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**SUBSTITUTE SENATE BILL 5191**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Goings, Roach, Haugen, Schow, Oke, Winsley and Rasmussen)

Read first time 03/05/97.

1 AN ACT Relating to crimes involving methamphetamine; amending RCW  
2 69.50.401 and 69.50.440; reenacting and amending RCW 9.94A.030; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are  
6 each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Collect," or any derivative thereof, "collect and remit," or  
10 "collect and deliver," when used with reference to the department of  
11 corrections, means that the department is responsible for monitoring  
12 and enforcing the offender's sentence with regard to the legal  
13 financial obligation, receiving payment thereof from the offender, and,  
14 consistent with current law, delivering daily the entire payment to the  
15 superior court clerk without depositing it in a departmental account.

16 (2) "Commission" means the sentencing guidelines commission.

17 (3) "Community corrections officer" means an employee of the  
18 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence  
2 conditions.

3 (4) "Community custody" means that portion of an inmate's sentence  
4 of confinement in lieu of earned early release time or imposed pursuant  
5 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to  
6 controls placed on the inmate's movement and activities by the  
7 department of corrections.

8 (5) "Community placement" means that period during which the  
9 offender is subject to the conditions of community custody and/or  
10 postrelease supervision, which begins either upon completion of the  
11 term of confinement (postrelease supervision) or at such time as the  
12 offender is transferred to community custody in lieu of earned early  
13 release. Community placement may consist of entirely community  
14 custody, entirely postrelease supervision, or a combination of the two.

15 (6) "Community service" means compulsory service, without  
16 compensation, performed for the benefit of the community by the  
17 offender.

18 (7) "Community supervision" means a period of time during which a  
19 convicted offender is subject to crime-related prohibitions and other  
20 sentence conditions imposed by a court pursuant to this chapter or RCW  
21 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
22 may include crime-related prohibitions and other conditions imposed  
23 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
24 for out-of-state supervision of parolees and probationers, RCW  
25 9.95.270, community supervision is the functional equivalent of  
26 probation and should be considered the same as probation by other  
27 states.

28 (8) "Confinement" means total or partial confinement as defined in  
29 this section.

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of  
34 money that is ordered by a superior court of the state of Washington  
35 for legal financial obligations which may include restitution to the  
36 victim, statutorily imposed crime victims' compensation fees as  
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
38 drug funds, court-appointed attorneys' fees, and costs of defense,  
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for  
2 vehicular assault while under the influence of intoxicating liquor or  
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
5 legal financial obligations may also include payment to a public agency  
6 of the expense of an emergency response to the incident resulting in  
7 the conviction, subject to the provisions in RCW 38.52.430.

8 (11) "Crime-related prohibition" means an order of a court  
9 prohibiting conduct that directly relates to the circumstances of the  
10 crime for which the offender has been convicted, and shall not be  
11 construed to mean orders directing an offender affirmatively to  
12 participate in rehabilitative programs or to otherwise perform  
13 affirmative conduct.

14 (12)(a) "Criminal history" means the list of a defendant's prior  
15 convictions, whether in this state, in federal court, or elsewhere.  
16 The history shall include, where known, for each conviction (i) whether  
17 the defendant has been placed on probation and the length and terms  
18 thereof; and (ii) whether the defendant has been incarcerated and the  
19 length of incarceration.

20 (b) "Criminal history" shall always include juvenile convictions  
21 for sex offenses and serious violent offenses and shall also include a  
22 defendant's other prior convictions in juvenile court if: (i) The  
23 conviction was for an offense which is a felony or a serious traffic  
24 offense and is criminal history as defined in RCW 13.40.020(9); (ii)  
25 the defendant was fifteen years of age or older at the time the offense  
26 was committed; and (iii) with respect to prior juvenile class B and C  
27 felonies or serious traffic offenses, the defendant was less than  
28 twenty-three years of age at the time the offense for which he or she  
29 is being sentenced was committed.

30 (13) "Day fine" means a fine imposed by the sentencing judge that  
31 equals the difference between the offender's net daily income and the  
32 reasonable obligations that the offender has for the support of the  
33 offender and any dependents.

34 (14) "Day reporting" means a program of enhanced supervision  
35 designed to monitor the defendant's daily activities and compliance  
36 with sentence conditions, and in which the defendant is required to  
37 report daily to a specific location designated by the department or the  
38 sentencing judge.

39 (15) "Department" means the department of corrections.

