

NO. 67475-7-I
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THE ESTATE OF ZINA LINNIK, and MIKHAIL and VALENTINA
LINNIK, a married couple, and STANISLAV M. LINNIK, and NINA
LINNIK, and MIKHAIL LINNIK, as parent and guardian for PAVEL
LINNIK, SVETLANA LINNIK, OKSANA LINNIK, VADIM LINNIK,
SAMUEL LINNIK, his minor children,

Appellants

vs.

STATE OF WASHINGTON, by and through its various state agencies
and subdivisions, including DEPARTMENT OF CORRECTIONS and
CHILD PROTECTIVE SERVICES, and PIERCE COUNTY, a
municipal corporation, and CITY OF TACOMA,

Respondent.

APPEAL FROM KING COUNTY SUPERIOR COURT
NO. 10-2-13557-2 KNT

REPLY BRIEF OF APPELLANT RE: PIERCE COUNTY

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I. INTRODUCTION

On July 4, 2007 Terapon Adhahn grabbed Zina Linnik from the alley behind her family's Tacoma home, shoved her into his van, and proceeded to brutally rape and then murder her. Zina was merely the latest in Adhahn's string of child victims stretching back nearly two decades.

Terapon Adhahn resided in Pierce County since before he assaulted his first victim in 1992. Although convicted of a sex offense, he was not made to register by Pierce County. When Pierce County did actually investigate and verify that he had failed to register, it took no action. And when Pierce County received a direct referral that Adhahn, at the time an unregistered sex offender, had enslaved a young girl for the purpose of sex, it still did nothing. Despite receiving follow up information containing Adhahn's full name and address, Pierce County made one half-hearted attempt to investigate, dropped the matter.

Pierce County asserts that not only was there no connection between its repeated failures to act, but that it committed no "'errors'... to begin with." Pierce County's Response at 2. In doing so, it argues again that each of its acts should be parsed out and examined separately rather than cumulatively as traditional negligence law requires. Plaintiffs have presented evidence from which a reasonable finder of fact could conclude

that Pierce County had a duty toward foreseeable child victims of Terapon Adhahn, such as Zina Linnik, that it breached this duty when it failed to take multiple opportunities that would have seen Adhahn deported or in jail by July of 2007, and that these failures proximately caused the death of Zina Linnik.

II. STATEMENT OF ADDITIONAL FACTS

It is undisputed that before murdering Zina Linnik, Terapon Adhahn had been convicted or pled guilty to the following crimes:¹

- One count of incest (RCW 9A.64.020) for the 1990 rape of his half-sister. (Pierce County Cause No. 90-1-01326-1). CP 1038-1049.
- One count of intimidation with a weapon (RCW 9A.41.270) for chasing strangers and pointing a gun at them outside a bar in 1992. CP 1110-1122.

Additionally, on April 7, 2008, after his apprehension for killing Zina Linnik, Adhahn pled guilty to rape, kidnapping, and murder in Zina's case, as well as the following charges for child rapes committed in 2000 and 2003-2005:

- Three counts of rape in the first degree (RCW 9A.44.040) and one count of kidnapping in the first degree (RCW 9A.40.020) for the 2000 kidnapping and rape of Sabrina Rasmussen, then 11 years old. (Pierce County Cause No. 02-1-03671-8). CP 1049-1055.
- One count of rape in the first degree (RCW 9A.44.040), three counts of rape in the second degree (RCW 9A.44.050), and three

¹ Plaintiffs also rely on the facts in their opening brief and other replies on file with this Court.

counts of rape in the third degree (RCW 9A.44.060) for the rape of L.T.N., a girl who had lived with Adhahn from 2000 to early 2005 and estimates that Adhahn raped her 150-200 times, once at gunpoint. (Pierce County Cause No. 07-1-03768-5). CP 1059-1062.

- One count of failure to register as a sex offender (RCW 9A.44.130) for failing to register at the address he lived at when he kidnapped Zina Linnik in 2007. (Pierce County Cause No. 07-1-03603-4). In fact, although Adhahn moved dozens of times between 1990 and 2007, he only registered twice—once in 1990 when he was first convicted, and once in 2002. CP 1065-1071, 1079-1081.

