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SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

CITY OF OLYMPIA, CITY OF LACEY, CITY OF TUMWATER and
CITY OF YELM,

Respondents,

CITY OF TENINO,

Intervenor.

ANSWER OF RESPONDENT CITIES OF OLYMPIA, LACEY,
TUMWATER AND YELM, AND INTERVENOR CITY OF TENINO,
TO THE WASHINGTON STATE ASSOCIATION OF COUNTIES
AMICUS CURIAE BRIEF

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I. INTRODUCTION

Pursuant to Rule 10.1(f) of the Washington Rules of Appellate Procedure, the Respondent and Intervenor cities (“Cities”) submit this Answer to the Amicus Curiae Brief filed by the Washington State Association of Counties.

II. ARGUMENT

The Washington State Association of Counties (“WSAC”) offers a strained approach to the interpretation of RCW 70.48.130(6). Similar to Thurston County in its Brief of Petitioner/Appellant Thurston County, WSAC reaches well beyond applicable rules of statutory construction in order to unreasonably define important statutory terms necessary to support the County’s position.

A. A Warrantless Felony Arrest by a Police Office Is Different Than the Initiation of Felony Charges by a County Prosecuting Attorney.

WSAC asserts that the trial court failed to consider that police officers “initiate” felony “charges,” for the purposes of RCW 70.48.130(6), when they “arrest” an individual for a felony pursuant to RCW 10.31.100. See Washington State Association of Counties Brief of Amicus Curiae at 5. WSAC is incorrect.

Under the plain terms of state statute, police officers have the authority to arrest an individual without a warrant, based on probable cause

that the person committed a felony. RCW 10.31.100 states “[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.” (emphasis added). The statute is completely silent regarding the possible and subsequent initiation of charges related to that arrest.

In contrast, RCW 70.48.130(6) is completely silent regarding arrests, and instead authorizes the reimbursement for the described medical costs “from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail.” (emphasis added).

The trial court specifically rejected the notion that officers “initiate” felony charges by arresting an individual for a felony because it found that the terms “arrest” and “charge” are meaningfully different. See CP 292-93. The trial court ruled that the word “charge” “refers to its common legal meaning.” CP 292. The term “charge” refers to the “legal term that the parties are aware of it, that i.e., that someone has been charged with a crime.” CP 293. Meanwhile, “it’s clear the legislature has used the word arrest differently.” Id.

This Court should likewise find that the terms “arrest” and “initiation of charges” have different meanings—they are not synonyms. Some persons who are actually arrested are not actually charged. The two different terms plainly have two different meanings.

The Legislature did not intend to equate the term “charge” with “arrest.” The City and County Jails Act, Chapter 70.48 RCW, uses the term “charge,” “charges” and “charged” consistently to refer to the charges filed against an individual, as distinguished from the mere act of arresting prior to booking a person into jail. See RCW 70.48.390; RCW 70.48.130(7). This Court can accordingly and reasonably infer that “arresting” or “booking” a person have different meanings than “charging” that same person. Henson v. Santander Consumer USA Inc., 582 U.S. ___, 137 S. Ct. 1718, 198 L. Ed. 2d 177 (2017) (holding the presumption that identical words used in different parts of the same statute carry the same meaning (citing IBP, Inc. v. Alvarez, 546 U.S. 21, 34, 126 S. Ct. 514, 163 L. Ed. 2d 288 (2005)), extends to words used in neighboring provisions in the same Act); State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002) (“[w]hen the legislature uses different words within the same statute, we recognize that a different meaning is intended.”).

By way of one example, RCW 70.48.390 instructs in pertinent part:

A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail’s actual booking costs or one hundred dollars.

If the person has no funds at the time of booking or during the period of incarceration,

the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records [emphases added].

Similarly, RCW 70.48.130(7) states:

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW [emphases added].

In this context, the Legislature plainly distinguished the acts of arresting, holding, and transporting a person to jail where he or she is then booked, from the separate act of charging that individual with a crime.