1 (16) "Determinate sentence" means a sentence that states with  
2 exactitude the number of actual years, months, or days of total  
3 confinement, of partial confinement, of community supervision, the  
4 number of actual hours or days of community service work, or dollars or  
5 terms of a legal financial obligation. The fact that an offender  
6 through "earned early release" can reduce the actual period of  
7 confinement shall not affect the classification of the sentence as a  
8 determinate sentence.

9 (17) "Disposable earnings" means that part of the earnings of an  
10 individual remaining after the deduction from those earnings of any  
11 amount required by law to be withheld. For the purposes of this  
12 definition, "earnings" means compensation paid or payable for personal  
13 services, whether denominated as wages, salary, commission, bonuses, or  
14 otherwise, and, notwithstanding any other provision of law making the  
15 payments exempt from garnishment, attachment, or other process to  
16 satisfy a court-ordered legal financial obligation, specifically  
17 includes periodic payments pursuant to pension or retirement programs,  
18 or insurance policies of any type, but does not include payments made  
19 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
20 or Title 74 RCW.

21 (18) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of  
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
24 controlled substance (RCW 69.50.403);

25 (b) Any offense defined as a felony under federal law that relates  
26 to the possession, manufacture, distribution, or transportation of a  
27 controlled substance; or

28 (c) Any out-of-state conviction for an offense that under the laws  
29 of this state would be a felony classified as a drug offense under (a)  
30 of this subsection.

31 (19) "Escape" means:

32 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
33 second degree (RCW 9A.76.120), willful failure to return from furlough  
34 (RCW 72.66.060), willful failure to return from work release (RCW  
35 72.65.070), or willful failure to be available for supervision by the  
36 department while in community custody (RCW 72.09.310); or

37 (b) Any federal or out-of-state conviction for an offense that  
38 under the laws of this state would be a felony classified as an escape  
39 under (a) of this subsection.

1 (20) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
4 and-run injury-accident (RCW 46.52.020(4)); or

5 (b) Any federal or out-of-state conviction for an offense that  
6 under the laws of this state would be a felony classified as a felony  
7 traffic offense under (a) of this subsection.

8 (21) "Fines" means the requirement that the offender pay a specific  
9 sum of money over a specific period of time to the court.

10 (22)(a) "First-time offender" means any person who is convicted of  
11 a felony (i) not classified as a violent offense or a sex offense under  
12 this chapter, or (ii) that is not the manufacture, delivery, or  
13 possession with intent to manufacture or deliver a controlled substance  
14 classified in schedule I or II that is a narcotic drug, nor the  
15 manufacture, delivery, or possession with intent to deliver  
16 methamphetamine, its salts, isomers, and salts of its isomers as  
17 defined in RCW 69.50.206(d)(2), nor the selling for profit of any  
18 controlled substance or counterfeit substance classified in schedule I,  
19 RCW 69.50.204, except leaves and flowering tops of marihuana, and  
20 except as provided in (b) of this subsection, who previously has never  
21 been convicted of a felony in this state, federal court, or another  
22 state, and who has never participated in a program of deferred  
23 prosecution for a felony offense.

24 (b) For purposes of (a) of this subsection, a juvenile adjudication  
25 for an offense committed before the age of fifteen years is not a  
26 previous felony conviction except for adjudications of sex offenses and  
27 serious violent offenses.

28 (23) "Most serious offense" means any of the following felonies or  
29 a felony attempt to commit any of the following felonies, as now  
30 existing or hereafter amended:

31 (a) Any felony defined under any law as a class A felony or  
32 criminal solicitation of or criminal conspiracy to commit a class A  
33 felony;

34 (b) Assault in the second degree;

35 (c) Assault of a child in the second degree;

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

39 (g) Incest when committed against a child under age fourteen;

