

SENATE BILL 5470

State of Washington 60th Legislature 2007 Regular Session

By Senators Hargrove, Stevens, McAuliffe, Brown and Regala

Read first time 01/19/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to dissolution proceedings; amending RCW 26.09.002,
2 26.12.240, 26.09.015, 2.56.180, 26.09.030, 26.09.187, and 26.09.197;
3 adding new sections to chapter 26.09 RCW; adding a new section to
4 chapter 2.53 RCW; creating new sections; and making appropriations.

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

PART I - Appropriations

7 NEW SECTION. **Sec. 1.** (1) The sum of . . . dollars of the general
8 fund--state appropriation for fiscal year 2008 and . . . dollars of the
9 general fund--state appropriation for fiscal year 2009 are provided
10 solely to the administrative office of the courts for the purposes of
11 funding twenty full-time equivalent positions statewide for courthouse
12 facilitators. The positions are to be distributed based on the average
13 annual number of dissolutions.

14 (2) The sum of . . . dollars of the general fund--state
15 appropriation for fiscal year 2008 and . . . dollars of the general
16 fund--state appropriation for fiscal year 2009 are provided solely to
17 the administrative office of the courts for the purposes of funding

1 mediation services for dissolution matters as provided in sections 5
2 and 7 of this act.

3 (3) The sum of . . . dollars of the general fund--state
4 appropriation for fiscal year 2008 and . . . dollars of the general
5 fund--state appropriation for fiscal year 2009 are provided solely to
6 the administrative office of the courts for the purposes of funding an
7 enhanced computer system capable of tracking dissolution information in
8 a case specific manner.

9 (4) The sum of . . . dollars of the general fund--state
10 appropriation for fiscal year 2008 and . . . dollars of the general
11 fund--state appropriation for fiscal year 2009 are provided solely to
12 the public safety and education account to enhance funding for
13 qualified legal aid programs for legal representation of indigent
14 persons in matters relating to domestic violence in domestic relations
15 and family law matters.

16 (5) The sum of . . . dollars of the general fund--state
17 appropriation for fiscal year 2008 are provided solely for the
18 development of supervised visitation and safe exchange centers.

19 (6) Counties receiving funds from the appropriations in this
20 section must agree not to use such funds to supplant existing funding
21 levels for maintenance of the courts.

22 **PART II - Intent**

23 **Sec. 2.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read
24 as follows:

25 Parents have the responsibility to make decisions and perform other
26 parental functions necessary for the care and growth of their minor
27 children. In any proceeding between parents under this chapter, the
28 best interests of the child shall be the standard by which the court
29 determines and allocates the parties' parental responsibilities. The
30 state recognizes the fundamental importance of the parent-child
31 relationship to the welfare of the child, and that the relationship
32 between the child and each parent should be fostered unless
33 inconsistent with the child's best interests. Visitation and child
34 support are equally important components of parenting arrangements.
35 The best interests of the child are served by a parenting arrangement
36 that best maintains a child's emotional growth, health and stability,

1 and physical care. Further, the best interest of the child is
2 ordinarily served when the existing pattern of interaction between a
3 parent and child is altered only to the extent necessitated by the
4 changed relationship of the parents or as required to protect the child
5 from physical, mental, or emotional harm.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 26.09 RCW
7 to read as follows:

8 The legislature reaffirms the intent of the current law as
9 expressed in RCW 26.09.002. However, after review, the legislature
10 finds that there are certain components of the existing law which do
11 not support the original legislative intent. In order to better
12 implement the existing legislative intent the legislature finds that
13 incentives for parties to reduce family conflict and additional
14 alternative dispute resolution options can assist in reducing the
15 number of contested trials. Furthermore, the legislature finds that
16 the identification of domestic violence and the treatment needs of the
17 parties to dissolutions are necessary to improve outcomes for children.
18 Presumptions in the law hinder the ability of judicial officers to
19 tailor individualized resolutions which are in the best interests of
20 the parties and their children as expressed in RCW 26.09.002. Judicial
21 officers should have the discretion and flexibility to assess each case
22 based on the merits of the individual cases before them.