Adhahn is a legal permanent resident, not a U.S. citizen. CP 1088-1090. Legal permanent residents who have been in the U.S. more than five years may be deported for two crimes of moral turpitude or for one aggravated felony. CP 1016-1017. Incest is a crime of moral turpitude. *Id.* So is brandishing a weapon with intent to cause intimidation or fear of harm. CP 1014, CP 1088-1090. Adhahn was convicted of incest in 1990, and of intimidation with a weapon in 1992. Thus, had the INS been informed of these convictions, Adhahn would have been deported or refused re-entry to the U.S. at any time after his 1992 conviction. In addition, under changes to immigration law that took effect in 1996 but are applied retroactively to convictions before 1996, the incest conviction is an aggravated felony because it involved incest with a minor. CP 1016-1017. Adhahn's half-sister had just turned 16 years old at the time of the rape—under federal definitions applied in immigration court at that time,

incest with a child under age 18 was an aggravated felony for purposes of federal immigration law. *Id.*

RCW 10.70.140 requires both jails and prisons to report noncitizens to immigration authorities. Adhahn spent 60 days in the Pierce County Jail in 1990, but immigration officials were never affirmatively informed. CP 1104-1109, CP 1141-1143. Adhahn spent another 3 days in the Pierce County Jail for the 1992 conviction, but the jail again did not inform immigration officials of the conviction. CP 1110-1123, CP 1141-1143. When immigration officials finally learned of these convictions in 2007, they detained Adhahn and began deportation proceedings on the basis that Adhahn had been convicted of two crimes of moral turpitude.. CP 1141-1143. Had immigration officials been informed earlier, Adhahn would have been deported well before he kidnapped, raped, and murdered Zina Linnik.

Further, Adhahn registered as required only in 1992 and in 2002, despite moving dozens of times. Between 1998 and 2010. RCW 9A.44.135 required counties to send a yearly, registered mail form to all sex offenders to verify that they were at their registered address. Pierce County only did this one time, in 1999. CP 1128-1129. Subsequently, the County ignored the statute and decided that they were not going to do any more mailings. CP 1128-1129. Instead, the County adopted a procedure

of in-person verification, but this procedure generally did not result in any verification for Level I sex offenders, which Adhahn was. Det. Keith Barnes testified that “I tried to do all the Level III’s and most of the Level II’s that I could, trying to verify those. You know, it was basically triage.” CP 1129-1130.

Any conviction for failure to register, which it is undisputed that Adhahn did, even if pled down to a misdemeanor, would also have resulted in the collection of his DNA under RCW 43.43.754. In 2005, Adhahn’s DNA from the 2000 rape of Sabrina Rasmussen had been processed and was documented in the “John Doe” Information in that case. CP 1049-1055. Law enforcement officials have stated that if Adhahn’s DNA were on file, he likely would have been picked up for the Rasmussen rape before he kidnapped Zina Linnik in 2007. CP 1101-1103 (Tacoma PIO Chris Taylor, saying that “It’s very possible [Adhahn] would have been picked up by now.”)

Even more blatantly, in January and February of 2004, Washington State Child Protective Services (CPS) received repeated referrals from a woman reporting that her stepdaughter, L.T.N., was living with Adhahn and had been “sold” to him for sex. CP 1095-1101. The referent correctly stated L.T.N.’s age as 15—below Washington’s age of consent. *Id.* The referrals mentioned Adhahn by name, and he was correctly identified by

the caller as “Terapon D. Adhahn.” The caller even called back with two different addresses for Adhahn. *Id.*

CPS did not investigate this referral itself, but wrongly “screened it out” to law enforcement because the intake worker believed the only allegation was one of “third-party abuse” by Adhahn. CP 1252-1253. CPS records indicate that two referrals were sent to Pierce County law enforcement—one on January 26, 2004 that may not have included Adhahn’s name, and one on February 4, 2004, that did. CP 1095-1100. The February 4, 2004 law enforcement referral included an addendum dated February 2, 2004, which included the girl’s age, an additional address, and Adhahn’s complete name. *Id.*

Pierce County disputes that it received the second referral, but this is a material issue of fact inappropriate for resolution on summary judgment. Further, the County never produced either referral, even the one it admits exists. Detective Berg’s deposition testimony was that she found the papers “in a box” after Zina’s murder, around the time when there was a dispute whether the State or the County was responsible for failing to investigate it. CP 1154-1156. Berg’s testimony is that she showed them to Pierce County Sheriff’s Department PIO Ed Troyer, but she does not know whether Troyer ever gave them back. CP 1154-1156. That is the last time Berg says she saw the documents. CP 1152-1153, ln. 12-20. Det.