1 (h) Indecent liberties;  
2 (i) Kidnapping in the second degree;  
3 (j) Leading organized crime;  
4 (k) Manslaughter in the first degree;  
5 (l) Manslaughter in the second degree;  
6 (m) Manufacture, deliver, or possess with intent to manufacture or  
7 deliver, methamphetamine or possession of ephedrine or pseudoephedrine  
8 with intent to manufacture methamphetamine;  
9 (n) Promoting prostitution in the first degree;  
10 (~~(n)~~) (o) Rape in the third degree;  
11 (~~(o)~~) (p) Robbery in the second degree;  
12 (~~(p)~~) (q) Sexual exploitation;  
13 (~~(q)~~) (r) Vehicular assault;  
14 (~~(r)~~) (s) Vehicular homicide, when proximately caused by the  
15 driving of any vehicle by any person while under the influence of  
16 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the  
17 operation of any vehicle in a reckless manner;  
18 (~~(s)~~) (t) Any other class B felony offense with a finding of  
19 sexual motivation, as "sexual motivation" is defined under this  
20 section;  
21 (~~(t)~~) (u) Any other felony with a deadly weapon verdict under RCW  
22 9.94A.125;  
23 (~~(u)~~) (v) Any felony offense in effect at any time prior to  
24 December 2, 1993, that is comparable to a most serious offense under  
25 this subsection, or any federal or out-of-state conviction for an  
26 offense that under the laws of this state would be a felony classified  
27 as a most serious offense under this subsection.  
28 (24) "Nonviolent offense" means an offense which is not a violent  
29 offense.  
30 (25) "Offender" means a person who has committed a felony  
31 established by state law and is eighteen years of age or older or is  
32 less than eighteen years of age but whose case has been transferred by  
33 the appropriate juvenile court to a criminal court pursuant to RCW  
34 13.40.110. Throughout this chapter, the terms "offender" and  
35 "defendant" are used interchangeably.  
36 (26) "Partial confinement" means confinement for no more than one  
37 year in a facility or institution operated or utilized under contract  
38 by the state or any other unit of government, or, if home detention or  
39 work crew has been ordered by the court, in an approved residence, for

1 a substantial portion of each day with the balance of the day spent in  
2 the community. Partial confinement includes work release, home  
3 detention, work crew, and a combination of work crew and home detention  
4 as defined in this section.

5 (27) "Persistent offender" is an offender who:

6 (a)(i) Has been convicted in this state of any felony considered a  
7 most serious offense; and

8 (ii) Has, before the commission of the offense under (a) of this  
9 subsection, been convicted as an offender on at least two separate  
10 occasions, whether in this state or elsewhere, of felonies that under  
11 the laws of this state would be considered most serious offenses and  
12 would be included in the offender score under RCW 9.94A.360; provided  
13 that of the two or more previous convictions, at least one conviction  
14 must have occurred before the commission of any of the other most  
15 serious offenses for which the offender was previously convicted; or

16 (b)(i) Has been convicted of (A) rape in the first degree, rape in  
17 the second degree, or indecent liberties by forcible compulsion; (B)  
18 murder in the first degree, murder in the second degree, kidnapping in  
19 the first degree, kidnapping in the second degree, assault in the first  
20 degree, assault in the second degree, or burglary in the first degree,  
21 with a finding of sexual motivation; or (C) an attempt to commit any  
22 crime listed in this subsection (27)(b)(i); and

23 (ii) Has, before the commission of the offense under (b)(i) of this  
24 subsection, been convicted as an offender on at least one occasion,  
25 whether in this state or elsewhere, of an offense listed in (b)(i) of  
26 this subsection.

27 (28) "Postrelease supervision" is that portion of an offender's  
28 community placement that is not community custody.

29 (29) "Restitution" means the requirement that the offender pay a  
30 specific sum of money over a specific period of time to the court as  
31 payment of damages. The sum may include both public and private costs.  
32 The imposition of a restitution order does not preclude civil redress.

33 (30) "Serious traffic offense" means:

34 (a) Driving while under the influence of intoxicating liquor or any  
35 drug (RCW 46.61.502), actual physical control while under the influence  
36 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
37 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
38 or

1 (b) Any federal, out-of-state, county, or municipal conviction for  
2 an offense that under the laws of this state would be classified as a  
3 serious traffic offense under (a) of this subsection.

4 (31) "Serious violent offense" is a subcategory of violent offense  
5 and means:

6 (a) Murder in the first degree, homicide by abuse, murder in the  
7 second degree, assault in the first degree, kidnapping in the first  
8 degree, or rape in the first degree, assault of a child in the first  
9 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
10 commit one of these felonies; or

11 (b) Any federal or out-of-state conviction for an offense that  
12 under the laws of this state would be a felony classified as a serious  
13 violent offense under (a) of this subsection.

14 (32) "Sentence range" means the sentencing court's discretionary  
15 range in imposing a nonappealable sentence.

16 (33) "Sex offense" means:

17 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
18 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
19 criminal attempt, criminal solicitation, or criminal conspiracy to  
20 commit such crimes;

21 (b) A felony with a finding of sexual motivation under RCW  
22 9.94A.127 or 13.40.135; or

23 (c) Any federal or out-of-state conviction for an offense that  
24 under the laws of this state would be a felony classified as a sex  
25 offense under (a) of this subsection.

26 (34) "Sexual motivation" means that one of the purposes for which  
27 the defendant committed the crime was for the purpose of his or her  
28 sexual gratification.