In addition, appellate courts have repeatedly recognized the distinction between arresting and charging an individual. *See, e.g., In re J.L.*, 140 Wn. App. 438, 448, 166 P.3d 776 (2007) (holding that “due process rights include the initiation of criminal action by filing of charges by the prosecutor”) (emphases added); *In re Rebecca K.*, 101 Wn. App. 309, 2 P.3d 501 (2000) (holding that “criminal contempt proceedings must be

initiated by a criminal information filed by the State in order to comply with due process”) (emphasis added). The use of the word “charges” as it appears in RCW 70.48.130(6) must be afforded the same meaning. Henson, 137 S. Ct. at 1722-23 (2007); Davis v. Dep’t of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (citing Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

Finally, the import of the Legislature’s choice of the word “charges” in RCW 70.48.130(6) is evidenced by its larger, commonly understood legal meaning. “If the legislature uses a term well known to the common law, it is presumed that the legislature intended it to mean what it was understood to mean at common law.” State v. Dixon, 78 Wn.2d 796, 804, 479 P.2d 931 (1971); *see also* Fransen v. State Bd. of Natural Resources, 66 Wn.2d 672, 674-75, 404 P.2d 432 (1965).

For example, in RCW 10.31.100, the term “arrest”—an authorized act of a police officer—is consistently differentiated from “charges:”

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.

(16)(a) Except as provided in (b) of this subsection, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when

the officer has probable cause to believe that the person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer: . . . (ii) has knowledge, based on a review of the information available to the officer at the time of arrest, that the person is charged with or is awaiting arraignment for an offense that would qualify as a prior offense as defined in RCW 46.61.5055 if it were a conviction.

RCW 10.31.100, and subpart (16)(a) thereto (emphases added). The County has failed to meet its burden to rebut the presumption that the operative term “charges” used in different parts of the City and County Jails Act and related legislation conveys the same meaning each time it is used. *See Henson*, 137 S. Ct. at 1722-23 (2017) (citing *IBP, Inc.*, 546 U.S. at 34 (2005) (holding “petitioners have not rebutted the presumption that identical words in the same statute carry the same meaning.”)).

B. The Cities’ Reading of RCW 70.48.130(6) Does Not Inappropriately Add Language to the Statute Because the Statute Is Unambiguous Under the Plain Meaning Rule.

The Cities’ reading of RCW 70.48.130(6) is perfectly consistent with the plain meaning rule. *See* Brief of Respondents/Intervenor at 8 et seq. In full, the statute provides:

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.

RCW 70.48.130(6).

WSAC asserts that this Court should not accept the Cities' application of the statute because the Cities distinguish between misdemeanors and felonies. WSAC fails to understand the Cities' position—the statute is unambiguous under the plain meaning rule. City police officers cannot initiate felony charges. That authority is vested solely in county prosecuting attorneys.

1. “Initiated the charges” refers to the formal commencement of criminal charges.

The phrase “initiated the charges” means just that—the actual commencement of felony criminal charges against a defendant, a power that resides exclusively with a county prosecuting attorney.¹ A county

¹ See, e.g., *City of Seattle v. Bonifacio*, 127 Wn.2d 482, 489, 900 P.2d 1105 (1995) (holding that “there is nothing to prevent the State or a city from seeking an amendment by complaint if, after review, it is deemed that a charge initiated by citation was unartfully stated”) (emphasis added); *State v. Kalakosky*, 121 Wn.2d 525, 534, 852 P.2d 1064 (1993) (holding that “it is firmly established that the right to counsel under the Sixth Amendment and under Const. art. 1, § 22 (amend. 10) attaches only at or after initiation of formal charges”) (emphasis added); *In re J.L.*, 140 Wn. App. 438, 448, 166 P.3d 776 (2007) (holding that “due process rights include the initiation of criminal action by filing of

prosecuting attorney has no power to arrest. In contrast, a city police officer has full powers of arrest, but has no power to initiate felony criminal charges.