Troyer admits to having seen the referral “when there was a dispute over whether they [CPS] had given it to us or not,” but cannot not say what happened to the original document. CP 1152-1154. The County’s currently states that Det. Troyer gave the original to a news reporter but can’t remember who. CP 1036.

III. ARGUMENT

Pierce County was negligent. It failed to alert INS as it was required to do of Adhahn in its jail. Pierce County failed to enforce sex offender registration laws. Pierce County, when it finally did enforce the law after decades of neglect. Refused to follow up on information it gather that demonstrated that Adhahn had absconded from his registered address—a felony. And with all this information in hand Pierce County failed to investigate an accurate report that Adhahn, its absconded sex offender, had purchased a prepubescent sex slave for furniture. In truth he had purchased the girl for \$2,000.00.

A reasonable finder of fact could conclude that the County is liable for the harm done to Zina Linnik.

A. Pierce County had a duty to protect foreseeable child victims from convicted violent sex offenders like Terapon Adhahn.

Washington courts have repeatedly held that fundamental principles of tort liability, drawn from the Restatement of Torts, determine

when a particularized duty is owed by a county. There is therefore a cause of action against public entities for negligence whenever the plaintiff can demonstrate that a duty runs to the plaintiff particularly. *Osborn v. Mason County*, 157 Wn.2d 18, 27-28, 134 P.3d 197 (2006); *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988). Here, the County in effect asks the Court to find that absent some specific threat to a specific individual, no duty arises. This is contrary to both logic and the law of this State.

Pierce County appears to argue that because *Osborne v. Mason County* examines the public duty doctrine exceptions as tools to determine when liability may exist for a County, these are the only instances in which a duty is owed. Yet the *Osborne* Court specifically notes that counties are liable “like any other defendant” and that public duty doctrine exceptions are “thus another way of asking whether the state had a duty to the plaintiff.” *Osborne*, 157 Wn.2d at 27-28. Nowhere does the Court hold that the only duties owed by a County are those traditionally included in the public duty doctrine.

In *Robb v. City of Seattle*, the Court of Appeals, following *Osborn v. Mason County*, held that a plaintiff did not need to demonstrate that a recognized exception to the public duty doctrine was applicable, but only that a duty ran under traditional tort principles. *Robb*, 159 Wn. App. 133,

245 P.3d 242 (2010). The *Robb* court held that Restatement (Second) of Torts § 302(B) comment *e* created a duty in Robb's case. In so holding, the court rejected Seattle's argument that for a duty to be found, the plaintiffs must demonstrate a public duty doctrine exception for a duty to run: "Seattle maintains that the public duty doctrine bars Robb's negligence action because none of the four exceptions to the doctrine are present. Seattle cites no authority to support this categorical statement. If a private actor can owe a duty under section 302B, as a consequence of the abolition of sovereign immunity the same must be true of a governmental actor." *Id.* at 145.

In *Robb*, police took control of a mentally disturbed man found near shotgun shells and known to be in possession of shotgun, but then departed without doing anything. *Id.* at 137. Unsurprisingly, the man subsequently caused harm to Robb. The facts of the present case are quite similar: Adhahn was known by Pierce County to be a violent child predator. He was under county supervision for a significant quantity of time, and in direct custody on several occasions. Despite statutory directives, the County neither reported Adhahn's convictions to the INS, nor properly informed the court of his crimes, nor did it bother to keep track of him when he failed to properly register. In effect, the County usually had no idea where Adhahn was or what he was doing, despite

knowledge that he was violent and often not in compliance with court-ordered conditions. Even when it received incredibly specific information as to his location and his repeated rape of a young girl, it failed to take reasonable action. It is easily foreseeable that another young girl would be victimized by Adhahn, and thus there is a duty that ran from Pierce County to Zina Linnik.

Following Pierce County's argument, if the County has credible information that a child rapist will target a particular 12-year old girl, and does nothing, and the rapist instead assaults that girl's 12-year-old female neighbor, then no liability attaches to the County for its failure to act because the actual victim was not named in the information. This position is illogical and bad policy, and this Court should not so hold.

