
SENATE BILL 5048

State of Washington**56th Legislature****1999 Regular Session****By** Senators Long and Hargrove

Read first time 01/11/1999. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to technical corrections to chapters 10.77 and
2 71.05 RCW; amending RCW 10.77.010, 10.77.240, 10.77.940, 71.05.020,
3 71.05.245, 71.05.320, 71.05.425, and 71.05.940; reenacting RCW
4 71.05.640, 71.05.670, 71.05.680, and 71.05.690; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** The purpose of this act is to make technical
8 nonsubstantive changes to chapters 10.77 and 71.05 RCW. No provision
9 of this act shall be construed as a substantive change in the
10 provisions dealing with persons charged with crimes who are subject to
11 evaluation under chapter 10.77 or 71.05 RCW.

12 **Sec. 2.** RCW 10.77.010 and 1998 c 297 s 29 are each amended to read
13 as follows:

14 As used in this chapter:

15 (1) "County designated mental health professional" has the same
16 meaning as provided in RCW 71.05.020.

17 (2) A "criminally insane" person means any person who has been
18 acquitted of a crime charged by reason of insanity, and thereupon found

1 to be a substantial danger to other persons or to present a substantial
2 likelihood of committing criminal acts jeopardizing public safety or
3 security unless kept under further control by the court or other
4 persons or institutions.

5 (3) "Department" means the state department of social and health
6 services.

7 (4) "Developmental disabilities professional" means a person who
8 has specialized training and three years of experience in directly
9 treating or working with persons with developmental disabilities and is
10 a psychiatrist or psychologist, or a social worker, and such other
11 developmental disabilities professionals as may be defined by rules
12 adopted by the secretary.

13 (5) "Developmental disability" means the condition defined in RCW
14 71A.10.020((+2)) (3).

15 (6) "((Expert or)) Professional person" means:

16 (a) A psychiatrist licensed as a physician and surgeon in this
17 state who has, in addition, completed three years of graduate training
18 in psychiatry in a program approved by the American medical association
19 or the American osteopathic association and is certified or eligible to
20 be certified by the American board of psychiatry and neurology;

21 (b) A psychologist licensed as a psychologist pursuant to chapter
22 18.83 RCW; or

23 (c) A social worker with a master's or further advanced degree from
24 an accredited school of social work or a degree deemed equivalent under
25 rules adopted by the secretary.

26 (7) "Furlough" means an authorized leave of absence for a resident
27 of a state institution operated by the department designated for the
28 custody, care, and treatment of the criminally insane, consistent with
29 an order of conditional release from the court under this chapter,
30 without any requirement that the resident be accompanied by, or be in
31 the custody of, any law enforcement or institutional staff, while on
32 such unescorted leave.

33 (8) "Habilitative services" means those services provided by
34 program personnel to assist persons in acquiring and maintaining life
35 skills and in raising their levels of physical, mental, social, and
36 vocational functioning. Habilitative services include education,
37 training for employment, and therapy. The habilitative process shall
38 be undertaken with recognition of the risk to the public safety

1 presented by the individual being assisted as manifested by prior
2 charged criminal conduct.

3 (9) "History of one or more violent acts" means violent acts
4 committed during: (a) The ten-year period of time prior to the filing
5 of criminal charges; plus (b) the amount of time equal to time spent
6 during the ten-year period in a mental health facility or in
7 confinement as a result of a criminal conviction.

8 (10) "Incompetency" means a person lacks the capacity to understand
9 the nature of the proceedings against him or her or to assist in his or
10 her own defense as a result of mental disease or defect.

11 (11) "Indigent" means any person who is financially unable to
12 obtain counsel or other necessary expert or professional services
13 without causing substantial hardship to the person or his or her
14 family.

