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NO. 95586-7

SUPREME COURT OF THE STATE OF WASHINGTON

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THURSTON COUNTY, ex rel.,  
JOHN SNAZA, THURSTON COUNTY SHERIFF,

Petitioner/Appellant,

vs.

CITY OF OLYMPIA, a municipal corporation;  
CITY OF LACEY, a municipal corporation;  
CITY OF TUMWATER, a municipal corporation;  
and CITY OF YELM, a municipal corporation,

Respondents,

and

CITY OF TENINO, a municipal corporation,

Intervenor/Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR THURSTON COUNTY  
Superior Court No. 16-2-04768-34

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WASHINGTON STATE ASSOCIATION OF COUNTIES  
BRIEF OF AMICUS CURIAE

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## **I. IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington State Association of Counties (“WSAC”) is a statewide association of the thirty-nine individual counties and their leadership. WSAC assists counties in carrying out their statutory duties and advising on policy related matters. One of the manners in which WSAC accomplishes its purpose is by appearing as amicus curiae or intervenor in pending lawsuits, proposing legislation, or testifying regarding legislation proposed by others. WSAC has an interest in the present case because if the Court adopts the reasoning of the trial court, it will impact jail contracts statewide and upend the established interpretation of the reimbursement provisions of the City and County Jails Act.

## **II. ISSUES ADDRESSED BY AMICUS**

1. RCW 70.48.130(6) is not ambiguous on its face because contrary to the trial court’s determination, law enforcement officers can initiate felony charges that hold an accused person in jail.

2. Differentiating between reimbursement for misdemeanors and felonies adds language to an unambiguous statute and creates legislation under the guise of statutory interpretation.

## **III. AMICUS CURIAE’S STATEMENT OF THE CASE**

Thurston County (County) and the collective cities of Thurston County (“Cities”) disagree over the interpretation of the phrase “unit of

government whose law enforcement officers initiated the charges” as that phrase appears in RCW 70.48.130(6). The Cities contend that only a county prosecutor can “initiate” felony charges, therefore the Cities are not subject to the reimbursement provision contained in RCW 70.48.130(6). [Brief of Respondents/Intervenor at 5]. The County interprets the term “law enforcement officers” to not include prosecuting attorneys and takes a position consistent with AGO 2005 No. 8, which interpreted RCW 70.48.130(6) to mean that counties can seek reimbursement from cities under certain circumstances. [CP 83-84].

The trial court determined the phrase “whose law enforcement officers initiated the charges,” as used in RCW 70.48.130(6) to be ambiguous on its face. [CP 261]. In reaching its decision, the trial court held that while prosecuting attorneys are not law enforcement officers, they are the only official who can initiate felony charges that hold a person in jail, thus rendering the statute ambiguous due to the use of inconsistent terms. The court ruled that the obligation to pay for medical costs incurred while being held on felony charges falls on the County and not the Cities. *Id.*

#### **IV. ARGUMENT**

RCW 70.48 130(6) is not ambiguous. Contrary to the trial court’s ruling, law enforcement officers, such as municipal police officers can

initiate charges that hold a person in jail on felony charges absent any involvement from the county prosecutor. Under RCW 10.31.100 and associated statutes and court rules, police officers are vested with authority to arrest, book and place holds on felony offenders.

**A. RCW 10.31.100 GRANTS POLICE WITH THE AUTHORITY TO INITIATE FELONY PROCEEDINGS THAT HOLD ACCUSED PEOPLE IN JAIL**

**1. How does a person become “held in the jail” on a felony charge?**

There are four primary ways to be “held in the jail” on a felony charge in our criminal justice system. First and foremost is after a warrantless arrest by a law enforcement officer. RCW 10.31.100. Secondly, a person can be “held in the jail” after the issuance of an arrest warrant by a judicial officer and clerk of the court after a criminal information or complaint is filed by a prosecutor and a determination of probable cause is made by the Court. *See* CrR 2.2(a). A third way to be “held in the jail” occurs when a person responds to a summons after a criminal information or complaint is filed by a prosecutor, typically for an arraignment, where the Court, after making a probable cause determination, decides that pursuant to CrR 3.2, that the person needs to post a bond as a part of their conditions of release. CrR 2.2(b). A fourth way for a person to be “held in the jail” on a felony occurs after a person is sentenced to a period

of confinement of under one year resulting from a criminal conviction.  
RCW 70.48.020(2).