B. Pierce County breached its duty when it failed to enforce statutory requirements, and when it failed to investigate a specific and credible referral that a known sex offender was raping a young girl.

1. Pierce County breached its duty when it failed to monitor Adhahn's sex offender registration.

The County argues that the scope of any duty it had under RCW 9A.44.135 did not run to Zina Linnik or her family, but instead was a general public duty on which no liability can attach, essentially arguing that the scope was strictly limited. A duty will run to an individual plaintiff, however, where government officials responsible for enforcing a

statute had actual knowledge of its violation, failed to take corrective action, had a statutory duty to take corrective action, and the plaintiff is within the class of foreseeable victims the statute intended to protect. *See, e.g. Campbell v. City of Bellevue*, 85 Wn.2d 1, 530 P.2d 234; *Bailey v. Town of Forks*, 108 Wn.2d 262, 737 P.2d 1257 (1987). This is known as the “failure to enforce” exception to the public duty doctrine. *Id.*

The failure to enforce exception applies to Pierce County’s failure to do its duty under RCW 9A.44.135 because in 2005, Pierce County possessed actual knowledge of Adhahn’s failure to register as a sex offender, and Pierce County failed to take the required corrective action (making reasonable attempts to locate Adhahn). Under the terms of the statute, Counties are specifically made responsible for enforcing sex offender registration. Therefore, the County had a statutory duty, running to Zina, as she was within the class of foreseeable victims the statute was intended to protect.

Foreseeability is generally an issue of fact to be decided by the jury. Here, Adhahn was a repeat pedophile, which Pierce County would have known were it not for the County’s own continued negligence. The Legislature has repeatedly recognized that sex offenders have a high rate of recidivism—the 1990 Community Protection Act alone refers to the risk of recidivism no less than three times. *See* Laws of 1990, ch.3, § 117

(“[S]ex offenders pose a high risk of engaging in sex offenses . . . after being released from incarceration or commitment”); § 401 (“[Se]x offenders often pose a high risk of reoffense”); § 1001 (“[S]ex offenders’ likelihood of engaging in repeat acts of predatory sexual violence is high.”). The sex offender registration statutes implicitly link the danger of recidivism to the need for registration and verification in order to help “local law enforcement agencies” protect “their communities.” *Id.* § 401. When sex offenders do not register, agencies’ “efforts to protect their communities . . . are impaired by the lack of information available . . . about convicted sex offenders who live within the law enforcement agency’s jurisdiction.” *Id.* Given what is known about sex offenders, and what should have been known about Adhahn, Zina was a foreseeable victim.

The County also owed a duty to Zina Linnik under the “take charge” exception to the public duty doctrine. The “take charge” exception provides that a government agency charged with the supervision or restraint of a dangerous individual owes a duty to plaintiffs whose harms are foreseeable from the supervised individual’s dangerous tendencies. *Osborn v. Mason County*, 157 Wn.2d 18, 24, 134 P.3d 197 (2006). For a “take charge” duty to arise, it is not necessary that the public entity have custodial control of the dangerous individual—a take-charge duty may

arise out of responsibilities to monitor and report. *Hertog, ex rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 279, 979 P.2d 400 (1999). The entity simply has duty to control dangerous individuals “to the extent it has authority to control them.” *Osborn*, 157 Wn.2d at 24. Under the sex offender registration statute, RCW 9A.44.135, Pierce County had a duty to monitor Adhahn and forward information to the sex offender registry. To the extent that Adhahn was subject to arrest for violation of sex offender registration statutes, the County also had authority to control him by arresting him for failure to register. It was foreseeable from the court-ordered evaluations and Adhahn’s past behavior that he would continue to rape other prepubescent females unless he was stopped. To the extent that the County failed to fulfill its duties under RCW 9A.44.135, a take-charge duty ran to Zina Linnik as a foreseeable victim.

By 2005, Pierce County knew that Adhahn was in the living in the county with a child he was raping. At that point, the County had duties under both RCW 26.44.030(5) and RCW 9A.44.135. The County had both the authority and the ability to control Adhahn by arresting him pursuant to the sex offender registration statute and child rape statutes, RCW 9A.44.073 - .089. That it unreasonably failed to do so created a foreseeable risk of harm to this state’s children.

