strange results.

In an attempt to overcome the plain language of RCW 72.09.480, the DOC argues that it possesses independent authority under RCW 72.11.020 to make “discretionary LFO deductions” from all inmate accounts, limited only by the ten dollar indigency floor. Respondent’s Brief, at 5. This argument ignores the elaborate legislative scheme that has grown to govern deductions from inmate funds.²

The DOC’s strained reading leads to strange results, which courts seek to avoid. *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). Specifically, the DOC interpretation leads to the strange and unlikely result that the DOC can ignore the mandatory deductions of RCW 72.09.480 or exceed the specified LFO deductions of the statute, rendering the deduction scheme of RCW 72.09.480 meaningless. Such a result would be in conflict with the rule that courts should construe statutes so as

² The DOC interpretation is entitled to no weight because RCW 72.09.480 is unambiguous. *See Tiger Oil Corp. v. Dept. of Licensing*, 88 Wn. App. 925, 931, 946 P.2d 1235 (1997) (“Absent ambiguity, however, there is no need for the agency’s expertise in construing the statute.”). Further, the DOC interpretation conflicts with RCW 72.09.480, and the court “will not defer to an agency determination that conflicts with the statute.” *Id.*

to avoid rendering meaningless any word or provision. *In re Estate of O'Brien*, 109 Wn.2d 913, 918, 749 P.2d 154 (1988).

In addition, even if RCW 72.11.020 is read to conflict with RCW 72.09.480, the latter—the more recent and more specific statute—should control. *See Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d at 211.

Where the Legislature intended the DOC to have authority to exceed minimum, mandatory deductions, it explicitly said so. *See* RCW 72.09.111(1). The view that the DOC possesses discretionary authority to take LFO deductions from “other funds” that RCW 72.09.480 does not facially authorize would lead to strange results entirely at odds with the legislative scheme governing LFO deductions.

5. This Court should defer to legislative policy choices and give effect to the plain language of RCW 72.09.480.

In fact, DOC’s decision to deduct 20 percent for LFOs from appellants’ accounts—the percentage that applies to most other inmates under RCW 72.09.480(2)—suggests that it simply disagrees with how subsection (7) was drafted. However, this disagreement with the Legislature’s policy choice is not a proper reason to disregard the statute’s plain language. The policy issue is not as clear-cut as DOC asserts, and this appeal is not the place to second-guess legislative choices. There is no question that inmates with LFOs are required to pay those obligations.

However, the issue of how best to collect LFOs is a complicated policy question for the Legislature rather than the courts. *See Cazzanigi v. Gen. Elec. Credit Corp.*, 132 Wn.2d 433, 449, 938 P.2d 819 (1997) (holding policy arguments should be made to the legislature).

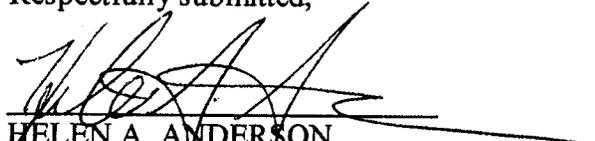
Any LFO collection scheme should take into account many factors such as the impact on inmate rehabilitation and re-entry into society, the impact on inmate families, inmate financial needs while in prison, as well as likely sources of inmate funds. The Legislature presumably considered many of these issues as it continued to modify LFO collection over the years. When making decisions regarding statutes that come under review, this Court has generally shown deference to the decisions of the Legislature. *See American Continental Ins. Co. v. Steen*, 151 Wn.2d 512, 519, n.1, 91 P.3d 864 (2004); *1519-1525 Lakeview Blvd. Condo. Ass'n v. Apartment Sales Corp.*, 144 Wn.2d 570, 582, 9 P.3d 1249 (2001);. This Court should defer to the legislative judgment about the appropriate LFO collection policy and give effect to the plain text of RCW 72.09.480.

V. CONCLUSION

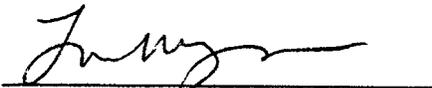
Appellants respectfully request that this Court reverse the trial court's order dismissing appellant's writ of review and complaint, and remand for further proceedings.

