

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

JAMES A. BOYD,

Appellant,

v.

HAROLD CLARKE, ACCOUNTANT D.  
LEWIS, and WASHINGTON  
DEPARTMENT OF CORRECTIONS,

Respondents.

No. 40411-7-II

UNPUBLISHED OPINION

Hunt, J. — James A. Boyd appeals the superior court’s grant of summary judgment to the Washington Department of Corrections (DOC) in his action challenging the DOC’s deductions from his prisoner funds. Serving his sentence for a Kansas conviction, Boyd currently is incarcerated in a Washington prison under an Interstate Corrections Compact (ICC) inmate transfer contract between the state of Washington and the state of Kansas. Boyd argues that, because Kansas convicted him, (1) the funds in his DOC prison account are subject only to

Kansas's deduction statutes and rules and (2) the DOC's deduction of his funds under Washington's deduction statute violates Washington's version of the ICC and his state and federal due process rights.<sup>1</sup> We disagree and affirm the superior court's grant of summary judgment.

#### FACTS

In 1985, under the ICC,<sup>2</sup> Kansas and Washington passed statutes that provided specific terms for the transfer and care of inmates from the custody of the Kansas Department of Corrections into the custody of the DOC. Kan. Stat. Ann. §§ 76-3001, -3002, -3003.<sup>3</sup> James A. Boyd pled guilty to various crimes not relevant to this appeal. Kansas transferred Boyd to the DOC's custody under the terms of its ICC contract with Washington. Because Boyd meets

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<sup>1</sup> U.S. Const. amend. XIV, § 1; Wash. Const. art. I, § 3.

<sup>2</sup> Nearly every state, including Washington, has adopted some form of the ICC statute. The ICC provides the authority for states to enter into contracts with other states (1) to establish a process for shifting institutional and jurisdictional authority over inmates, and (2) to arrange for the sharing of agencies' responsibilities and obligations for transferred inmates. *See* RCW 72.74.020(1); *see also* Nat'l Inst. of Corr., U.S. Dept. of Justice, *Interstate Transfer of Prison Inmates in the United States: Special Issues in Corrections* (Feb. 2006), *available at* <http://nicic.gov/Downloads/PDF/Library/021242.pdf>. The ICC provides boilerplate provisions that every transfer contract must include, but the states must still negotiate the specific terms of each prisoner's transfer. *See* RCW 72.74.020 ("The secretary of the department of corrections is hereby authorized and requested to execute, on behalf of the state of Washington, with any other state or states legally joining therein a compact which shall be in form substantially as follows: . . . .")

<sup>3</sup> Washington's version of the ICC is codified as RCW 72.74.010-.900.

RCW 72.09.015(16)'s definition of a Washington "inmate,"<sup>4</sup> the DOC has applied Washington's inmate fund deduction laws to Boyd's prison account.<sup>5</sup>

Boyd filed an action for declaratory relief in Thurston County Superior Court, alleging that the DOC's application of Washington's inmate fund deduction laws to him contravened Washington's ICC and infringed on his due process rights under the Fourteenth Amendment of the United States Constitution and article I, section 3 of the Washington Constitution. According to the trial court, Boyd waived these constitutional claims during oral argument.<sup>6</sup>

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<sup>4</sup> RCW 72.09.015(16) provides:

'Inmate' means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and *persons received from another state, state agency, county, or federal jurisdiction.*

(Emphasis added).

<sup>5</sup> Washington provides for two types of inmate fund deductions: (1) deductions from an inmate's "gross wages, gratuities, or workers' compensation benefits," RCW 72.09.111(1); and (2) deductions from "any funds in addition to . . . wages [and] gratuities." RCW 72.09.480(2). The rate of an inmate's deductions from his wages/gratuities under RCW 72.09.111 depends on the 'class' that the DOC assigns to the wages/gratuities, for example, "class I gross wages" or "class III gratuities." Because Boyd claims that all his funds are deducted at a 35 percent rate, he is likely enrolled in a class I program; neither the record nor his briefs confirm this.

Under RCW 72.09.480(2), the DOC deducts all non-wage funds as follows: (1) "[5 percent] to the crime victims' compensation fund"; (2) "[10 percent] to a department personal inmate savings account"; (3) "[20 percent] for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court"; (4) "[20 percent] for any child support owed under a support order"; and (5) "[20 percent] to the department to contribute to the cost of incarceration."

