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SENATE BILL 6683

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Fairley, Pridemore, Thibaudeau and Rasmussen

Read first time 01/18/2006. Referred to Committee on Judiciary.

1            AN ACT Relating to visitation rights for grandparents; amending RCW  
2 26.09.004 and 26.10.160; adding a new section to chapter 26.09 RCW;  
3 creating a new section; and repealing RCW 26.09.240.

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

5            NEW SECTION.    **Sec. 1.** The legislature recognizes that the recent  
6 Washington State Supreme Court decision in *In re Parentage of C.A.M.A.*  
7 found Washington's grandparent visitation statutes to be  
8 unconstitutional. It is the intent of the legislature to bring the law  
9 in line with the court's holding in that case, in order to ensure that  
10 grandparents have a viable means of petitioning the court for  
11 visitation with their grandchildren.

12            **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read  
13 as follows:

14            The definitions in this section apply throughout this chapter.

15            (1) "Temporary parenting plan" means a plan for parenting of the  
16 child pending final resolution of any action for dissolution of  
17 marriage, declaration of invalidity, or legal separation which is  
18 incorporated in a temporary order.

1 (2) "Permanent parenting plan" means a plan for parenting the  
2 child, including allocation of parenting functions, which plan is  
3 incorporated in any final decree or decree of modification in an action  
4 for dissolution of marriage, declaration of invalidity, or legal  
5 separation.

6 (3) "Parenting functions" means those aspects of the parent-child  
7 relationship in which the parent makes decisions and performs functions  
8 necessary for the care and growth of the child. Parenting functions  
9 include:

10 (a) Maintaining a loving, stable, consistent, and nurturing  
11 relationship with the child;

12 (b) Attending to the daily needs of the child, such as feeding,  
13 clothing, physical care and grooming, supervision, health care, and day  
14 care, and engaging in other activities which are appropriate to the  
15 developmental level of the child and that are within the social and  
16 economic circumstances of the particular family;

17 (c) Attending to adequate education for the child, including  
18 remedial or other education essential to the best interests of the  
19 child;

20 (d) Assisting the child in developing and maintaining appropriate  
21 interpersonal relationships;

22 (e) Exercising appropriate judgment regarding the child's welfare,  
23 consistent with the child's developmental level and the family's social  
24 and economic circumstances; and

25 (f) Providing for the financial support of the child.

26 (4) "Grandparent" means a person who is the parent of a child's  
27 father or mother, who is related to the child by blood, in whole or by  
28 half, adoption, or marriage.

29 NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW  
30 to read as follows:

31 (1) A grandparent may petition the court for visitation with a  
32 child one time regardless of whether there is a pending dissolution,  
33 legal separation, or modification of a parenting plan proceeding.

34 (a) A grandparent may file a subsequent petition if the grandparent  
35 can prove, in a threshold hearing, that a substantial change in  
36 circumstances has occurred. If the court finds good cause to allow the

1 grandparent to file more than one time, the court shall allow the  
2 filing and consider the petition.

3 (b) A death or incapacitation of a parent that occurs subsequent to  
4 any petition is a substantial change in circumstances, which would  
5 permit a grandparent to file an additional petition requesting  
6 visitation with the child.

7 (2) In considering a petition by a grandparent for visitation, a  
8 court must give some deference to the determinations of a fit parent,  
9 including determinations regarding visitation between a grandparent and  
10 his or her child.

11 (3) For a grandparent to have standing, he or she must prove the  
12 following:

13 (a) The applicant is a grandparent who has a significant  
14 relationship with the child. To satisfy this criterion, the applicant  
15 must show that:

16 (i) His or her relationship with the child has been significant in  
17 nature for a substantial period of time;

18 (ii) A parent or custodian of the child consented to or allowed the  
19 formation and establishment of the relationship, or the relationship  
20 was formed as a result of the unavailability or inability of any legal  
21 parent to perform caretaking functions; and

22 (iii) His or her relationship with the child is beneficial; and

23 (b) A parent or custodian has substantially interfered with the  
24 grandparent's relationship with the child, and the grandparent has  
25 unsuccessfully tried to resolve any disagreement with the parent or  
26 custodian before going to court.