DATED this 26th day of October, 2006.

Respectfully submitted,


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FILED AS ATTACHMENT
TO E-MAIL


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FILED AS ATTACHMENT
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FILED AS ATTACHMENT
TO E-MAIL

**APPENDIX A:
STATUTORY AUTHORITY**

RCW 72.11.020

The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or 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. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

RCW 72.09.111

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

- (a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:
 - (i) Five percent to the public safety and education account for the purpose of crime victims' compensation;
 - (ii) Ten percent to a department personal inmate savings account;
 - (iii) Twenty percent to the department to contribute to the cost of incarceration; and
 - (iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.
- (b) The formula shall include the following minimum deductions from class II gross gratuities:
 - (i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

- (ii) Ten percent to a department personal inmate savings account;
 - (iii) Fifteen percent to the department to contribute to the cost of incarceration;
 - (iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and
 - (v) Fifteen percent for any child support owed under a support order.
- (c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:
- (i) Five percent to the public safety and education account for the purpose of crime victims' compensation;
 - (ii) Ten percent to a department personal inmate savings account;
 - (iii) Twenty percent to the department to contribute to the cost of incarceration; and
 - (iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.
- (d) The formula shall include the following minimum deductions from class III gratuities:
- (i) Five percent for the purpose of crime victims' compensation; and
 - (ii) Fifteen percent for any child support owed under a support order.
- (e) The formula shall include the following minimum deduction from class IV gross gratuities:
- (i) Five percent to the department to contribute to the cost of incarceration; and
 - (ii) Fifteen percent for any child support owed under a support order.
- (2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).
- (3) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.
- (4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:
- (i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;
 - (ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II

correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

RCW 72.09.480

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(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) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent to the department to contribute to the cost of incarceration;

(d) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(e) Fifteen percent for any child support owed under a support order.

(3) When an inmate, except as provided in subsection (7) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(5) The deductions required under subsection (2) of this section shall not apply to funds received by the department on behalf of an offender for payment of one fee-based education or vocational program that is associated with an inmate's work program or a placement decision made by the department under RCW 72.09.460 to prepare an inmate for work upon release.

An inmate may, prior to the completion of the fee-based education or vocational program authorized under this subsection, apply to a person designated by the secretary for permission to make a change in his or her program. The secretary, or his or her designee, may approve the application based solely on the following criteria: (a) The inmate has been transferred to another institution by the department for reasons unrelated to education or a change to a higher security classification and the offender's current program is unavailable in the offender's new placement; (b) the inmate entered an academic program as an undeclared major and wishes to declare a major. No inmate may

apply for more than one change to his or her major and receive the exemption from deductions specified in this subsection; (c) the educational or vocational institution is terminating the inmate's current program; or (d) the offender's training or education has demonstrated that the current program is not the appropriate program to assist the offender to achieve a placement decision made by the department under RCW 72.09.460 to prepare the inmate for work upon release.

(6) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(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 settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation, twenty percent to the department to contribute to the cost of incarceration, and fifteen percent to child support payments.

(8) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds from a settlement or award resulting from a legal action in addition to his or her gratuities, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation and twenty percent to the department to contribute to the cost of incarceration.

(9) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(10) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN PHILLIP ANDERSON &
FRANK REED NORDLUND.,

Appellants,

v.

STATE OF WASHINGTON, ET AL.,
Respondents.

) No. 78715-8

) DECLARATION OF SERVICE

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The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 26, 2006, I mailed, postage prepaid, a true and correct copy of the Appellants' Supplemental Brief, dated October 26, 2006, addressed to: Mary C. McLachlan, Assistant Attorney General, 1116 West Riverside Avenue, Spokane, WA 99201-1194, Counsel for Respondents.

DATED at Seattle, Washington this 26 day of October, 2006



Helen A. Anderson

FILED AS ATTACHMENT
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