<sup>6</sup> Boyd now contends that he did not waive these constitutional arguments below. But because he has failed to provide verbatim transcripts of the proceedings to support his contention, we cannot resolve this conflict by reviewing the record. Nevertheless, as we discuss in the Analysis portion of this opinion, even if Boyd preserved his constitutional arguments, they fail.

Boyd moved for judgment on the pleadings.<sup>7</sup> The DOC cross-moved for summary judgment. The trial court denied Boyd's motion and granted the DOC's motion. Subsequently, the trial court denied Boyd's motion for reconsideration.

Boyd appealed and sought review by our Supreme Court, which transferred his appeal to our court. He did not, however, designate the transfer contract as part of the record on appeal.<sup>8</sup> When we ordered Boyd to supplement the record on appeal he responded that he was unable to procure a copy of the transfer contract.<sup>9</sup> We then ordered the State to supplement the record with the transfer contract. When the State complied, Boyd objected on grounds that the contract failed to conform to RCW 5.44.040<sup>10</sup> and that neither Kansas nor Washington had authority to enter into the transfer contract. Now that this transfer contract is part of the record on appeal, we can review the merits of Boyd's argument to the extent that his briefing permits.

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<sup>7</sup> The trial court apparently treated Boyd's motion for judgment on the pleadings as a summary judgment motion under Cr 12(c).

<sup>8</sup> The superior court expressly referred to this contract in its findings of fact and conclusions of law. Nevertheless, it appeared that the contract was not filed with us as a separate exhibit or clerk's paper.

<sup>9</sup> We note, however, that according to the DOC, Boyd attached the transfer contract to his declaration that he filed in the trial court on November 25, 2008, and he also attached it to his motion for judgment on the pleadings that he filed in the trial court on November 25, 2008.

<sup>10</sup> RCW 5.44.040 provides that public records are admissible if they are "duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state."

## ANALYSIS

Boyd argues that Washington's ICC prohibits the DOC from applying Washington's inmate fund deduction laws to him<sup>11</sup> and that the superior court erred by concluding otherwise. Boyd's argument fails.

### I. Standard of Review

We review summary judgment de novo, engaging in the same inquiry as the superior court and viewing the facts and any reasonable inferences therefrom in the light most favorable to the non-moving party, here, Boyd. *Associated Petroleum Prod., Inc. v. Nw. Cascade, Inc.*, 149 Wn. App. 429, 434, 203 P.3d 1077 (citing *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005)), *review denied*, 166 Wn.2d 1034, 217 P.3d 782 (2009). Summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Diamond B Constructors., Inc. v. Granite Falls Sch. Dist.*, 117 Wn. App. 157, 160-61, 70 P.3d 966 (2003) (citing CR 56(c)). Such is not the case here.

### II. Washington's ICC

Boyd cites several provisions of Washington's ICC that he alleges favor his position, without supporting analysis: RCW 72.74.020(3)(a)(ii), (3)(b), (4)(a), (4)(c), (4)(e), and (4)(h).

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<sup>11</sup> Boyd contends that the DOC unlawfully subjects his prison funds to a 35 percent deduction rate applicable to Washington prisoners, instead of a \$12 annual deduction for Kansas prisoners. But he does not specify the statutory provision that he contends the DOC is using improperly to deduct his funds.

Boyd also asserts that he has "the right not to pay mandatory deductions twice, under both Kansas and Washington." Reply Br. of Appellant at 8. But he neither claims on appeal nor did he present evidence below that Kansas and Washington are simultaneously subjecting his prison funds to their respective states' deduction laws.

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We could decline to address the merits of these unsupported arguments. RAP 10.3(a)(6).

Nevertheless, to the extent possible, we examine the potential applicability of each statute in turn.

A. RCW 72.74.020(3)(a)(ii)<sup>12</sup>

Boyd cites RCW 72.74.020(3)(a)(ii), as one of the statutes that the DOC violates when it deducts from his funds under Washington law. But he provides no supporting analysis.

RCW 72.74.020(3)(a)(ii) provides:

[A contract entered into between two states for inmate transfer shall provide for] [p]ayments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

RCW 72.74.020(3)(a)(ii) requires only that the transfer contract contain terms about certain payment types from the sending state to the receiving state. Because paragraph 27 of the transfer contract contains these terms,<sup>13</sup> the DOC has complied with RCW 72.74.020(3)(a)(ii) in this case.