27 (4) The court shall treat standing as a threshold issue. The  
28 grandparent bears the burden of establishing standing. If the  
29 grandparent does not satisfy this burden, the proceeding shall be  
30 dismissed.

31 (5) In order to prove standing, the grandparent must show that the  
32 child would suffer harm or the substantial risk of harm if contact  
33 between the grandparent and the child is not awarded. If the court  
34 finds that the child would very likely suffer harm, the burden shifts  
35 to the parent or custodian to prove why their decision to deny  
36 visitation is reasonable and in the best interests of the child.

37 (6) The court shall order visitation if it finds by clear and  
38 convincing evidence that the child would suffer harm or the substantial

1 risk of harm if contact between the grandparent and the child is not  
2 awarded and that denial of contact is unreasonable and not in the  
3 child's best interest. In making this determination, the court shall  
4 consider the following, nonexclusive factors:

5 (a) The love, affection, and strength of the relationship between  
6 the child and the grandparent;

7 (b) The length and quality of the prior relationship between the  
8 child and the parent, including the role performed by the grandparent  
9 and the emotional ties that existed between the child and the  
10 grandparent;

11 (c) The relationship between each of the child's parents or the  
12 person with whom the child is residing and the petitioner;

13 (d) The nature and reason for either parent's objection to granting  
14 the petitioner visitation;

15 (e) The effect that granting visitation will have on the  
16 relationship between the child and the child's parents or the person  
17 with whom the child is residing;

18 (f) The residential time-sharing arrangements between the parents;

19 (g) The good faith of the petitioner;

20 (h) Any history of physical, emotional, or sexual abuse or neglect  
21 of the child by the grandparent;

22 (i) The child's reasonable preference, if the court considers the  
23 child to be of sufficient age to express a preference; and

24 (j) Any other factor relevant to the child's best interest.

25 (7) Any contact ordered by the court shall be subject to the  
26 limitations set forth in RCW 26.10.160. Visitation shall be limited if  
27 a parent or custodian presents evidence that could allow a reasonable  
28 fact-finder to conclude that the grandparent or grandparents seeking  
29 visitation have engaged in any of the conduct outlined in RCW  
30 26.10.160(2)(a).

31 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read  
32 as follows:

33 (1) A parent not granted custody of the child is entitled to  
34 reasonable visitation rights except as provided in subsection (2) of  
35 this section.

36 (2)(a) Visitation with the child shall be limited if it is found  
37 that the parent seeking visitation has engaged in any of the following

1 conduct: (i) Willful abandonment that continues for an extended period  
2 of time or substantial refusal to perform parenting functions; (ii)  
3 physical, sexual, or a pattern of emotional abuse of a child; (iii) a  
4 history of acts of domestic violence as defined in RCW 26.50.010(1) or  
5 an assault or sexual assault which causes grievous bodily harm or the  
6 fear of such harm; or (iv) the parent has been convicted as an adult of  
7 a sex offense under:

8 (A) RCW 9A.44.076 if, because of the difference in age between the  
9 offender and the victim, no rebuttable presumption exists under (d) of  
10 this subsection;

11 (B) RCW 9A.44.079 if, because of the difference in age between the  
12 offender and the victim, no rebuttable presumption exists under (d) of  
13 this subsection;

14 (C) RCW 9A.44.086 if, because of the difference in age between the  
15 offender and the victim, no rebuttable presumption exists under (d) of  
16 this subsection;

17 (D) RCW 9A.44.089;

18 (E) RCW 9A.44.093;

19 (F) RCW 9A.44.096;

20 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
21 between the offender and the victim, no rebuttable presumption exists  
22 under (d) of this subsection;

23 (H) Chapter 9.68A RCW;

24 (I) Any predecessor or antecedent statute for the offenses listed  
25 in (a)(iv)(A) through (H) of this subsection;

26 (J) Any statute from any other jurisdiction that describes an  
27 offense analogous to the offenses listed in (a)(iv)(A) through (H) of  
28 this subsection.