**2. Warrantless arrest by law enforcement officer pursuant to RCW 10.31.100**

Police officers routinely initiate holding accused people in jail on felony charges without any involvement of the county prosecutor. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. RCW 10.31.100. Not only does the police officer have arrest authority, but any officer authorized to execute a warrant in a criminal action may take recognizance of the arrested and approve bail. See RCW 10.19.040. County prosecutors, however, do not have the authority to arrest people. See RCW 36.27.020(4) and RCW 36.27.005.

After a law enforcement officer arrests and jails an accused person, there must be a judicial determination of probable cause within 48 hours of the arrest. See CrR 3.2.1(a). An information or indictment must be filed within 72 hours of the jail detention. Computation of the 72 hour time period does not include any part of Saturdays, Sundays, or holidays. CrR 3.2.1(f).

In practice this means that a person arrested on a felony charge on a Friday evening can remain held in the jail until the Wednesday of the

following week in the absence of a county prosecutor filing an information. If a holiday falls on a Monday, then the deadline becomes Thursday. If no information is filed by a prosecutor within the timelines of CrR 3.2.1(f)(1) then the Court shall release the detained pursuant to CrR 3.2.1(f)(2)(i) and (ii).

**3. The trial court's interpretation of the phrase "initiated the charges" contained in RCW 70.48.130(6) ignores the authority granted to police by RCW 10.31.100.**

The trial court's determination that RCW 70.48.130(6) was ambiguous hinged on a mistaken belief that there was an inconsistency between "law enforcement officers" and "initiated charges." This reading of RCW 70.48.130(6) neglects to account for the common scenario of warrantless arrest by police officers.

RCW 10.31.100 clearly authorizes a police officer to arrest a person who has or is committing a felony in the absence of a warrant. See RCW 10.31.100. It is also abundantly clear that besides having warrantless arrest authority, a police officer can take recognizance of the arrested and approve bail. See RCW 10.19.040. Municipal police officers are law enforcement officers that initiate felony and misdemeanor charges that hold accused people in jail. RCW 70.48.130(6) is not ambiguous.

**B. THE CITIES' INTERPRETATION OF RCW 70.48.130(6) INAPPROPRIATELY ADDS LANGUAGE TO THE STATUTE PARSING FELONY AND MISDEMEANOR DETENTION**

The Cities concede that the County can seek reimbursement under RCW 70.48.130(6) when police officers initiate misdemeanor charges that hold accused people in jail. [Brief of Respondents/Intervenor at 6]. The statute does not use the terms “felonies” and “misdemeanors” or differentiate between them. The Cities’ interpretation requires that a distinction between misdemeanors and felonies be added to the statute.

RCW 70.48.130(6) reads in full:

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the authority's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

If a statute is clear on its face, its meaning is to be derived from the language of the statute alone. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)).

If a statute is ambiguous, we employ tools of statutory construction to ascertain its meaning. A statute is ambiguous if it is “‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not ambiguous merely because different interpretations are conceivable.’” *Agrilink Foods v. State Department of Revenue*, 153 Wn.2d 392 at 396, 103 P.3d 1226 (quoting *State v. Hahn*, 83 Wn.App. 825, 831, 924 P.2d 392 (1996)).

The court should not subject an unambiguous statute to statutory construction and has “declined to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it.” *Kilian*, 147 Wn.2d at 20, 50 P.3d 638 (citing *Keller*, 143 Wn.2d at 276, 19 P.3d 1030; *Wash. State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 904, 949 P.2d 1291 (1997)). “Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute.” *Kilian*, 147 Wn.2d at 21, 50 P.3d 638 (footnote omitted) (citing *Associated Gen. Contractors v. King County*, 124 Wn.2d 855, 865, 881 P.2d 996 (1994)).

Here, the Cities’ interpretation requires a distinction between types of charges to read into the statute that is not there.

## V. CONCLUSION

RCW 70.48.130(6) is not ambiguous. The assertion that only a county prosecutor can “initiate” a felony charge that holds a person in the

jail is incorrect. The trial court failed to analyze RCW 70.48.130(6) in the context of RCW 10.31.100 and CrR 3.2.1. There is no distinction between reimbursement for felony and misdemeanor charges in the statute and the judiciary should not add such a distinction.

For all the reasons set forth above, and those provided by Thurston County, WSAC respectfully requests this Court reverse the trial court decision and affirm that RCW 70.48.130(6) allows counties to seek reimbursement from cities for emergency medical care when municipal law enforcement officers initiate the charges on which the person is being held in the jail.

Respectfully submitted this 4<sup>th</sup> day of January, 2019.

CHAD M. ENRIGHT  
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CERTIFICATE OF SERVICE

I, Batrice Fredsti, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

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WSAC's Motion for Leave to File Amicus Brief and Brief of Amicus Curiae

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