15 (12) "Individualized service plan" means a plan prepared by a
16 developmental disabilities professional with other professionals as a
17 team, for an individual with developmental disabilities, which shall
18 state:

19 (a) The nature of the person's specific problems, prior charged
20 criminal behavior, and habilitation needs;

21 (b) The conditions and strategies necessary to achieve the purposes
22 of habilitation;

23 (c) The intermediate and long-range goals of the habilitation
24 program, with a projected timetable for the attainment;

25 (d) The rationale for using this plan of habilitation to achieve
26 those intermediate and long-range goals;

27 (e) The staff responsible for carrying out the plan;

28 (f) Where relevant in light of past criminal behavior and due
29 consideration for public safety, the criteria for proposed movement to
30 less-restrictive settings, criteria for proposed eventual discharge
31 from involuntary confinement, and a projected possible date for
32 discharge from involuntary confinement; and

33 (g) The type of residence immediately anticipated for the person
34 and possible future types of residences.

35 (13) "Secretary" means the secretary of the department of social
36 and health services or his or her designee.

37 (14) "Treatment" means any currently standardized medical or mental
38 health procedure including medication.

1 (15) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
2 if completed as intended would have resulted in; or (iii) was
3 threatened to be carried out by a person who had the intent and
4 opportunity to carry out the threat and would have resulted in,
5 homicide, nonfatal injuries, or substantial damage to property; or (b)
6 recklessly creates an immediate risk of serious physical injury to
7 another person.

8 **Sec. 3.** RCW 10.77.240 and 1973 1st ex.s. c 117 s 24 are each
9 amended to read as follows:

10 Nothing in this chapter shall prohibit a person presently committed
11 from exercising a right presently available to him or her for obtaining
12 release from confinement, including the right to petition for a writ of
13 habeas corpus.

14 **Sec. 4.** RCW 10.77.940 and 1989 c 420 s 17 are each amended to read
15 as follows:

16 The provisions of ((this act)) chapter 420, Laws of 1989 shall
17 apply equally to persons ((presently)) in the custody of the department
18 on May 13, 1989, who were found by a court to be not guilty by reason
19 of insanity or incompetent to stand trial, or who have been found to
20 have committed acts constituting a felony pursuant to RCW 71.05.280(3)
21 and present a substantial likelihood of repeating similar acts, and the
22 secretary shall cause such persons to be evaluated to ascertain if such
23 persons are developmentally disabled for placement in a program
24 specifically reserved for the treatment and training of persons with
25 developmental disabilities.

26 **Sec. 5.** RCW 71.05.020 and 1998 c 297 s 3 are each amended to read
27 as follows:

28 For the purposes of this chapter:

29 (1) "Antipsychotic medications" means that class of drugs primarily
30 used to treat serious manifestations of mental illness associated with
31 thought disorders, which includes, but is not limited to atypical
32 antipsychotic medications;

33 (2) "Attending staff" means any person on the staff of a public or
34 private agency having responsibility for the care and treatment of a
35 patient;

1 (3) "County designated mental health professional" means a mental
2 health professional appointed by the county to perform the duties
3 specified in this chapter;

4 (4) "Custody" means involuntary detention under the provisions of
5 this chapter or chapter 10.77 RCW, uninterrupted by any period of
6 unconditional release from a facility providing involuntary care and
7 treatment;

8 (5) "Department" means the department of social and health
9 services;

10 (6) "Developmental disabilities professional" means a person who
11 has specialized training and three years of experience in directly
12 treating or working with persons with developmental disabilities and is
13 a psychiatrist, psychologist, or social worker, and such other
14 developmental disabilities professionals as may be defined by rules
15 adopted by the secretary;

16 (7) "Developmental disability" means that condition defined in RCW
17 71A.10.020((+2)) (3);

18 (8) "Evaluation and treatment facility" means any facility which
19 can provide directly, or by direct arrangement with other public or
20 private agencies, emergency evaluation and treatment, outpatient care,
21 and timely and appropriate inpatient care to persons suffering from a
22 mental disorder, and which is certified as such by the department. A
23 physically separate and separately operated portion of a state hospital
24 may be designated as an evaluation and treatment facility. A facility
25 which is part of, or operated by, the department or any federal agency
26 will not require certification. No correctional institution or
27 facility, or jail, shall be an evaluation and treatment facility within
28 the meaning of this chapter;