2. Pierce County breached its duty when it failed to investigate reports that Adhahn was living with and raping L.T.N.

RCW 26.44.050 creates a duty for both police agencies and DSHS to investigate reports of child abuse. This statute has repeatedly been held to create a duty running in tort. *See, e.g. Tyner v. DSHS*, 141 Wn.2d 68, 79, 1 P.3d 1140 (2000); *Yonker v. DSHS*, 85 Wn. App. 71, 79-82, 930 P.2d 958 (1997) (duty runs to children who may be victims of abuse, or who “may be abused”). RCW 26.44.030 has also been held actionable at tort, and §§ (5) requires law enforcement agencies receiving reports of child abuse to both investigate them and report the incident and whatever the investigation has revealed to the county prosecutor in writing. RCW 26.44.030(5). Despite the County’s assertions to the contrary, Washington courts have held that breach of RCW 26.44.030 can be the basis for a suit in negligence. *Doe v. Latter Day Saints*, 141 Wn. App. 407, 421-22, 167 P.3d 1193 (2007).

The County cites a number of cases in which Washington courts have held that the duty set forth in RCW 26.44.050 does not run to adults other than a child’s biological or adoptive parents. Those holdings exist because the investigation requirement of RCW 26.44.050 exists, in part, to protect the integrity of the family. That is the duty owed to parents under the statute—a duty not to disrupt familial integrity without first conducting

a reasonable investigation. That same duty is also owed to children, but the County owes children additional duties to protect them from known abusers such as Adhahn under RCW 26.44.050 and .030. Pierce County argues that because Zina was not the subject of the 2004 CPS referral, no duty runs to her. This is untrue under Washington case law, and is also untrue under fundamental tort principles of foreseeability.

The court held in *Lewis v. Whatcom County*, 136 Wn. App. 450, 460, 149 P.3d 636 (2006), that Washington case law and the language of RCW 26.44.050 both included “children who may be abused or neglected” in the class protected by the statute. *Id.* at 454-57. The court stated that statute’s plain language indicated that the legislature did not intend to limit law enforcement’s investigatory duty only to situations where the parent or guardian was the abuser. *Id.* at 453. The language “is a broad mandate covering any report of possible abuse or neglect.” *Id.* at 454. The *Lewis* court also held that the language in *M.W.* limiting liability to damages arising from a placement decision “address[ed] only the issues presented in *M.W.*” *Id.* at 458. Thus in circumstances such as those present here, the scope of the County’s duty is not limited as it suggests. It follows that the scope of the duty derived from RCW 26.44.030 and .050 should then instead be limited by whether Adhahn’s victimization of Zina Linnik was

foreseeable. *See Briggs v. Pacificorp*, 120 Wn. App. 319, 322-23, 85 P.3d 369 (2003).

Much of Pierce County's argument attempts to use the County's own negligent acts, and in particular its failure to reasonably investigate the 2004 CPS referral or make reasonable efforts to locate Terapon Adhahn in 2005 when he was no longer at his registered address, to insulate itself from liability because it was unaware of Adhahn's crimes or couldn't foresee the danger he posed. As a matter of torts law analysis, this is ineffective. Risks are foreseeable when a reasonable person would have foreseen them. *Robb v. City of Seattle*, 159 Wn. App. at 142 (citing *Minahan v. W. Wash. Fair Ass'n*, 117 Wn. App. 881, 897, 73 P.3d 1019 (2003); Restatement (Second) of Torts § 321 (1965)). In other words, foreseeability is judged from the perspective of the reasonable, non-negligent actor. The County would have foreseeability judged instead from the perspective of its own negligence.

It is not necessary that the particular plaintiff, as an individual, be foreseeable. It is only necessary that it be foreseeable to a reasonable person that an unreasonable risk of harm to someone is created. Thus, in *Robb v. City of Seattle*, the City was liable when a mentally ill man, known to the police to be mentally unstable and in possession of a shotgun, killed a random passerby after officers stopped him on suspicion

of burglary and then released him after noticing shotgun shells on the ground near him. *Robb* 159 Wn. App. at 136-137. In *Bailey v. Town of Forks*, 108 Wn.2d 262, 737 P.2d 1257 (1987), the city was liable to a previously unknown driver in the area where an officer failed to apprehend an intoxicated driver. Neither of these plaintiffs was previously known to the defendants, but both gave rise to a duty when the government failed to act.