23 **PART III - Facilitation**

24 **Sec. 4.** RCW 26.12.240 and 2005 c 457 s 15 are each amended to read
25 as follows:

26 A county (~~may~~) shall create a courthouse facilitator program to
27 provide basic services to pro se litigants in family law cases.
28 Courthouse facilitators shall be trained to screen for domestic
29 violence, substance abuse, and mental health issues and equipped to
30 make referrals for comprehensive evaluations as appropriate when
31 necessary. In agreed matters, courthouse facilitators shall be
32 available to assist parties in completing the necessary forms. The
33 legislative authority of any county may impose user fees or may impose
34 a surcharge of up to twenty dollars on only those superior court cases
35 filed under Title 26 RCW, or both, to pay for the expenses of the

1 courthouse facilitator program. Fees collected under this section
2 shall be collected and deposited in the same manner as other county
3 funds are collected and deposited, and shall be maintained in a
4 separate account to be used as provided in this section.

5 **PART IV - Domestic Violence**

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.09 RCW
7 to read as follows:

8 Mediation is generally inappropriate in cases involving family
9 violence, child abuse, and neglect. In order to better recognize
10 domestic violence and reduce conflict in dissolution matters: (1)
11 Litigants shall meet with trained professional courthouse facilitators
12 prior to participation in mediation; (2) where appropriate litigants
13 shall be provided access to trained domestic violence advocates; and
14 (3) in cases where a victim requests mediation the court may make
15 exceptions and permit mediation, so long as the victim is permitted to
16 have a supporting person present during the mediation proceedings.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 2.53 RCW
18 to read as follows:

19 (1) Beginning in 2007, the office of civil legal aid shall convene
20 a workgroup to establish statewide protocols for dissolution cases.
21 The group shall develop: (a) Clear and concise dispute resolution
22 procedures; (b) a sexual assault training curriculum; (c) consistent
23 standards for parenting evaluators; and (d) a domestic violence
24 training curriculum for individuals making evaluations in dissolution
25 cases. The workgroup shall further evaluate the need for: Specialized
26 evaluators for dissolution cases, simplification of dissolution forms
27 and procedures, and the reduction of fees.

28 (2) The governor shall appoint the following members of the
29 workgroup:

- 30 (a) A representative of the office of victim's assistance;
- 31 (b) A professor of law specializing in family law;
- 32 (c) A representative from the state bar association's family law
33 executive committee;
- 34 (d) A representative from a domestic violence advocacy group;
- 35 (e) A representative from a legal services entity;

1 (f) Two noncustodial parents, each of whom may be a representative
2 of an advocacy group, an attorney, or an individual, with at least one
3 representing the interests of low-income, noncustodial parents; and

4 (g) Two custodial parents, each of whom may be a representative of
5 an advocacy group, an attorney, or an individual, with at least one
6 representing the interests of low-income, custodial parents.

7 (3) The chief justice of the supreme court shall appoint the
8 following members of the workgroup:

9 (a) Two representatives from the superior court judges association,
10 including a superior court judge and a court commissioner who is
11 familiar with dissolution issues; and

12 (b) A representative from the administrative office of the courts.

13 (4) Membership of the workgroup may also include any members of the
14 civil legal aid oversight committee, including but not limited to the
15 legislative members of the committee.

16 (5) The office of civil legal aid shall provide staff support to
17 the workgroup, and shall carefully consider all input received from
18 interested organizations and individuals during the review process.

19 (6) The workgroup may form an executive committee, create
20 subcommittees, designate alternative representatives, and define other
21 procedures, as needed, for operation of the work group.

22 (7) Legislative members of the workgroup shall be reimbursed for
23 travel expenses under RCW 44.04.120. Nonlegislative members, except
24 those representing an employee or organization, are entitled to be
25 reimbursed for travel expenses in accordance with RCW 43.03.050 and
26 43.03.060.

27 (8) The workgroup shall report preliminary findings and conclusions
28 to the civil legal aid oversight committee by September 1, 2008, a
29 final report and recommendations, including recommendations for
30 legislative action, if necessary, shall be provided to the governor's
31 office, the supreme court and the appropriate committees of the
32 legislature by December 1, 2008.