29 (9) "Gravely disabled" means a condition in which a person, as a
30 result of a mental disorder: (a) Is in danger of serious physical harm
31 resulting from a failure to provide for his or her essential human
32 needs of health or safety; or (b) manifests severe deterioration in
33 routine functioning evidenced by repeated and escalating loss of
34 cognitive or volitional control over his or her actions and is not
35 receiving such care as is essential for his or her health or safety;

36 (10) "Habilitative services" means those services provided by
37 program personnel to assist persons in acquiring and maintaining life
38 skills and in raising their levels of physical, mental, social, and
39 vocational functioning. Habilitative services include education,

1 training for employment, and therapy. The rehabilitative process shall
2 be undertaken with recognition of the risk to the public safety
3 presented by the individual being assisted as manifested by prior
4 charged criminal conduct;

5 (11) "History of one or more violent acts" refers to the period of
6 time ten years prior to the filing of a petition under this chapter,
7 excluding any time spent, but not any violent acts committed, in a
8 mental health facility or in confinement as a result of a criminal
9 conviction;

10 (12) "Individualized service plan" means a plan prepared by a
11 developmental disabilities professional with other professionals as a
12 team, for an individual with developmental disabilities, which shall
13 state:

14 (a) The nature of the person's specific problems, prior charged
15 criminal behavior, and habilitation needs;

16 (b) The conditions and strategies necessary to achieve the purposes
17 of habilitation;

18 (c) The intermediate and long-range goals of the habilitation
19 program, with a projected timetable for the attainment;

20 (d) The rationale for using this plan of habilitation to achieve
21 those intermediate and long-range goals;

22 (e) The staff responsible for carrying out the plan;

23 (f) Where relevant in light of past criminal behavior and due
24 consideration for public safety, the criteria for proposed movement to
25 less-restrictive settings, criteria for proposed eventual discharge
26 from involuntary confinement, and a projected possible date for
27 discharge from involuntary confinement; and

28 (g) The type of residence immediately anticipated for the person
29 and possible future types of residences;

30 (13) "Judicial commitment" means a commitment by a court pursuant
31 to the provisions of this chapter;

32 (14) "Likelihood of serious harm" means:

33 (a) A substantial risk that: (i) Physical harm will be inflicted
34 by an individual upon his or her own person, as evidenced by threats or
35 attempts to commit suicide or inflict physical harm on oneself; (ii)
36 physical harm will be inflicted by an individual upon another, as
37 evidenced by behavior which has caused such harm or which places
38 another person or persons in reasonable fear of sustaining such harm;
39 or (iii) physical harm will be inflicted by an individual upon the

1 property of others, as evidenced by behavior which has caused
2 substantial loss or damage to the property of others; or

3 (b) The individual has threatened the physical safety of another
4 and has a history of one or more violent acts;

5 (15) "Mental disorder" means any organic, mental, or emotional
6 impairment which has substantial adverse effects on an individual's
7 cognitive or volitional functions;

8 (16) "Mental health professional" means a psychiatrist,
9 psychologist, psychiatric nurse, or social worker, and such other
10 mental health professionals as may be defined by rules adopted by the
11 secretary pursuant to the provisions of this chapter;

12 (17) "Peace officer" means a law enforcement official of a public
13 agency or governmental unit, and includes persons specifically given
14 peace officer powers by any state law, local ordinance, or judicial
15 order of appointment;

16 (18) "Private agency" means any person, partnership, corporation,
17 or association that is not ((defined as)) a public agency, whether or
18 not financed in whole or in part by public funds, which constitutes an
19 evaluation and treatment facility or private institution, hospital, or
20 sanitarium, which is conducted for, or includes a department or ward
21 conducted for, the care and treatment of persons who are mentally ill;

22 (19) "Professional person" means a mental health professional and
23 shall also mean a physician, registered nurse, and such others as may
24 be defined by rules adopted by the secretary pursuant to the provisions
25 of this chapter;

26 (20) "Psychiatrist" means a person having a license as a physician
27 and surgeon in this state who has in addition completed three years of
28 graduate training in psychiatry in a program approved by the American
29 medical association or the American osteopathic association and is
30 certified or eligible to be certified by the American board of
31 psychiatry and neurology;

32 (21) "Psychologist" means a person who has been licensed as a
33 psychologist pursuant to chapter 18.83 RCW;