On the facts of this case, Zina Linnik was a reasonably foreseeable victim. Particularly given what Pierce County would have learned had its investigation of the 2004 CPS referral been non-negligent (that Adhahn was reoffending after 14 years, that he had forcibly raped L.T.N. in early adolescence, that he was a registered sex offender, and that he had kidnapped and raped Sabrina Rasmussen in 2000), a reasonable jury could conclude that it is imminently foreseeable that, if not imprisoned or deported, Adhahn would have (and did) continue raping and kidnapping 11-14 year old girls in the Tacoma area.

In addition to these two duties found in RCW 26.44, on the facts of this case, the County also owed Zina a duty under Restatement (Second) of Torts § 302B comment *e*, the duty at issue in *Robb v. Seattle*. Under that section, as adopted by *Robb*, a public entity owes a duty to foreseeable victims where “the actor’s own affirmative act has...exposed

the other to a recognizable high degree of risk of harm...through [third-party] misconduct, which a reasonable man would take into account.” *Robb* 159 Wn. App. at 143 (quoting Restatement). In *Robb*, the officers owed the duty because they had allowed a mentally disturbed man known to have a shotgun go free after investigating him for involvement in a robbery. *Id.* at 137. In this case, Pierce County owes a duty because they allowed Terapon Adhahn, a repeat child rapist, to remain free in the community even after receiving information indicating that he was still assaulting children 14 years after his original incest conviction.

3. Pierce County breached its duty when it failed to report Adhahn’s convictions to immigrations authorities as required by RCW 10.70.140

When Adhahn served time in the Pierce County Jail, the County also negligently failed to report either of Adhahn’s convictions to immigration authorities. This is a duty that arose when Adhahn was in the County’s custodial control, and is thus, also, a take-charge duty. As discussed above, those having charge of dangerous offenders have an obligation to take the steps available to them to protect others from those offenders. Reporting Adhahn to immigration was statutorily required of the County. Adhahn served time in county jail for both the 1990 incest conviction and for the 1992 intimidation with a weapon conviction. Both of those convictions demonstrate Adhahn’s difficulties with anger and

impulse control. The incest conviction and surrounding psychological evaluations demonstrated in Adhahn a desire and willingness to sexually victimize young girls. Nonetheless, the County failed to properly report Adhahn's convictions to immigration authorities either time he was in custody. Adhahn was subsequently released back into the community both times with very little supervision. The danger Adhahn posed to Zina Linnik, and young girl of the type Adhahn repeatedly abused, was foreseeable.

C. Pierce County's failure to act was proximately responsible for the murder of Zina Linnik.

The County argues that its failures did not proximately cause Zina's death, either because they were "too remote in time" and therefore not the legal cause of Zina's kidnapping, rape, and murder, or because there is not sufficient certainty that but for any single act or omission, Adhahn would have been deported, incarcerated, or otherwise unable to harm Zina. This is an incorrect interpretation of law and applicable policy.

Where the initial act was negligent at the time, and where the results are foreseeable, legal cause is found. The County cites no authority holding that the sheer passage of time defeats causation. Here, Pierce County's acts were negligent at the time. Adhahn was known to be a repeat child rapist with impulse control issues who had threatened

strangers with a gun. It is irrelevant that Zina Linnik was not Adhahn's preferred victim at exactly the moment of his violations. On those facts, it was foreseeable that if not apprehended, Adhahn would go on to reoffend.

A court is often in the position of balancing the social utility of liability against the utility of permitting some leeway in otherwise negligent conduct. Many of the cases cited by the County, including *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 30 P.3d 1261 (2001); *Alexander v. Walla Walla County*, 84 Wn. App. 687, 929 P.2d 1182 (1997); *Couch v. Dept. of Corr.*, 113 Wn. App. 556, 54 P.3d 197 (2002) and *Walters v. Hampton*, 14 Wn. App. 548, 543 P.2d 648 (1975), contain instances where there is some social utility to the otherwise negligent conduct. For example, in *Babcock v. Mason County*, plaintiffs brought suit against the fire department for negligently failing to adequately protect their property after making an implied assurance regarding that property's safety. *Babcock*, 144 Wn.2d at 782-83. The Court did not find liability on the basis that it was unreasonable for the plaintiffs to rely on the firefighter's statement that their property would be unharmed regardless of the circumstances of wind and fire. *Id.* at 794. Similarly, the court in *Walters v. Hampton* did not find liability on the basis that police should properly have some discretion in dealing with potential domestic violence situations. *Walters*, 14 Wn. App at 553.