29 This subsection (2)(a) shall not apply when (c) or (d) of this  
30 subsection applies.

31 (b) The parent's visitation with the child shall be limited if it  
32 is found that the parent resides with a person who has engaged in any  
33 of the following conduct: (i) Physical, sexual, or a pattern of  
34 emotional abuse of a child; (ii) a history of acts of domestic violence  
35 as defined in RCW 26.50.010(1) or an assault or sexual assault that  
36 causes grievous bodily harm or the fear of such harm; or (iii) the  
37 person has been convicted as an adult or as a juvenile has been  
38 adjudicated of a sex offense under:

1 (A) RCW 9A.44.076 if, because of the difference in age between the  
2 offender and the victim, no rebuttable presumption exists under (e) of  
3 this subsection;

4 (B) RCW 9A.44.079 if, because of the difference in age between the  
5 offender and the victim, no rebuttable presumption exists under (e) of  
6 this subsection;

7 (C) RCW 9A.44.086 if, because of the difference in age between the  
8 offender and the victim, no rebuttable presumption exists under (e) of  
9 this subsection;

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

13 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
14 between the offender and the victim, no rebuttable presumption exists  
15 under (e) of this subsection;

16 (H) Chapter 9.68A RCW;

17 (I) Any predecessor or antecedent statute for the offenses listed  
18 in (b)(iii)(A) through (H) of this subsection;

19 (J) Any statute from any other jurisdiction that describes an  
20 offense analogous to the offenses listed in (b)(iii)(A) through (H) of  
21 this subsection.

22 This subsection (2)(b) shall not apply when (c) or (e) of this  
23 subsection applies.

24 (c) If a parent has been found to be a sexual predator under  
25 chapter 71.09 RCW or under an analogous statute of any other  
26 jurisdiction, the court shall restrain the parent from contact with a  
27 child that would otherwise be allowed under this chapter. If a parent  
28 resides with an adult or a juvenile who has been found to be a sexual  
29 predator under chapter 71.09 RCW or under an analogous statute of any  
30 other jurisdiction, the court shall restrain the parent from contact  
31 with the parent's child except contact that occurs outside that  
32 person's presence.

33 (d) There is a rebuttable presumption that a parent who has been  
34 convicted as an adult of a sex offense listed in (d)(i) through (ix) of  
35 this subsection poses a present danger to a child. Unless the parent  
36 rebuts this presumption, the court shall restrain the parent from  
37 contact with a child that would otherwise be allowed under this  
38 chapter:

1 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
2 was at least five years older than the other person;  
3 (ii) RCW 9A.44.073;  
4 (iii) RCW 9A.44.076, provided that the person convicted was at  
5 least eight years older than the victim;  
6 (iv) RCW 9A.44.079, provided that the person convicted was at least  
7 eight years older than the victim;  
8 (v) RCW 9A.44.083;  
9 (vi) RCW 9A.44.086, provided that the person convicted was at least  
10 eight years older than the victim;  
11 (vii) RCW 9A.44.100;  
12 (viii) Any predecessor or antecedent statute for the offenses  
13 listed in (d)(i) through (vii) of this subsection;  
14 (ix) Any statute from any other jurisdiction that describes an  
15 offense analogous to the offenses listed in (d)(i) through (vii) of  
16 this subsection.  
17 (e) There is a rebuttable presumption that a parent who resides  
18 with a person who, as an adult, has been convicted, or as a juvenile  
19 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
20 of this subsection places a child at risk of abuse or harm when that  
21 parent exercises visitation in the presence of the convicted or  
22 adjudicated person. Unless the parent rebuts the presumption, the  
23 court shall restrain the parent from contact with the parent's child  
24 except for contact that occurs outside of the convicted or adjudicated  
25 person's presence:  
26 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
27 was at least five years older than the other person;  
28 (ii) RCW 9A.44.073;  
29 (iii) RCW 9A.44.076, provided that the person convicted was at  
30 least eight years older than the victim;  
31 (iv) RCW 9A.44.079, provided that the person convicted was at least  
32 eight years older than the victim;  
33 (v) RCW 9A.44.083;  
34 (vi) RCW 9A.44.086, provided that the person convicted was at least  
35 eight years older than the victim;  
36 (vii) RCW 9A.44.100;  
37 (viii) Any predecessor or antecedent statute for the offenses  
38 listed in (e)(i) through (vii) of this subsection;