Boyd shows no DOC violation of this statute.

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<sup>12</sup> Boyd also cites Kansas's equivalent statute, Kan. Stat. Ann. § 76-3002, art. III(a)(2), which contains language identical to RCW 72.74.020(3)(a)(ii) except that Kansas's version omits the phrase "or to the federal government." This difference does not alter our analysis.

<sup>13</sup> Paragraph 27 of the transfer contract provides that "the costs to each state of the custody of inmates transferred under the terms of this contract shall be offset through mutual exchange of inmates between the states." Clerk's Papers (CP) at 65.

B. RCW 72.74.020(3)(b)<sup>14</sup>

Similarly, Boyd cites RCW 72.74.020(3)(b) without supporting analysis. RCW 72.74.020(3)(b) provides:

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

Again, Boyd simply identifies this statute as one the DOC violated.

But RCW 72.74.020(3)(b) provides only that transfer contracts must incorporate the ICC's terms and that any contract terms that conflict with the ICC must give way to the ICC's superior terms. Boyd's transfer contract does not reveal any conflicting terms; nor does Boyd assert any. Again, Boyd shows no DOC violation of this statute.

C. RCW 72.74.020(4)(a)<sup>15</sup>

Boyd argues that under RCW 72.74.020(4)(a) "Washington State [must] act 'solely' as an agent in regards to the jurisdiction of [his] legal rights." Br. of Appellant at 5 (quoting RCW 72.74.020(4)(a)). RCW 72.74.020(4)(a) provides:

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to subsection (3)(a) of this section, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard *solely as agent* for the sending state.

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<sup>14</sup> Boyd also cites Kansas's equivalent statute, Kan. Stat. Ann. § 76-3002, art. III(b), which contains language identical to RCW 72.74.020(3)(b).

<sup>15</sup> Boyd also cites Kansas's equivalent statute, Kan. Stat. Ann. § 76-3002, art. IV(a), which contains identical language as RCW 72.74.020(3)(b) except Kansas's version reads "article III" instead of "subsection (3)(a) of this section." This difference does not alter our analysis.

(Emphasis added). There is, however, no authoritative case law that defines the scope of this type of agency under RCW 72.74.020(4)(a).

The Kansas judgment orders Boyd to pay restitution and various court costs. But nothing in the Kansas judgment forbids Kansas, and therefore, Washington, acting as Kansas's agent under RCW 72.74.020(4)(a), from imposing any costs or fines of any kind on Boyd. Thus, Boyd's is not a case where the sending jurisdiction forbids the imposition of any fees for any reason.<sup>16</sup>

On the contrary, the ICC transfer contract helps define the agency/principal relationship between Washington and Kansas. Paragraph 17 of this transfer contract provides:

Inmates, while in the custody of the receiving state, shall be subject to all the provisions of law and regulations applicable to persons committed for violations of law of the receiving state not inconsistent with the sentence imposed.

Clerk's Papers (CP) at 62. Paragraph 13 also provides, "It shall be the responsibility of . . . the receiving state . . . to make certain that [the transferred inmate] receive[s] no special privileges."

CP at 60. And paragraph 15A specifically addresses inmate compensation:

Compensation in connection with any such participation [in programs of occupational training and industrial or other work] (whether as payment, incentive, or for any other therapeutic or rehabilitative reason) shall be paid to inmates of the sending state on the same basis as to inmates of the receiving state.

CP at 61. The thrust of paragraphs 13, 15, and 17, under RCW 72.74.020(4)(a), does not require Washington, as Kansas's agent, to deduct funds from Boyd's account under Kansas law; nor do these or any other paragraphs of the transfer contract restrict Washington from applying

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<sup>16</sup> General Rule 14.1 forbids Boyd's citation to an unpublished decision of the Pierce County Superior Court. Therefore, we do not further consider this part of his argument.



Washington inmate fund deduction laws to Boyd. Again, Boyd has failed to show that the DOC has violated RCW 72.74.020(4)(a).

D. RCW 72.74.020(4)(c)<sup>17</sup>

RCW 72.74.020(4)(c) provides:

Inmates confined in an institution pursuant to the terms of this compact *shall at all times be subject to the jurisdiction of the sending state* and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of subsection (3)(a) of this section.

(Emphasis added).

Again, Boyd neither analyzes this provision nor cites any legal authority interpreting the term “jurisdiction” in RCW 72.74.020(4)(c). Accordingly, we need not further consider his argument. RAP 10.3(a)(6).