33 **PART V - Additional Services**

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 26.09 RCW
35 to read as follows:

36 In order to provide judicial officers with better information and

1 to facilitate decision making which allows for the protection of
2 children from physical, mental, or emotional harm and in order to
3 facilitate consistent healthy contact between both parents and their
4 children:

5 (1) Individuals who require the assistance of interpreters shall be
6 provided access to such pursuant to chapter 2.42 or 2.43 RCW.

7 (2) Individuals who require literacy assistance shall be referred
8 to the multipurpose service centers established in chapter 28B.04 RCW.

9 (3) In matters involving guardian ad litem, the court shall
10 specify the hourly rate the guardian ad litem may charge for his or her
11 services, and shall specify the maximum amount the guardian ad litem
12 may charge without additional review. Indigent litigants shall be
13 provided with guardian ad litem services at no expense.

14 (4) Parties may request to participate by telephone. The court may
15 allow telephonic participation of one or more parties at any proceeding
16 in its discretion. The court may also allow telephonic participation
17 of witnesses.

18 (5) In cases involving family violence, child abuse, and neglect,
19 supervised visitation and safe exchange centers or alternative safe
20 neutral locations shall be utilized to facilitate visitation if
21 ordered.

22 **PART VI - Mediation**

23 **Sec. 8.** RCW 26.09.015 and 2005 c 172 s 17 are each amended to read
24 as follows:

25 (1) In any proceeding under this chapter, the matter may be set for
26 mediation of the contested issues before or concurrent with the setting
27 of the matter for hearing. Both predecree and postdecree mediation
28 shall be provided at no expense to the parties. The purpose of the
29 mediation proceeding shall be to reduce acrimony which may exist
30 between the parties and to develop an agreement assuring the child's
31 close and continuing contact with both parents after the marriage is
32 dissolved. The mediator shall use his or her best efforts to effect a
33 settlement of the dispute.

34 (2) Each superior court may make available a mediator. The
35 mediator may be a member of the professional staff of a family court or

1 mental health services agency, or may be any other person or agency
2 designated by the court. In order to provide mediation services, the
3 court is not required to institute a family court.

4 (3)(a) Mediation proceedings under this chapter shall be governed
5 in all respects by chapter 7.07 RCW, except as follows:

6 (i) Mediation communications in postdecree mediations mandated by
7 a parenting plan are admissible in subsequent proceedings for the
8 limited purpose of proving:

9 (A) Abuse, neglect, abandonment, exploitation, or unlawful
10 harassment as defined in RCW 9A.46.020(1), of a child;

11 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of
12 a family or household member as defined in RCW 26.50.010(2); or

13 (C) That a parent used or frustrated the dispute resolution process
14 without good reason for purposes of RCW 26.09.184(3)(d).

15 (ii) If a postdecree mediation-arbitration proceeding is required
16 pursuant to a parenting plan and the same person acts as both mediator
17 and arbitrator, mediation communications in the mediation phase of such
18 a proceeding may be admitted during the arbitration phase, and shall be
19 admissible in the judicial review of such a proceeding under RCW
20 26.09.184(3)(e) to the extent necessary for such review to be
21 effective.

22 (b) None of the exceptions under (a)(i) and (ii) of this subsection
23 shall subject a mediator to compulsory process to testify except by
24 court order for good cause shown, taking into consideration the need
25 for the mediator's testimony and the interest in the mediator
26 maintaining an appearance of impartiality. If a mediation
27 communication is not privileged under (a)(i) of this subsection or that
28 portion of (a)(ii) of this subsection pertaining to judicial review,
29 only the portion of the communication necessary for the application of
30 the exception may be admitted, and such admission of evidence shall not
31 render any other mediation communication discoverable or admissible
32 except as may be provided in chapter 7.07 RCW.

33 (4) The mediator shall assess the needs and interests of the child
34 or children involved in the controversy and may interview the child or
35 children if the mediator deems such interview appropriate or necessary.