29 (35) "Total confinement" means confinement inside the physical  
30 boundaries of a facility or institution operated or utilized under  
31 contract by the state or any other unit of government for twenty-four  
32 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

33 (36) "Transition training" means written and verbal instructions  
34 and assistance provided by the department to the offender during the  
35 two weeks prior to the offender's successful completion of the work  
36 ethic camp program. The transition training shall include instructions  
37 in the offender's requirements and obligations during the offender's  
38 period of community custody.

1 (37) "Victim" means any person who has sustained emotional,  
2 psychological, physical, or financial injury to person or property as  
3 a direct result of the crime charged.

4 (38) "Violent offense" means:

5 (a) Any of the following felonies, as now existing or hereafter  
6 amended: Any felony defined under any law as a class A felony or an  
7 attempt to commit a class A felony, criminal solicitation of or  
8 criminal conspiracy to commit a class A felony, manslaughter in the  
9 first degree, manslaughter in the second degree, indecent liberties if  
10 committed by forcible compulsion, kidnapping in the second degree,  
11 arson in the second degree, assault in the second degree, assault of a  
12 child in the second degree, extortion in the first degree, robbery in  
13 the second degree, vehicular assault, and vehicular homicide, when  
14 proximately caused by the driving of any vehicle by any person while  
15 under the influence of intoxicating liquor or any drug as defined by  
16 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

17 (b) Any conviction for a felony offense in effect at any time prior  
18 to July 1, 1976, that is comparable to a felony classified as a violent  
19 offense in (a) of this subsection; and

20 (c) Any federal or out-of-state conviction for an offense that  
21 under the laws of this state would be a felony classified as a violent  
22 offense under (a) or (b) of this subsection.

23 (39) "Work crew" means a program of partial confinement consisting  
24 of civic improvement tasks for the benefit of the community of not less  
25 than thirty-five hours per week that complies with RCW 9.94A.135. The  
26 civic improvement tasks shall have minimal negative impact on existing  
27 private industries or the labor force in the county where the service  
28 or labor is performed. The civic improvement tasks shall not affect  
29 employment opportunities for people with developmental disabilities  
30 contracted through sheltered workshops as defined in RCW 82.04.385.  
31 Only those offenders sentenced to a facility operated or utilized under  
32 contract by a county or the state are eligible to participate on a work  
33 crew. Offenders sentenced for a sex offense as defined in subsection  
34 (33) of this section are not eligible for the work crew program.

35 (40) "Work ethic camp" means an alternative incarceration program  
36 designed to reduce recidivism and lower the cost of corrections by  
37 requiring offenders to complete a comprehensive array of real-world job  
38 and vocational experiences, character-building work ethics training,

1 life management skills development, substance abuse rehabilitation,  
2 counseling, literacy training, and basic adult education.

3 (41) "Work release" means a program of partial confinement  
4 available to offenders who are employed or engaged as a student in a  
5 regular course of study at school. Participation in work release shall  
6 be conditioned upon the offender attending work or school at regularly  
7 defined hours and abiding by the rules of the work release facility.

8 (42) "Home detention" means a program of partial confinement  
9 available to offenders wherein the offender is confined in a private  
10 residence subject to electronic surveillance.

11 **Sec. 2.** RCW 69.50.401 and 1996 c 205 s 2 are each amended to read  
12 as follows:

13 (a) Except as authorized by this chapter, it is unlawful for any  
14 person to manufacture, deliver, or possess with intent to manufacture  
15 or deliver, a controlled substance.

16 (1) Any person who violates this subsection with respect to:

17 (i) a controlled substance classified in Schedule I or II which is  
18 a narcotic drug, is guilty of a crime and upon conviction may be  
19 imprisoned for not more than ten years, or (A) fined not more than  
20 twenty-five thousand dollars if the crime involved less than two  
21 kilograms of the drug, or both such imprisonment and fine; or (B) if  
22 the crime involved two or more kilograms of the drug, then fined not  
23 more than one hundred thousand dollars for the first two kilograms and  
24 not more than fifty dollars for each gram in excess of two kilograms,  
25 or both such imprisonment and fine;