1 (ix) Any statute from any other jurisdiction that describes an  
2 offense analogous to the offenses listed in (e)(i) through (vii) of  
3 this subsection.

4 (f) The presumption established in (d) of this subsection may be  
5 rebutted only after a written finding that:

6 (i) If the child was not the victim of the sex offense committed by  
7 the parent requesting visitation, (A) contact between the child and the  
8 offending parent is appropriate and poses minimal risk to the child,  
9 and (B) the offending parent has successfully engaged in treatment for  
10 sex offenders or is engaged in and making progress in such treatment,  
11 if any was ordered by a court, and the treatment provider believes such  
12 contact is appropriate and poses minimal risk to the child; or

13 (ii) If the child was the victim of the sex offense committed by  
14 the parent requesting visitation, (A) contact between the child and the  
15 offending parent is appropriate and poses minimal risk to the child,  
16 (B) if the child is in or has been in therapy for victims of sexual  
17 abuse, the child's counselor believes such contact between the child  
18 and the offending parent is in the child's best interest, and (C) the  
19 offending parent has successfully engaged in treatment for sex  
20 offenders or is engaged in and making progress in such treatment, if  
21 any was ordered by a court, and the treatment provider believes such  
22 contact is appropriate and poses minimal risk to the child.

23 (g) The presumption established in (e) of this subsection may be  
24 rebutted only after a written finding that:

25 (i) If the child was not the victim of the sex offense committed by  
26 the person who is residing with the parent requesting visitation, (A)  
27 contact between the child and the parent residing with the convicted or  
28 adjudicated person is appropriate and that parent is able to protect  
29 the child in the presence of the convicted or adjudicated person, and  
30 (B) the convicted or adjudicated person has successfully engaged in  
31 treatment for sex offenders or is engaged in and making progress in  
32 such treatment, if any was ordered by a court, and the treatment  
33 provider believes such contact is appropriate and poses minimal risk to  
34 the child; or

35 (ii) If the child was the victim of the sex offense committed by  
36 the person who is residing with the parent requesting visitation, (A)  
37 contact between the child and the parent in the presence of the  
38 convicted or adjudicated person is appropriate and poses minimal risk



1 to the child, (B) if the child is in or has been in therapy for victims  
2 of sexual abuse, the child's counselor believes such contact between  
3 the child and the parent residing with the convicted or adjudicated  
4 person in the presence of the convicted or adjudicated person is in the  
5 child's best interest, and (C) the convicted or adjudicated person has  
6 successfully engaged in treatment for sex offenders or is engaged in  
7 and making progress in such treatment, if any was ordered by a court,  
8 and the treatment provider believes contact between the parent and  
9 child in the presence of the convicted or adjudicated person is  
10 appropriate and poses minimal risk to the child.

11 (h) If the court finds that the parent has met the burden of  
12 rebutting the presumption under (f) of this subsection, the court may  
13 allow a parent who has been convicted as an adult of a sex offense  
14 listed in (d)(i) through (ix) of this subsection to have visitation  
15 with the child supervised by a neutral and independent adult and  
16 pursuant to an adequate plan for supervision of such visitation. The  
17 court shall not approve of a supervisor for contact between the child  
18 and the parent unless the court finds, based on the evidence, that the  
19 supervisor is willing and capable of protecting the child from harm.  
20 The court shall revoke court approval of the supervisor upon finding,  
21 based on the evidence, that the supervisor has failed to protect the  
22 child or is no longer willing or capable of protecting the child.