36 (5) Any agreement reached by the parties as a result of mediation
37 shall be reported to the court and to counsel for the parties by the

1 mediator on the day set for mediation or any time thereafter designated
2 by the court.

3 (6) Parties who choose to participate in good faith in the
4 mediation process within one month of filing a dissolution petition
5 remain eligible to finalize the dissolution within ninety days of the
6 date of filing. In addition, courthouse facilitator services shall be
7 made available at no cost for such parties.

8 **PART VII - Technical Changes**

9 **Sec. 9.** RCW 2.56.180 and 2005 c 282 s 10 are each amended to read
10 as follows:

11 (1) The administrative office of the courts shall create a handbook
12 explaining the sections of Washington law pertaining to the rights and
13 responsibilities of marital partners to each other and to any children
14 during a marriage and a dissolution of marriage. The handbook may also
15 be provided in videotape or other electronic form.

16 (2) The handbook created under subsection (1) of this section shall
17 be provided by the county auditor when an individual applies for a
18 marriage license under RCW 26.04.140.

19 (3) The handbook created under subsection (1) of this section shall
20 also be provided to both parties when an individual files a petition
21 for dissolution pursuant to RCW 26.09.020.

22 (4) The information contained in the handbook created under
23 subsection (1) of this section shall be reviewed and updated annually.
24 The handbook must contain the following information:

25 (a) Information on prenuptial agreements as contracts and as a
26 means of structuring financial arrangements and other aspects of the
27 marital relationship;

28 (b) Information on shared parental responsibility for children,
29 including establishing a residential schedule for the child in the
30 event of the dissolution of the marriage;

31 (c) Information on notice requirements and standards for parental
32 relocation;

33 (d) Information on child support for minor children;

34 (e) Information on property rights, including equitable
35 distribution of assets and premarital and postmarital property rights;

36 (f) Information on spousal maintenance;

- 1 (g) Information on domestic violence, child abuse, and neglect,
2 including penalties;
- 3 (h) Information on the court process for dissolution;
- 4 (i) Information on the effects of dissolution on children;
- 5 (j) Information on community resources that are available to
6 separating or divorcing persons and their children.

7 **Sec. 10.** RCW 26.09.030 and 2005 c 55 s 1 are each amended to read
8 as follows:

- 9 (1) When a party who ~~((1))~~ is:
10 (a) A resident of this state~~((, or (2) is))~~;
11 (b) A member of the armed forces and is stationed in this
12 state~~((7))~~; or ~~((3) is)~~

13 (c) Married to a party who is a resident of this state or who is a
14 member of the armed forces and is stationed in this state,
15 petitions for a dissolution of marriage, and alleges that the marriage
16 is irretrievably broken, the party may file a petition alleging such
17 facts in the county where either party resides, and when ninety days
18 have elapsed since the petition was filed and from the date when
19 service of summons was made upon the respondent or the first
20 publication of summons was made, the court shall proceed as follows:

21 ~~((a))~~ (i) If the other party joins in the petition or does not
22 deny that the marriage is irretrievably broken, the court shall enter
23 a decree of dissolution.

24 ~~((b))~~ (ii) If the other party alleges that the petitioner was
25 induced to file the petition by fraud, or coercion, the court shall
26 make a finding as to that allegation and, if it so finds shall dismiss
27 the petition.

28 ~~((c))~~ (iii) If the other party denies that the marriage is
29 irretrievably broken the court shall consider all relevant factors,
30 including the circumstances that gave rise to the filing of the
31 petition and the prospects for reconciliation and shall:

32 ~~((i))~~ (A) Make a finding that the marriage is irretrievably
33 broken and enter a decree of dissolution of the marriage; or

34 ~~((ii))~~ (B) At the request of either party or on its own motion,
35 transfer the cause to the family court, refer them to another
36 counseling service of their choice, and request a report back from the

1 counseling service within sixty days, or continue the matter for not
2 more than sixty days for hearing. If the cause is returned from the
3 family court or at the adjourned hearing, the court shall:

4 ~~((A))~~ (I) Find that the parties have agreed to reconciliation and
5 dismiss the petition; or

6 ~~((B))~~ (II) Find that the parties have not been reconciled, and
7 that either party continues to allege that the marriage is
8 irretrievably broken. When such facts are found, the court shall enter
9 a decree of dissolution of the marriage.