Nevertheless, we look to other jurisdictions that have examined similarly worded statutes.<sup>18</sup> A Kansas appellate court (in a different appeal also filed by Boyd) recently interpreted Kan. Stat. Ann. § 76-3002, art. IV(c), which is nearly identical to RCW 72.74.020(4)(c). *Boyd v. Werholtz*, 41 Kan. App. 2d 15, 203 P.3d 1, 2-3 (2008). In that case, Boyd, also while

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<sup>17</sup> Boyd also cites Kansas’s equivalent statute, Kan. Stat. Ann. § 76-3002, art. IV(c), which contains language identical in substance to RCW 72.74.020(4)(c). That Kansas’s version reads “article III” instead of “subsection (3)(a) of this section” does not render the two statutes different in function or meaning.

<sup>18</sup> See, e.g., *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 359, 20 P.3d 921 (2001) (citing *Genaro v. Cent. Transp., Inc.*, 703 N.E.2d 782 (Ohio 1999); *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873 (D.C. 1998)).

incarcerated in Washington, sent letters to various Kansas correctional officials and employees claiming that his sentence had been miscalculated and that he had not received any early release credit. *Boyd*, 203 P.3d at 2. Boyd filed a habeas corpus petition, which the Kansas court dismissed on grounds that he had failed to exhaust his administrative remedies. *Boyd*, 203 P.3d at 2. The *Boyd* court held that the “jurisdiction” provision of Kan. Stat. Ann. § 76-3002, art. IV(c) required Boyd to exhaust Kansas’s administrative remedies, even though Boyd was imprisoned in Washington, because Kansas retained authority over Boyd for purposes of transfer, release on probation or parole, and discharge from confinement. *Boyd*, 203 P.3d at 2-3. That decision did not address the issue before us here, namely to what extent, if any, Washington can apply its internal inmate fund laws to Boyd, a prisoner from Kansas. Nor did this decision suggest that the DOC must apply Kansas’s inmate fund deduction laws to Boyd. Thus, the DOC has not violated RCW 72.74.020(4)(c).

E. RCW 72.74.020(4)(e)<sup>19</sup>

RCW 72.74.020(4)(e) provides:

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be *treated equally* with such similar inmates of the *receiving state* as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any *legal rights* which said inmate would have had if confined in an appropriate institution of the *sending state*.

(Emphasis added). This provision contains two apparently contradictory clauses: (1) the “treated equally” clause, which the DOC emphasizes and (2) the “deprivation” clause, to which Boyd

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<sup>19</sup> Boyd also cites Kansas’s equivalent statute, Kan. Stat. Ann. § 76-3002, art. IV(e), which contains language identical to RCW 72.74.020(4)(e).

refers.

Paragraph 15A of the transfer contract establishes that Boyd's inmate wages are under the complete control of the DOC:

Compensation in connection with any such participation [in employment] shall be paid to inmates of the sending state on the same basis as to inmates of the receiving state.

CP at 61. The transfer contract makes clear that the DOC has the authority to dispose of deductions from Boyd's wages under Washington law. Thus, RCW 72.09.111 controls the DOC's deductions from Boyd's wages, and Boyd's argument—that the DOC must apply Kansas laws to deductions from his wages—fails.

Although RCW 72.74.020(4)(e) does not determine the applicable law that the DOC must apply to deductions from Boyd's wages, the transfer contract makes clear that the DOC can apply Washington law to these deductions. The transfer contract does not make clear, however, which law the DOC must apply to Boyd's non-wage deductions under RCW 72.09.480(2). Accordingly, we turn to case law.

Deductions under RCW 72.09.480 “shall not exceed the department's total cost of incarceration.” RCW 72.09.480(5). Noting this statutory cap, our Supreme Court has explained that RCW 72.09.480 “is best described as a recoupment provision, designed to collect a fee for specific services rendered by the State to inmates.” *Dean v. Lehman*, 143 Wn.2d 12, 28, 18 P.3d 523 (2001). “In essence,” under RCW 72.09.480, “an inmate is being asked to reimburse the State because the inmate ‘has made it necessary for the State to keep and maintain him at a large cost.’” *Dean*, 143 Wn.2d at 29 (quoting *Auditor Gen. v. Hall*, 1 N.W.2d 516, 518 (Mich. 1942)).