In Washington, the prosecuting attorney generally possesses sole authority and discretion to determine the sufficiency of a criminal investigation and to decline or initiate criminal charges. RCW 9.94A.411. It is axiomatic that “[t]he prosecuting attorney’s office, not the police, determines whether a felony or misdemeanor will be charged.” State v. Terrell, 38 Wn. App. 187, 189–90, 684 P.2d 1318 (1984); *see also* State v. Thompson, 58 Wn.2d 598, 606, 364 P.2d 527 (1961) (holding that “[t]he police record or booking is not the charge upon which a defendant goes to trial”); *see also* Youker v. Douglas Cty., 162 Wn. App. 448, 467, 258 P.3d 60 (2011) (holding that “the action of the prosecutor was a superseding intervening cause that would limit any liability for false arrest and false imprisonment [against the County and its Sherriff] to damages accruing before criminal charges were filed by a fully informed prosecutor”) (quoting Townes v. City of New York, 176 F.3d 138, 147 (2d Cir. 1999) (“[i]t is well

charges by the prosecutor”) (emphases added); In re Rebecca K., 101 Wn. App. 309, 2 P.3d 501 (2000) (holding that “criminal contempt proceedings must be initiated by a criminal information filed by the State in order to comply with due process”) (emphasis added); City of Auburn v. Brooke, 119 Wn.2d 623, 629, 836 P.2d 212 (1992) (holding that “the citation charging procedure [set out in CrRLJ 2.1(b), applicable to misdemeanor and gross misdemeanors only] permits officers to initiate prosecutions”).

settled that the chain of causation between a police officer's unlawful arrest and a subsequent conviction and incarceration is broken by the intervening exercise of independent judgment") (internal quotation omitted).

Importantly, in Washington state only county prosecutors may initiate felony charges, while both counties and cities may prosecute misdemeanors and gross misdemeanors committed in their respective jurisdictions. See Wash. Const. art. IV, § 6 (superior court has original jurisdiction over all criminal cases amounting to felony). RCW 39.34.180 expressly states as follows:

Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

Procedurally, felony charges must be initiated by the county prosecutor by means of an information, or grand jury indictment. See generally Const. art. I, §§ 25 and 26; RCW 10.37.015; CrR 2.1; JuCR 7.2.

In contrast, a misdemeanor or gross misdemeanor filed in a municipal or district court by a city prosecutor is charged by either a complaint, issued by the prosecutor, or by a citation and notice, issued by an arresting police officer. See generally RCW 10.37.015; CrRLJ 2.1.

This latter option carves out an important exception to the standard requirement that “all criminal proceedings shall be initiated by a complaint [filed by a prosecutor].” CrRLJ 2.1(a)(1). No comparable provision exists for felonies, all of which may only be charged by the county prosecutor. RCW 10.37.015(1) (“No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge[.]”); CrR 2.1; Wash. Const. art. IV, § 6.

It is only in this very limited circumstance—misdemeanors and gross misdemeanors filed in a municipal or district court—that a police officer may initiate charges, as a matter of law. This restriction was aptly addressed in City of Auburn v. Brooke, which held that:

[T]he citation charging procedure permits officers to initiate prosecutions without unjustifiable expense and delay. In addition, the procedure under CrRLJ 2.1(b) facilitates an officer’s ability to charge defendants at the scene and then to release those persons for whom jailing is unnecessary. Differing

procedures and requirements for charging by complaint and by citation and notice do not violate due process and equal protection right.

City of Auburn v. Brooke, 119 Wn.2d 623, 629, 836 P.2d 212 (1992); *see also* State v. Leach, 113 Wn.2d 679, 694, 782 P.2d 552 (1989) (“[a] law enforcement officer may initiate charges by citation and notice without prior approval of the prosecutor”) (citing CrRLJ 2.1(b)(6)).

III. CONCLUSION

This Court should reject WSAC’s arguments. RCW 70.48.130(6) is unambiguous and requires the County to pay for all medical costs incurred for inmates held in the Thurston County Jail on felony charges.

RESPECTFULLY SUBMITTED this 5th day of February, 2019.

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