10 ~~((d))~~ (iv) If the petitioner requests the court to decree legal
11 separation in lieu of dissolution, the court shall enter the decree in
12 that form unless the other party objects and petitions for a decree of
13 dissolution or declaration of invalidity.

14 ~~((e))~~ (v) In considering a petition for dissolution of marriage,
15 a court shall not use a party's pregnancy as the sole basis for denying
16 or delaying the entry of a decree of dissolution of marriage. Granting
17 a decree of dissolution of marriage when a party is pregnant does not
18 affect further proceedings under the uniform parentage act, chapter
19 26.26 RCW.

20 (2) Both parties shall acknowledge, in writing, the receipt of the
21 family law handbook, information related to alternatives to litigation
22 including, counseling, legal separation, and mediation services, and if
23 appropriate information regarding supervised visitation and safe
24 exchange programs prior to entry of a decree of dissolution.

25 **Sec. 11.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to
26 read as follows:

27 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
28 dispute resolution process, except court action, when it finds that any
29 limiting factor under RCW 26.09.191 applies(~~(, or when it finds that~~
30 ~~either parent is unable to afford the cost of the proposed dispute~~
31 ~~resolution process)~~). If a dispute resolution process is not precluded
32 or limited, then in designating such a process the court shall consider
33 all relevant factors, including:

34 (a) Differences between the parents that would substantially
35 inhibit their effective participation in any designated process; and

36 (b) The parents' wishes or agreements and, if the parents have

1 entered into agreements, whether the agreements were made knowingly and
2 voluntarily(~~(; and~~

3 ~~(c) Differences in the parents' financial circumstances that may~~
4 ~~affect their ability to participate fully in a given dispute resolution~~
5 ~~process)).~~

6 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

7 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
8 agreements of the parties allocating decision-making authority, or
9 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it
10 finds that:

11 (i) The agreement is consistent with any limitations on a parent's
12 decision-making authority mandated by RCW 26.09.191; and

13 (ii) The agreement is knowing and voluntary.

14 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole
15 decision-making to one parent when it finds that:

16 (i) A limitation on the other parent's decision-making authority is
17 mandated by RCW 26.09.191;

18 (ii) Both parents are opposed to mutual decision making;

19 (iii) One parent is opposed to mutual decision making, and such
20 opposition is reasonable based on the criteria in (c) of this
21 subsection;

22 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
23 and (b) of this subsection, the court shall consider the following
24 criteria in allocating decision-making authority:

25 (i) The existence of a limitation under RCW 26.09.191;

26 (ii) The history of participation of each parent in decision making
27 in each of the areas in RCW 26.09.184(4)(a);

28 (iii) Whether the parents have a demonstrated ability and desire to
29 cooperate with one another in decision making in each of the areas in
30 RCW 26.09.184(4)(a); and

31 (iv) The parents' geographic proximity to one another, to the
32 extent that it affects their ability to make timely mutual decisions.

33 (3) RESIDENTIAL PROVISIONS.

34 (a) The court shall make residential provisions for each child
35 which encourage each parent to maintain a loving, stable, and nurturing
36 relationship with the child, consistent with the child's developmental
37 level and the family's social and economic circumstances. The child's

1 residential schedule shall be consistent with RCW 26.09.191. Where the
2 limitations of RCW 26.09.191 are not dispositive of the child's
3 residential schedule, the court shall consider the following factors:

4 (i) The relative strength, nature, and stability of the child's
5 relationship with each parent(~~(, including whether a parent has taken~~
6 ~~greater responsibility for performing parenting functions relating to~~
7 ~~the daily needs of the child));~~

8 (ii) The agreements of the parties, provided they were entered into
9 knowingly and voluntarily;

10 (iii) Each parent's past and potential for future performance of
11 parenting functions;

12 (iv) The emotional needs and developmental level of the child;

13 (v) The child's relationship with siblings and with other
14 significant adults, as well as the child's involvement with his or her
15 physical surroundings, school, or other significant activities;

16 (vi) The wishes of the parents and the wishes of a child who is
17 sufficiently mature to express reasoned and independent preferences as
18 to his or her residential schedule; ~~((and))~~

19 (vii) Each parent's employment schedule, and shall make
20 accommodations consistent with those schedules;

21 (viii) The parties availability to each other, especially in
22 geographic proximity, to the extent necessary to ensure their ability
23 to share performance of the parenting functions; and

24 (ix) The best interests of the child.