Once deductions under RCW 72.09.480 are considered reimbursements for the State's expenditures, the question of whether RCW 72.74.020(4)(e) requires the DOC to deduct Boyd's non-wage funds under Kansas law or Washington law becomes clear. Under paragraph 27 of the transfer contract, "each state shall bear the cost of providing care and custody of the inmate sent to it." CP at 65. Because the DOC, and ultimately the state of Washington, absorbs the cost of housing Boyd,<sup>20</sup> the DOC must recoup this cost by applying Washington deduction laws.<sup>21</sup>

Boyd argues that he should not contribute to Washington's victims' compensation fund because he was convicted for crimes committed in Kansas and, therefore, he "does not have a victim in Washington." Reply Br. of Appellant at 7. Division One of our court has held that victims of crimes perpetrated outside Washington are not eligible to receive benefits from Washington's victims' compensation fund. *L.H. v. Dep't of Labor & Indus.*, 86 Wn. App. 512, 518-19, 940 P.2d 657 (1996). And convicted defendants may be ordered to make restitution only if they committed or attempted to commit a criminal act "in this state," RCW 7.68.020(2), that results in injury that the victims' compensation fund act covers. RCW 7.68.120(1).

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<sup>20</sup> Paragraph 27 of the ICC transfer contract provides: "It is intended by both states that the costs to each state of the custody of inmates transferred under the terms of this contract shall be offset through mutual exchange of inmates between the states. . . . [E]ach state shall bear the cost of providing care and custody of the inmate sent to it." CP at 65.

<sup>21</sup> We note that other jurisdictions have applied similar logic in analogous cases. For example, the United States District Court of Kansas ruled that, despite Kan. Stat. Ann. § 76-3002, art. IV(e), which also contains the apparently contradictory "legal rights" and "deprivation" clauses, the receiving state had authority to re-classify the transferred inmate because "a common-sense reading of this provision must allow authorities having daily, physical custody of the transferred inmate to evaluate this aspect of his program." *Jaben v. Moore*, 788 F. Supp. 500, 504 (1992) (comparing to *Stewart v. McManus*, 924 F.2d 138 (8th Cir. 1991)). See also *Glick v. Holden*, 889 P.2d 1389, 1393 (Utah Ct. App. 1995); *Cranford v. Iowa*, 471 N.W.2d 904, 905-06 (Iowa Ct. App. 1991).

But Boyd's case does not involve a restitution order or an out-of-state victim seeking benefits. Rather, Boyd contends that the DOC cannot use deductions from funds of prisoners incarcerated in Washington but convicted for crimes committed outside Washington to fund Washington's victims' compensation. Boyd's argument is misplaced. Chapter 7.68 RCW does not place restrictions on the kind of prisoner whose funds the DOC may deduct under RCW 72.09.480 to contribute to the victims' compensation fund. The mechanism for directly linking the victim's injury to the perpetrator is a restitution order, which is why restitution can only be given to Washington residents who suffered from a crime committed in Washington.

But deductions from inmates' accounts do not correlate with the victims of the inmates' crimes. Thus, under RCW 72.09.480(2)(a), every inmate has the same percentage (5 percent) of his account deducted for the victims' compensation fund, regardless of the magnitude of the injuries the crimes caused. And chapter 7.68 RCW makes no mention of exemption for inmates whose victims have moved out of Washington or died. Accordingly, we refuse to read chapter 7.68 RCW as implicitly exempting Boyd from having his funds deducted under RCW 72.09.480(2) for Washington's victims' compensation fund.

In sum, RCW 72.74.020(4)(e) does not determine whether the DOC is required to make deductions from Boyd's account under Kansas or Washington law. But Boyd's transfer contract expressly provides that the DOC may deduct from Boyd's wages under RCW 72.09.111 in the same manner as it deducts from other Washington inmates' wages. For the reasons explained above, Washington law applies to DOC deductions from Boyd's non-wage funds under RCW 72.09.480(2) that go toward the cost of incarceration and the victims' compensation fund.

Paragraph 13 of the transfer contract further supports our conclusion in providing that Boyd is entitled to “no special privileges.” CP at 60. Accordingly, Boyd has not shown that the DOC violated RCW 72.74.020(4)(e).