Other cases cited by the State follow a similar pattern, where government discretion serves some social utility. Notably, these cases also do not involve abused children.

To the contrary, the legislature and courts of this state have continually emphasized the paramount importance of protecting children. *See, e.g. Tyner v. DSHS*, 141 Wn.2d 68; *Yonker v. DSHS*, 85 Wn. App. 71; *Lewis v. Whatcom County*, 136 Wn. App. 450, 460, 149 P.3d 636 (2006); RCW 9A.44.010, Intent 1994 c 271; RCW 9.69.100(1)(b) Finding—Policy—1990 c 3 § 117. Here, there is zero social utility in allowing a child such as L.T.N. to remain enslaved by a known abuser, and in fact statutes require law enforcement to act. For the County to argue that its failure to adequately investigate a detailed referral of abuse was somehow not error flies in the face of logic and legislative intent. Removing a dangerous child predator like Adhahn from the streets of Tacoma was within the County's ability. Had Pierce County correctly investigated, L.T.N. would have received help earlier, and evidence shows that Adhahn would not have been in a position to harm Zina Linnik because he would have been incarcerated or deported on July 4, 2007. Courts rightly hold government agencies responsible when their failures cause foreseeable harm to children, and circumstances such as those of the instant case should be no exception.

Additionally, cause in fact should be for the jury in this case. The plaintiffs introduced evidence from which a reasonable jury could find that, were it not for the defendants' multiple negligent acts, Terapon Adhahn would have been deported or incarcerated before he had the opportunity to harm Zina Linnik. At each point the County could have broken the chain of causation had it non-negligently performed its duties. Had the County reported the 1992 conviction to immigration authorities, Adhahn would have been deportable starting then, and given the fact that the incest conviction was for a forcible sexual assault, and the content of his psychological evaluation was extremely disturbing, it is likely that he would have been a high priority for deportation. CP 1018-1019. Had the County pursued Adhahn for failure to register in 2005, and had he spent any time in jail or under DOC for that conviction, a jury could conclude that he would have been deported for all three crimes. Any conviction for failure to register after 2002 would have resulted in Adhahn's DNA being drawn—DNA that was already on file with the John Doe Information in Rasmussen—rendering Adhahn deportable. Had the County non-negligently investigated the 2004 CPS referral, the evidence is that some kind of conviction and incarceration would have resulted—either for the rapes of L.T.N., or, even if that prosecution somehow fell apart, for failure to register. Again, resulting in a DNA draw and deportation, either for two

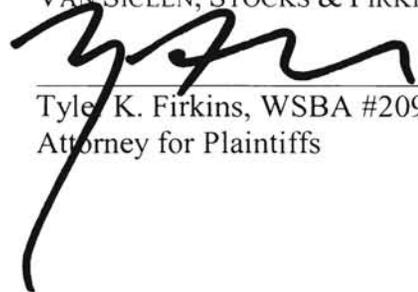
or more crimes of moral turpitude, or one aggravated felony. CP 1013-1020. On the basis of this evidence, a reasonable jury could conclude that but for Pierce County's negligence, Adhahn's incarceration and deportation were not merely likely, but inevitable.

IV. CONCLUSION

Pierce County had a duty to protect Zina Linnik and breached that duty when it repeatedly failed to act. Had the County properly reported Adhahn's convictions to immigration officials, he would have been deported long before he murdered Zina. Had the County properly investigated the detailed referral Adhahn was abusing L.T.N., he would have been incarcerated or deported at the time he murdered Zina. For the foregoing reasons, it was error to dismiss Plaintiffs' claims on summary judgment, and this case should be remanded for trial.

DATED this 25h day of June, 2012.

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CERTIFICATE OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on June 25, 2012, she caused the foregoing *Reply Brief of Appellant re: Pierce County* to be served on the following parties of record and/or interested parties by regular US Mail and email transmission the same day:

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