34 (22) "Public agency" means any evaluation and treatment facility or
35 institution, hospital, or sanitarium which is conducted for, or
36 includes a department or ward conducted for, the care and treatment of
37 persons who are mentally ill ((or deranged)); if the agency is operated
38 directly by, federal, state, county, or municipal government, or a
39 combination of such governments;

1 (23) "Resource management services" has the meaning given in
2 chapter 71.24 RCW;

3 (24) "Secretary" means the secretary of the department of social
4 and health services, or his or her designee;

5 (25) "Social worker" means a person with a master's or further
6 advanced degree from an accredited school of social work or a degree
7 deemed equivalent under rules adopted by the secretary;

8 (26) "Violent act" means behavior that resulted in homicide,
9 attempted suicide, nonfatal injuries, or substantial damage to
10 property.

11 **Sec. 6.** RCW 71.05.245 and 1998 c 297 s 14 are each amended to read
12 as follows:

13 In making a determination of whether there is a likelihood of
14 serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320,
15 the court shall give great weight to any evidence before the court
16 regarding whether the person has: (1) A recent history of one or more
17 violent acts; or (2) a recent history of one or more commitments under
18 this chapter or its equivalent provisions under the laws of another
19 state which were based on a likelihood of serious harm. The existence
20 of prior violent acts or commitments under this chapter or its
21 equivalent shall not be the sole basis for determining whether a person
22 presents a likelihood of serious harm.

23 For the purposes of this section "recent" refers to the period of
24 time not exceeding three years prior to the current hearing.

25 **Sec. 7.** RCW 71.05.320 and 1997 c 112 s 26 are each amended to read
26 as follows:

27 (1) If the court or jury finds that grounds set forth in RCW
28 71.05.280 have been proven and that the best interests of the person or
29 others will not be served by a less restrictive treatment which is an
30 alternative to detention, the court shall remand him or her to the
31 custody of the department or to a facility certified for ninety day
32 treatment by the department for a further period of intensive treatment
33 not to exceed ninety days from the date of judgment: PROVIDED, That if
34 the grounds set forth in RCW 71.05.280(3) are the basis of commitment,
35 then the period of treatment may be up to but not exceed one hundred
36 eighty days from the date of judgment in a facility certified for one
37 hundred eighty day treatment by the department. If the committed

1 person is developmentally disabled and has been determined incompetent
2 pursuant to RCW 10.77.090((+3)) (4), and the best interests of the
3 person or others will not be served by a less-restrictive treatment
4 which is an alternative to detention, the court shall remand him or her
5 to the custody of the department or to a facility certified for one
6 hundred eighty-day treatment by the department. When appropriate and
7 subject to available funds, treatment and training of such persons must
8 be provided in a program specifically reserved for the treatment and
9 training of developmentally disabled persons. A person so committed
10 shall receive habilitation services pursuant to an individualized
11 service plan specifically developed to treat the behavior which was the
12 subject of the criminal proceedings. The treatment program shall be
13 administered by developmental disabilities professionals and others
14 trained specifically in the needs of developmentally disabled persons.
15 The department may limit admissions to this specialized program in
16 order to ensure that expenditures for services do not exceed amounts
17 appropriated by the legislature and allocated by the department for
18 such services. The department may establish admission priorities in
19 the event that the number of eligible persons exceeds the limits set by
20 the department. An order for treatment less restrictive than
21 involuntary detention may include conditions, and if such conditions
22 are not adhered to, the designated mental health professional or
23 developmental disabilities professional may order the person
24 apprehended under the terms and conditions of RCW 71.05.340.

25 If the court or jury finds that grounds set forth in RCW 71.05.280
26 have been proven, but finds that treatment less restrictive than
27 detention will be in the best interest of the person or others, then
28 the court shall remand him or her to the custody of the department or
29 to a facility certified for ninety day treatment by the department or
30 to a less restrictive alternative for a further period of less
31 restrictive treatment not to exceed ninety days from the date of
32 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)
33 are the basis of commitment, then the period of treatment may be up to
34 but not exceed one hundred eighty days from the date of judgment.