23 (i) If the court finds that the parent has met the burden of  
24 rebutting the presumption under (g) of this subsection, the court may  
25 allow a parent residing with a person who has been adjudicated as a  
26 juvenile of a sex offense listed in (e)(i) through (ix) of this  
27 subsection to have visitation with the child in the presence of the  
28 person adjudicated as a juvenile, supervised by a neutral and  
29 independent adult and pursuant to an adequate plan for supervision of  
30 such visitation. The court shall not approve of a supervisor for  
31 contact between the child and the parent unless the court finds, based  
32 on the evidence, that the supervisor is willing and capable of  
33 protecting the child from harm. The court shall revoke court approval  
34 of the supervisor upon finding, based on the evidence, that the  
35 supervisor has failed to protect the child or is no longer willing or  
36 capable of protecting the child.

37 (j) If the court finds that the parent has met the burden of  
38 rebutting the presumption under (g) of this subsection, the court may

1 allow a parent residing with a person who, as an adult, has been  
2 convicted of a sex offense listed in (e)(i) through (ix) of this  
3 subsection to have visitation with the child in the presence of the  
4 convicted person supervised by a neutral and independent adult and  
5 pursuant to an adequate plan for supervision of such visitation. The  
6 court shall not approve of a supervisor for contact between the child  
7 and the parent unless the court finds, based on the evidence, that the  
8 supervisor is willing and capable of protecting the child from harm.  
9 The court shall revoke court approval of the supervisor upon finding,  
10 based on the evidence, that the supervisor has failed to protect the  
11 child or is no longer willing or capable of protecting the child.

12 (k) A court shall not order unsupervised contact between the  
13 offending parent and a child of the offending parent who was sexually  
14 abused by that parent. A court may order unsupervised contact between  
15 the offending parent and a child who was not sexually abused by the  
16 parent after the presumption under (d) of this subsection has been  
17 rebutted and supervised visitation has occurred for at least two years  
18 with no further arrests or convictions of sex offenses involving  
19 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW  
20 and (i) the sex offense of the offending parent was not committed  
21 against a child of the offending parent, and (ii) the court finds that  
22 unsupervised contact between the child and the offending parent is  
23 appropriate and poses minimal risk to the child, after consideration of  
24 the testimony of a state-certified therapist, mental health counselor,  
25 or social worker with expertise in treating child sexual abuse victims  
26 who has supervised at least one period of visitation between the parent  
27 and the child, and after consideration of evidence of the offending  
28 parent's compliance with community supervision requirements, if any.  
29 If the offending parent was not ordered by a court to participate in  
30 treatment for sex offenders, then the parent shall obtain a  
31 psychosexual evaluation conducted by a certified sex offender treatment  
32 provider or a certified affiliate sex offender treatment provider  
33 indicating that the offender has the lowest likelihood of risk to  
34 reoffend before the court grants unsupervised contact between the  
35 parent and a child.

36 (l) A court may order unsupervised contact between the parent and  
37 a child which may occur in the presence of a juvenile adjudicated of a  
38 sex offense listed in (e)(i) through (ix) of this subsection who

1 resides with the parent after the presumption under (e) of this  
2 subsection has been rebutted and supervised visitation has occurred for  
3 at least two years during which time the adjudicated juvenile has had  
4 no further arrests, adjudications, or convictions of sex offenses  
5 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter  
6 9.68A RCW, and (i) the court finds that unsupervised contact between  
7 the child and the parent that may occur in the presence of the  
8 adjudicated juvenile is appropriate and poses minimal risk to the  
9 child, after consideration of the testimony of a state-certified  
10 therapist, mental health counselor, or social worker with expertise in  
11 treatment of child sexual abuse victims who has supervised at least one  
12 period of visitation between the parent and the child in the presence  
13 of the adjudicated juvenile, and after consideration of evidence of the  
14 adjudicated juvenile's compliance with community supervision or parole  
15 requirements, if any. If the adjudicated juvenile was not ordered by  
16 a court to participate in treatment for sex offenders, then the  
17 adjudicated juvenile shall obtain a psychosexual evaluation conducted  
18 by a certified sex offender treatment provider or a certified affiliate  
19 sex offender treatment provider indicating that the adjudicated  
20 juvenile has the lowest likelihood of risk to reoffend before the court  
21 grants unsupervised contact between the parent and a child which may  
22 occur in the presence of the adjudicated juvenile who is residing with  
23 the parent.