25 ~~((Factor (i) shall be given the greatest weight.))~~

26 (b) ~~((The court may order that a child frequently alternate his or~~
27 ~~her residence between the households of the parents for brief and~~
28 ~~substantially equal intervals of time only if the court finds the~~
29 ~~following:~~

30 ~~(i) No limitation exists under RCW 26.09.191;~~

31 ~~(ii)(A) The parties have agreed to such provisions and the~~
32 ~~agreement was knowingly and voluntarily entered into; or~~

33 ~~(B) The parties have a satisfactory history of cooperation and~~
34 ~~shared performance of parenting functions; the parties are available to~~
35 ~~each other, especially in geographic proximity, to the extent necessary~~
36 ~~to ensure their ability to share performance of the parenting~~
37 ~~functions; and~~

1 ~~(iii) The provisions are in the best interests of the child))~~ For
2 any child, residential provisions may contain any reasonable terms or
3 conditions that facilitate the orderly and meaningful exercise of
4 residential time by a parent, including one or more of the following:

5 (i) Requirements that residential time be specified;

6 (ii) Requirements of reasonable notice when residential time will
7 not occur;

8 (iii) Requirement that if either party raises a domestic violence
9 allegation both parties shall be screened to determine the
10 appropriateness of a referral for a domestic violence assessment. Any
11 assessment should include recommendations for relationship education or
12 counseling for perpetrators and victims; and

13 (iv) Any other reasonable condition determined to be appropriate in
14 the particular case.

15 (c) In any parenting plan in which the court finds that the parties
16 do not have a satisfactory history of cooperation or the limitations of
17 RCW 26.09.191 are dispositive; to the extent necessary, the parenting
18 plan shall include a safe, neutral, and public location for the
19 exchange of the child such as a school, day care, place of worship, or
20 supervised visitation and safe exchange center.

21 **Sec. 12.** RCW 26.09.197 and 1987 c 460 s 14 are each amended to
22 read as follows:

23 After considering the affidavit required by RCW 26.09.194(1) and
24 other relevant evidence presented, the court shall make a temporary
25 parenting plan that is in the best interest of the child. In making
26 this determination, the court shall give particular consideration to((+

27 ~~(1) Which parent has taken greater responsibility during the last~~
28 ~~twelve months for performing parenting functions relating to the daily~~
29 ~~needs of the child; and~~

30 ~~(2))~~ which parenting arrangements will cause the least disruption
31 to the child's emotional stability while the action is pending.

32 The court shall also consider the factors used to determine
33 residential provisions in the permanent parenting plan.

34 **PART VIII - Data Tracking**

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 26.09 RCW
2 to read as follows:

3 The clerk of the superior court shall keep an electronic record of
4 all orders, decrees, and judgments made by the court and the minutes of
5 the court in dissolution proceedings regarding residential schedules
6 with a reasonable degree of specificity regarding actual time with each
7 parent, including enforcement practices, representation status of the
8 parties, whether domestic violence, child abuse or neglect, chemical
9 dependency, or mental health issues and whether the matter was agreed
10 or contested.

11 This information shall be transmitted to the administrative office
12 of the courts for purposes of tracking residential time awards by
13 parent and the parties' representation status. Such information shall
14 be made publicly available.

15 **PART IX - Miscellaneous**

16 NEW SECTION. **Sec. 14.** Part headings used in this act are not any
17 part of the law.

18 NEW SECTION. **Sec. 15.** If specific funding for the purposes of
19 this act, referencing this act by bill or chapter number, is not
20 provided by June 30, 2007, in the omnibus appropriations act, this act
21 is null and void.

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