35 (2) The person shall be released from involuntary treatment at the
36 expiration of the period of commitment imposed under subsection (1) of
37 this section unless the superintendent or professional person in charge
38 of the facility in which he or she is confined, or in the event of a
39 less restrictive alternative, the designated mental health professional

1 or developmental disabilities professional, files a new petition for
2 involuntary treatment on the grounds that the committed person;

3 (a) During the current period of court ordered treatment: (i) Has
4 threatened, attempted, or inflicted physical harm upon the person of
5 another, or substantial damage upon the property of another, and (ii)
6 as a result of mental disorder or developmental disability presents a
7 likelihood of serious harm; or

8 (b) Was taken into custody as a result of conduct in which he or
9 she attempted or inflicted serious physical harm upon the person of
10 another, and continues to present, as a result of mental disorder or
11 developmental disability a likelihood of serious harm; or

12 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
13 mental disorder or developmental disability presents a substantial
14 likelihood of repeating similar acts considering the charged criminal
15 behavior, life history, progress in treatment, and the public safety;
16 or

17 (d) Continues to be gravely disabled.

18 If the conduct required to be proven in (b) and (c) of this
19 subsection was found by a judge or jury in a prior trial under this
20 chapter, it shall not be necessary to reprove that element. Such new
21 petition for involuntary treatment shall be filed and heard in the
22 superior court of the county of the facility which is filing the new
23 petition for involuntary treatment unless good cause is shown for a
24 change of venue. The cost of the proceedings shall be borne by the
25 state.

26 The hearing shall be held as provided in RCW 71.05.310, and if the
27 court or jury finds that the grounds for additional confinement as set
28 forth in this subsection are present, the court may order the committed
29 person returned for an additional period of treatment not to exceed one
30 hundred eighty days from the date of judgment. At the end of the one
31 hundred eighty day period of commitment, the committed person shall be
32 released unless a petition for another one hundred eighty day period of
33 continued treatment is filed and heard in the same manner as provided
34 in this subsection. Successive one hundred eighty day commitments are
35 permissible on the same grounds and pursuant to the same procedures as
36 the original one hundred eighty day commitment.

37 (3) No person committed as provided in this section may be detained
38 unless a valid order of commitment is in effect. No order of
39 commitment can exceed one hundred eighty days in length.

1 **Sec. 8.** RCW 71.05.425 and 1994 c 129 s 9 are each amended to read
2 as follows:

3 (1)(a) Except as provided in subsection (2) of this section, at the
4 earliest possible date, and in no event later than thirty days before
5 conditional release, final discharge, authorized leave under RCW
6 71.05.325(2), or transfer to a less-restrictive facility than a state
7 mental hospital, the superintendent shall send written notice of
8 conditional release, final discharge, authorized leave, or transfer of
9 a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following
10 dismissal of a sex, violent, or felony harassment offense pursuant to
11 RCW 10.77.090~~((+3))~~ (4) to the following:

12 (i) The chief of police of the city, if any, in which the person
13 will reside; and

14 (ii) The sheriff of the county in which the person will reside.

15 (b) The same notice as required by (a) of this subsection shall be
16 sent to the following, if such notice has been requested in writing
17 about a specific person committed under RCW 71.05.280(3) or
18 71.05.320(2)(c) following dismissal of a sex, violent, or felony
19 harassment offense pursuant to RCW 10.77.090~~((+3))~~ (4):

20 (i) The victim of the sex, violent, or felony harassment offense
21 that was dismissed pursuant to RCW 10.77.090~~((+3))~~ (4) preceding
22 commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's
23 next of kin if the crime was a homicide;

24 (ii) Any witnesses who testified against the person in any court
25 proceedings; and

26 (iii) Any person specified in writing by the prosecuting attorney.
27 Information regarding victims, next of kin, or witnesses requesting the
28 notice, information regarding any other person specified in writing by
29 the prosecuting attorney to receive the notice, and the notice are
30 confidential and shall not be available to the person committed under
31 this chapter.

32 (c) The thirty-day notice requirements contained in this subsection
33 shall not apply to emergency medical furloughs.