26 (ii) methamphetamine, is guilty of a crime and upon conviction may  
27 be imprisoned for not more than ten years, or (A) fined not more than  
28 twenty-five thousand dollars if the crime involved less than two  
29 kilograms of the drug, or both such imprisonment and fine; or (B) if  
30 the crime involved two or more kilograms of the drug, then fined not  
31 more than one hundred thousand dollars for the first two kilograms and  
32 not more than fifty dollars for each gram in excess of two kilograms,  
33 or both such imprisonment and fine. Three thousand dollars of the fine  
34 may not be suspended. As collected, the first three thousand dollars  
35 of the fine must be deposited with the law enforcement agency having  
36 responsibility for cleanup of laboratories, sites, or substances used  
37 in the manufacture of the methamphetamine. The fine moneys deposited  
38 with that law enforcement agency must be used for such clean-up cost;

1 (iii) any other controlled substance classified in Schedule I, II,  
2 or III, is guilty of a crime and upon conviction may be imprisoned for  
3 not more than five years, fined not more than ten thousand dollars, or  
4 both;

5 (iv) a substance classified in Schedule IV, is guilty of a crime  
6 and upon conviction may be imprisoned for not more than five years,  
7 fined not more than ten thousand dollars, or both;

8 (v) a substance classified in Schedule V, is guilty of a crime and  
9 upon conviction may be imprisoned for not more than five years, fined  
10 not more than ten thousand dollars, or both.

11 (b) Except as authorized by this chapter, it is unlawful for any  
12 person to create, deliver, or possess a counterfeit substance.

13 (1) Any person who violates this subsection with respect to:

14 (i) a counterfeit substance classified in Schedule I or II which is  
15 a narcotic drug, is guilty of a crime and upon conviction may be  
16 imprisoned for not more than ten years, fined not more than twenty-five  
17 thousand dollars, or both;

18 (ii) a counterfeit substance which is methamphetamine, is guilty of  
19 a crime and upon conviction may be imprisoned for not more than ten  
20 years, fined not more than twenty-five thousand dollars, or both;

21 (iii) any other counterfeit substance classified in Schedule I, II,  
22 or III, is guilty of a crime and upon conviction may be imprisoned for  
23 not more than five years, fined not more than ten thousand dollars, or  
24 both;

25 (iv) a counterfeit substance classified in Schedule IV, is guilty  
26 of a crime and upon conviction may be imprisoned for not more than five  
27 years, fined not more than ten thousand dollars, or both;

28 (v) a counterfeit substance classified in Schedule V, is guilty of  
29 a crime and upon conviction may be imprisoned for not more than five  
30 years, fined not more than ten thousand dollars, or both.

31 (c) It is unlawful, except as authorized in this chapter and  
32 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for  
33 the sale, gift, delivery, dispensing, distribution, or administration  
34 of a controlled substance to any person and then sell, give, deliver,  
35 dispense, distribute, or administer to that person any other liquid,  
36 substance, or material in lieu of such controlled substance. Any  
37 person who violates this subsection is guilty of a crime and upon  
38 conviction may be imprisoned for not more than five years, fined not  
39 more than ten thousand dollars, or both.

1 (d) It is unlawful for any person to possess a controlled substance  
2 unless the substance was obtained directly from, or pursuant to, a  
3 valid prescription or order of a practitioner while acting in the  
4 course of his or her professional practice, or except as otherwise  
5 authorized by this chapter. Any person who violates this subsection is  
6 guilty of a crime, and upon conviction may be imprisoned for not more  
7 than five years, fined not more than ten thousand dollars, or both,  
8 except as provided for in subsection (e) of this section.

9 (e) Except as provided for in subsection (a)(1)(iii) of this  
10 section any person found guilty of possession of forty grams or less of  
11 marihuana shall be guilty of a misdemeanor.

12 (f) It is unlawful to compensate, threaten, solicit, or in any  
13 other manner involve a person under the age of eighteen years in a  
14 transaction unlawfully to manufacture, sell, or deliver a controlled  
15 substance. A violation of this subsection shall be punished as a class  
16 C felony punishable in accordance with RCW 9A.20.021.

17 This section shall not apply to offenses defined and punishable  
18 under the provisions of RCW 69.50.410.

19 **Sec. 3.** RCW 69.50.440 and 1996 c 205 s 1 are each amended to read  
20 as follows:

21 It is unlawful for any person to possess ephedrine or  
22 pseudoephedrine with intent to manufacture methamphetamine. Any person  
23 who violates this section is guilty of a crime and may be imprisoned  
24 for not more than ten years, fined not more than twenty-five thousand  
25 dollars, or both. Three thousand dollars of the fine may not be  
26 suspended. As collected, the first three thousand dollars of the fine  
27 must be deposited with the law enforcement agency having responsibility  
28 for cleanup of laboratories, sites, or substances used in the  
29 manufacture of the methamphetamine. The fine moneys deposited with  
30 that law enforcement agency must be used for such clean-up cost.

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