

**ADDENDUM TO VOLK v. DEMEERLER STUDY REPORT BY
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In our report, we inadvertently neglected to discuss a 1986 case, *Bader v. State*, 43 Wash. App. 223. The patient in the *Bader* case had been referred to Eastern State Hospital to determine whether he was competent to stand trial following arrest for assaulting his mother on February 27, 1979. He was diagnosed as a paranoid schizophrenic and manic depressive, and assessed as presenting “a substantial danger to other persons and presents a likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.” 43 Wash. App. at 224. The patient was acquitted of the criminal charges on the basis of insanity, and placed on conditional release on April 16, 1979. The conditions of release included following a medication regimen and seeking outpatient treatment at Chelan-Douglas Mental Health Center (the “Center”). While initially compliant, the patient’s family soon reported to the Center that he ceased taking his medication and was increasingly paranoid. He also missed several appointments. The patient then killed the victim, a neighbor who had repeatedly reported to police that he was threatening her life, on October 1, 1979, just 4 days after seeing his therapist at the Center who was charged with maintaining him on conditional release. Relying upon *Petersen*, the Washington Court of Appeals held the Center had a duty to take reasonable precautions to protect anyone foreseeably endangered by the patient. 43 Wash. App. at 228. With respect to issues of foreseeability and gross negligence, the court remanded the case to determine the action the Center should have taken once it became aware of the man violating the conditions of release. 43 Wash. App. at 229. No subsequent judicial findings appear to have been made.

The *Bader* decision simply applies *Petersen*. It does not add anything to the duty analysis. Arguably, the plaintiff’s use of the phrase “duty to the general public” is new insofar as it is explicit, but our report analysis makes clear that *Petersen* was always understood as such. Further, the Court does not adopt the plaintiff’s wording. It refers to taking “reasonable precautions to protect any person who might foreseeably be endangered”—the key phrase from *Petersen*. Notably, *Bader*’s discussion of judicial immunity (for Eastern State Hospital, for its initial assessment of the patient), rather than its application of *Petersen* to the Center, is discussed most by subsequent court opinions, such as in *Walker v. State*, 60 Wash. App. 624 (1991), which was included in our analysis. Notably, the *Walker* Court refers to a different case (which we also referred to in our analysis), *Metlow v. Spokane Alcoholic Rehab Ctr. Inc.*, 55 Wash. App. 845 (1989) review denied 114 Wash.2d 1007 (1990), in considering whether a legal duty applies to that case, and not *Bader*.

The *Bader* case fits into the chronology of Washington State cases on duty to protect and/or warn third parties as follows:

***Petersen v. State* (1983)** – Western State Hospital was grossly negligent in discharging a patient and had a duty to protect anyone foreseeably endangered by the recently discharged patient.

***Bader v. State* (1986)** – Mental health center responsible for and actively treating the patient has a duty to take reasonable precautions to protect anyone foreseeably endangered by that patient’s mental problems (*applying Petersen*).

1987, RCW 71.05.120(2) enacted by Legislature, limiting the duty to warn or take reasonable precautions to provide protection to “actual threats of physical violence against a reasonably identifiable victim,” re-codified in 2016 as RCW 71.05.120(3).

Noonan v. State (1989) – Outpatient alcohol treatment facility did not have a special relationship and duty to protect (§315) in the absence of a take charge duty (§319).

Metlow v. Spokane Alcoholic Rehab Ctr (1990) – No duty to warn persons who might be foreseeably endangered by patient engaged in outpatient alcohol treatment because there was no custodial relationship.

Walker v. State (1991) – Inpatient mental hospital has no legal duty to protect or warn after inpatient discharged from hospital’s control.

Taggart v. State (1992) – Duty to control third person who parole officer knows or ought to know would be likely to cause bodily harm to others (alternate reading: duty to protect third parties from reasonably foreseeable danger resulting from dangerous propensities of parolees).

Bishop v. Miche (1999) – County probation officers have a duty to use reasonable care to control probationers.

Hertog v. State (1999) – City probation officers and county pre-trial release counselors have a duty to protect others from reasonably foreseeable danger resulting from the dangerous propensities of probationers.

Stevenson v. State (2000) –In case with both mental health and law enforcement issues, the State is liable for a claim of third party harm when a man with a history of both mental illness and multiple parole violations was mistakenly released due to lost paperwork. This case follows and cites both *Petersen* (mental health) and the *Taggart*, *Bishop*, and *Hertog* (law enforcement).

Estate of Davis v. State (2005) – Mental health counselor who saw patient for initial assessment at the request of police did not establish a special relation to trigger any duty to third parties.

Joyce v. State (2005) – As in the Taggart case, community corrections officers have a “take charge duty” and to use reasonable care to protect others from foreseeable dangers.

Husted v. State (2015) – In the law enforcement context, there is no duty to control an offender who has absconded and for whom a warrant is out for his arrest; there is no continuing relationship to give rise to a duty to protect third parties.

Binschus v. State (2016) – In case with both mental health and law enforcement dimensions, the Supreme Court tied together a duty to control with duty to protect against all foreseeable dangers; noting that without one, there isn’t the other. In this case, there was no duty to control an offender lawfully released from incarceration.

Lennox v. Lourdes Health Network (2016) – RCW 71.05.120 provides immunity for failure to involuntary commit patient who harms third parties, but not for gross negligence (i.e. *Petersen*).

Volk v. DeMeerleer (2016) – Outpatient mental health professionals have a duty to protect all foreseeable victims.