24 (m)(i) The limitations imposed by the court under (a) or (b) of  
25 this subsection shall be reasonably calculated to protect the child  
26 from the physical, sexual, or emotional abuse or harm that could result  
27 if the child has contact with the parent requesting visitation. If the  
28 court expressly finds based on the evidence that limitations on  
29 visitation with the child will not adequately protect the child from  
30 the harm or abuse that could result if the child has contact with the  
31 parent requesting visitation, the court shall restrain the person  
32 seeking visitation from all contact with the child.

33 (ii) The court shall not enter an order under (a) of this  
34 subsection allowing a parent to have contact with a child if the parent  
35 has been found by clear and convincing evidence in a civil action or by  
36 a preponderance of the evidence in a dependency action to have sexually  
37 abused the child, except upon recommendation by an evaluator or  
38 therapist for the child that the child is ready for contact with the

1 parent and will not be harmed by the contact. The court shall not  
2 enter an order allowing a parent to have contact with the child in the  
3 offender's presence if the parent resides with a person who has been  
4 found by clear and convincing evidence in a civil action or by a  
5 preponderance of the evidence in a dependency action to have sexually  
6 abused a child, unless the court finds that the parent accepts that the  
7 person engaged in the harmful conduct and the parent is willing to and  
8 capable of protecting the child from harm from the person.

9 (iii) If the court limits visitation under (a) or (b) of this  
10 subsection to require supervised contact between the child and the  
11 parent, the court shall not approve of a supervisor for contact between  
12 a child and a parent who has engaged in physical, sexual, or a pattern  
13 of emotional abuse of the child unless the court finds based upon the  
14 evidence that the supervisor accepts that the harmful conduct occurred  
15 and is willing to and capable of protecting the child from harm. The  
16 court shall revoke court approval of the supervisor upon finding, based  
17 on the evidence, that the supervisor has failed to protect the child or  
18 is no longer willing to or capable of protecting the child.

19 (n) If the court expressly finds based on the evidence that  
20 contact between the parent and the child will not cause physical,  
21 sexual, or emotional abuse or harm to the child and that the  
22 probability that the parent's or other person's harmful or abusive  
23 conduct will recur is so remote that it would not be in the child's  
24 best interests to apply the limitations of (a), (b), and (m)(i) and  
25 (iii) of this subsection, or if the court expressly finds that the  
26 parent's conduct did not have an impact on the child, then the court  
27 need not apply the limitations of (a), (b), and (m)(i) and (iii) of  
28 this subsection. The weight given to the existence of a protection  
29 order issued under chapter 26.50 RCW as to domestic violence is within  
30 the discretion of the court. This subsection shall not apply when (c),  
31 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this  
32 subsection apply.

33 ~~(3) ((Any person may petition the court for visitation rights at~~  
34 ~~any time including, but not limited to, custody proceedings. The court~~  
35 ~~may order visitation rights for any person when visitation may serve~~  
36 ~~the best interest of the child whether or not there has been any change~~  
37 ~~of circumstances.~~

1       ~~(4))~~) The court may modify an order granting or denying visitation  
2 rights whenever modification would serve the best interests of the  
3 child. Modification of a parent's visitation rights shall be subject  
4 to the requirements of subsection (2) of this section.

5       ~~((5))~~ (4) For the purposes of this section, a parent's child  
6 means that parent's natural child, adopted child, or stepchild.

7       NEW SECTION.   **Sec. 5.** RCW 26.09.240 (Visitation rights--Person  
8 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,  
9 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st  
10 ex.s. c 157 s 24 are each repealed.

11       NEW SECTION.   **Sec. 6.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

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