34 (d) The existence of the notice requirements in this subsection
35 will not require any extension of the release date in the event the
36 release plan changes after notification.

37 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c)
38 following dismissal of a sex, violent, or felony harassment offense
39 pursuant to RCW 10.77.090~~((+3))~~ (4) escapes, the superintendent shall

1 immediately notify, by the most reasonable and expedient means
2 available, the chief of police of the city and the sheriff of the
3 county in which the person resided immediately before the person's
4 arrest. If previously requested, the superintendent shall also notify
5 the witnesses and the victim of the sex, violent, or felony harassment
6 offense that was dismissed pursuant to RCW 10.77.090((3)) (4)
7 preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the
8 victim's next of kin if the crime was a homicide. In addition, the
9 secretary shall also notify appropriate parties pursuant to RCW
10 71.05.410. If the person is recaptured, the superintendent shall send
11 notice to the persons designated in this subsection as soon as possible
12 but in no event later than two working days after the department learns
13 of such recapture.

14 (3) If the victim, the victim's next of kin, or any witness is
15 under the age of sixteen, the notice required by this section shall be
16 sent to the parent or legal guardian of the child.

17 (4) The superintendent shall send the notices required by this
18 chapter to the last address provided to the department by the
19 requesting party. The requesting party shall furnish the department
20 with a current address.

21 (5) For purposes of this section the following terms have the
22 following meanings:

- 23 (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- 24 (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- 25 (c) "Next of kin" means a person's spouse, parents, siblings, and
26 children;
- 27 (d) "Felony harassment offense" means a crime of harassment as
28 defined in RCW 9A.46.060 that is a felony.

29 **Sec. 9.** RCW 71.05.640 and 1989 c 205 s 14 are each reenacted to
30 read as follows:

31 (1) Procedures shall be established by resource management services
32 to provide reasonable and timely access to individual treatment
33 records. However, access may not be denied at any time to records of
34 all medications and somatic treatments received by the individual.

35 (2) Following discharge, the individual shall have a right to a
36 complete record of all medications and somatic treatments prescribed
37 during admission or commitment and to a copy of the discharge summary

1 prepared at the time of his or her discharge. A reasonable and uniform
2 charge for reproduction may be assessed.

3 (3) Treatment records may be modified prior to inspection to
4 protect the confidentiality of other patients or the names of any other
5 persons referred to in the record who gave information on the condition
6 that his or her identity remain confidential. Entire documents may not
7 be withheld to protect such confidentiality.

8 (4) At the time of discharge all individuals shall be informed by
9 resource management services of their rights as provided in RCW
10 71.05.610 through 71.05.690.

11 **Sec. 10.** RCW 71.05.670 and 1990 c 3 s 115 are each reenacted to
12 read as follows:

13 Except as provided in RCW 4.24.550, any person, including the state
14 or any political subdivision of the state, violating RCW 71.05.610
15 through 71.05.690 shall be subject to the provisions of RCW 71.05.440.

16 **Sec. 11.** RCW 71.05.680 and 1989 c 205 s 18 are each reenacted to
17 read as follows:

18 Any person who requests or obtains confidential information
19 pursuant to RCW 71.05.610 through 71.05.690 under false pretenses shall
20 be guilty of a gross misdemeanor.

21 **Sec. 12.** RCW 71.05.690 and 1989 c 205 s 19 are each reenacted to
22 read as follows:

23 The department shall adopt rules to implement RCW 71.05.610 through
24 71.05.680.

25 **Sec. 13.** RCW 71.05.940 and 1989 c 420 s 18 are each amended to
26 read as follows:

27 The provisions of ((this act)) chapter 420, Laws of 1989 shall
28 apply equally to persons ((presently)) in the custody of the department
29 on May 13, 1989, who were found by a court to be not guilty by reason
30 of insanity or incompetent to stand trial, or who have been found to
31 have committed acts constituting a felony pursuant to RCW 71.05.280(3)
32 and present a substantial likelihood of repeating similar acts, and the
33 secretary shall cause such persons to be evaluated to ascertain if such
34 persons are developmentally disabled for placement in a program

1 specifically reserved for the treatment and training of persons with
2 developmental disabilities.

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