G. RCW 72.74.020(4)(h)<sup>22</sup>

RCW 72.74.020(4)(h) provides:

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on *account of any action or proceeding* in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(Emphasis added). We agree with the DOC that this provision is irrelevant here because the DOC’s deductions from Boyd’s funds were not an “action or proceeding.” Br. of Resp’t at 7; RCW 72.74.020(4)(h). Moreover, Boyd fails to establish that the DOC’s application of Washington’s deduction laws to his inmate funds violates any provision of Washington’s ICC. We hold, therefore, that the superior court did not err by granting summary judgment to the DOC.

III. Due Process

Boyd next argues that the DOC violated his due process rights by applying Washington’s deduction laws to his inmate funds. Even if Boyd had not previously waived his constitutional challenges, his constitutional arguments would fail. At the outset we note that prisoners do not have a constitutional property interest in prison wages. *In re Pers. Restraint of Metcalf*, 92 Wn. App. 165, 175, 963 P.2d 911 (1998) (citing *Hrbek v. Farrier*, 787 F.2d 414, 416 (8th Cir. 1986)),

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<sup>22</sup> Boyd also cites Kansas’s equivalent statute, Kan. Stat. Ann. § 76-3002, art. IV(h), which contains language identical to RCW 72.74.020(4)(h).

*cert. denied*, 527 U.S. 1041 (1999). Thus, Boyd cannot bring a procedural or substantive due process challenge to the DOC's statutory deductions from his wages under RCW 72.09.111.

Boyd does, however, have a property interest in receiving money from outside sources. *Metcalfe*, 92 Wn. App. at 175 (citing *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985)). Thus, the DOC must provide Boyd with sufficient procedural due process before depriving him of any money from outside sources under RCW 72.09.480(2). See *City of Redmond v. Bagby*, 155 Wn.2d 59, 62, 117 P.3d 1126 (2005) (citing *Dixon v. Love*, 431 U.S. 105, 112, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977)). But Boyd's procedural due process challenge fails. "When a challenge is to a legislative enactment," as is Boyd's challenge to RCW 72.09.480(2), "the legislative process provides all the process due." *Metcalfe*, 92 Wn. App. at 176 (citing *Okla. Educ. Ass'n v. Alcoholic Beverage Laws Enforcement Comm'n*, 889 F.2d 929, 936 (10th Cir. 1989)). There is no question here that Washington enacted RCW 72.09.480 in compliance with proper legislative procedures. Thus, the DOC has not violated Boyd's procedural due process rights by deducting funds from his account under RCW 72.09.111 and RCW 72.09.480(2).

The DOC did not violate Boyd's substantive due process rights, either. Boyd's interest in his receiving outside funds does not implicate a fundamental right. *Metcalfe*, 92 Wn. App. at 176-77. Thus, the appropriate level of scrutiny is rational basis. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 222, 143 P.3d 571 (2006) (citation omitted). Under this standard, the challenged law must be rationally related to a legitimate state interest and "a court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest." *Amunrud*, 158

Wn.2d at 222 (citing *Heller v. Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993)).

Boyd presumably does not challenge RCW 72.09.480(2) on its face, but rather as applied to him. And Boyd's briefs contain only one argument that could possibly be construed as a substantive due process challenge under RCW 72.09.480(2): the 5 percent of Boyd's outside funds that are deducted for the Washington victim's compensation fund under RCW 72.09.480(2)(a) are deducted under "false pretense[s]" because Boyd "does not have a victim in Washington." Reply Br. of Appellant at 7.

But we have already addressed Boyd's argument in a different context. The DOC's deduction of funds for contributions to the victims' compensation fund, even if the inmate "does not have a victim in Washington" is not irrational. Reply Br. of Appellant at 7. Increasing the size of the victims' compensation fund in order to promote the welfare of Washington victims is a legitimate state interest; and deducting 5 percent of Boyd's non-wage funds is rationally related to achieving that end. Again, Boyd's constitutional challenges fail.

#### IV. Rule of Lenity

Finally, Boyd argues that "[t]he rule of lenity" requires the DOC to apply Kansas's deduction laws to him. Br. of Appellant at 12. This argument fails because the rule of lenity pertains to criminal statutes only. See *State v. Ague-Masters*, 138 Wn. App. 86, 106, 156 P.3d 265 (2007) (citing *State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d 855 (1991)). Washington's ICC is a civil statute, not a criminal one. Thus, Boyd's final argument also fails.



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The superior court did not err by granting summary judgment in the DOC's favor on this ground. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Armstrong, P.J.

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Van Deren, J.