

ESHB 2164 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 03/06/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.40.193 and 2003 c 53 s 100 are each amended to
4 read as follows:

5 (1) If a respondent is found to have been in possession of a
6 firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose
7 a minimum disposition of ten days of confinement. If the offender's
8 standard range of disposition for the offense as indicated in RCW
9 13.40.0357 is more than thirty days of confinement, the court shall
10 commit the offender to the department for the standard range
11 disposition. The offender shall not be released until the offender has
12 served a minimum of ten days in confinement.

13 (2)(a) If a respondent is found to have been in possession of a
14 firearm in violation of RCW 9.41.040, the disposition must include a
15 requirement that the respondent participate in a qualifying program as
16 described in (b) of this subsection, when available, unless the court
17 makes a written finding based on the outcome of the juvenile court risk
18 assessment that participation in a qualifying program would not be
19 appropriate.

20 (b) For purposes of this section, "qualifying program" means an
21 aggression replacement training program, a functional family therapy
22 program, or another program applicable to the juvenile firearm offender
23 population that has been identified as evidence-based or research-based
24 and cost-beneficial in the current list prepared at the direction of
25 the legislature by the Washington state institute for public policy.

26 (3) If the court finds that the respondent or an accomplice was
27 armed with a firearm, the court shall determine the standard range
28 disposition for the offense pursuant to RCW 13.40.160. If the offender
29 or an accomplice was armed with a firearm when the offender committed
30 any felony other than possession of a machine gun, possession of a

1 stolen firearm, drive-by shooting, theft of a firearm, unlawful
2 possession of a firearm in the first and second degree, or use of a
3 machine gun in a felony, the following periods of total confinement
4 must be added to the sentence: For a class A felony, six months; for
5 a class B felony, four months; and for a class C felony, two months.
6 The additional time shall be imposed regardless of the offense's
7 juvenile disposition offense category as designated in RCW 13.40.0357.

8 ~~((3))~~ (4) When a disposition under this section would effectuate
9 a manifest injustice, the court may impose another disposition. When
10 a judge finds a manifest injustice and imposes a disposition of
11 confinement exceeding thirty days, the court shall commit the juvenile
12 to a maximum term, and the provisions of RCW 13.40.030(2) shall be used
13 to determine the range. When a judge finds a manifest injustice and
14 imposes a disposition of confinement less than thirty days, the
15 disposition shall be comprised of confinement or community supervision
16 or both.

17 ~~((4))~~ (5) Any term of confinement ordered pursuant to this
18 section shall run consecutively to any term of confinement imposed in
19 the same disposition for other offenses.

20 **Sec. 2.** RCW 13.40.127 and 2013 c 179 s 5 are each amended to read
21 as follows:

22 (1) A juvenile is eligible for deferred disposition unless he or
23 she:

- 24 (a) Is charged with a sex or violent offense;
- 25 (b) Has a criminal history which includes any felony;
- 26 (c) Has a prior deferred disposition or deferred adjudication; or
- 27 (d) Has two or more adjudications.

28 (2) The juvenile court may, upon motion at least fourteen days
29 before commencement of trial and, after consulting the juvenile's
30 custodial parent or parents or guardian and with the consent of the
31 juvenile, continue the case for disposition for a period not to exceed
32 one year from the date the juvenile is found guilty. The court shall
33 consider whether the offender and the community will benefit from a
34 deferred disposition before deferring the disposition. The court may
35 waive the fourteen-day period anytime before the commencement of trial
36 for good cause.

37 (3) Any juvenile who agrees to a deferral of disposition shall:

1 (a) Stipulate to the admissibility of the facts contained in the
2 written police report;

3 (b) Acknowledge that the report will be entered and used to support
4 a finding of guilt and to impose a disposition if the juvenile fails to
5 comply with terms of supervision;

6 (c) Waive the following rights to: (i) A speedy disposition; and
7 (ii) call and confront witnesses; and

8 (d) Acknowledge the direct consequences of being found guilty and
9 the direct consequences that will happen if an order of disposition is
10 entered.

11 The adjudicatory hearing shall be limited to a reading of the
12 court's record.

13 (4) Following the stipulation, acknowledgment, waiver, and entry of
14 a finding or plea of guilt, the court shall defer entry of an order of
15 disposition of the juvenile.

16 (5) Any juvenile granted a deferral of disposition under this
17 section shall be placed under community supervision. The court may
18 impose any conditions of supervision that it deems appropriate
19 including posting a probation bond. Payment of restitution under RCW
20 13.40.190 shall be a condition of community supervision under this
21 section.

22 The court may require a juvenile offender convicted of animal
23 cruelty in the first degree to submit to a mental health evaluation to
24 determine if the offender would benefit from treatment and such
25 intervention would promote the safety of the community. After
26 consideration of the results of the evaluation, as a condition of
27 community supervision, the court may order the offender to attend
28 treatment to address issues pertinent to the offense.

29 The court may require the juvenile to undergo a mental health or
30 substance abuse assessment, or both. If the assessment identifies a
31 need for treatment, conditions of supervision may include treatment for
32 the assessed need that has been demonstrated to improve behavioral
33 health and reduce recidivism.

34 The court shall require a juvenile granted a deferral of
35 disposition for unlawful possession of a firearm in violation of RCW
36 9.41.040 to participate in a qualifying program as described in RCW
37 13.40.193(2)(b), when available, unless the court makes a written

1 finding based on the outcome of the juvenile court risk assessment that
2 participation in a qualifying program would not be appropriate.

3 (6) A parent who signed for a probation bond has the right to
4 notify the counselor if the juvenile fails to comply with the bond or
5 conditions of supervision. The counselor shall notify the court and
6 surety of any failure to comply. A surety shall notify the court of
7 the juvenile's failure to comply with the probation bond. The state
8 shall bear the burden to prove, by a preponderance of the evidence,
9 that the juvenile has failed to comply with the terms of community
10 supervision.

11 (7)(a) Anytime prior to the conclusion of the period of
12 supervision, the prosecutor or the juvenile's juvenile court community
13 supervision counselor may file a motion with the court requesting the
14 court revoke the deferred disposition based on the juvenile's lack of
15 compliance or treat the juvenile's lack of compliance as a violation
16 pursuant to RCW 13.40.200.

17 (b) If the court finds the juvenile failed to comply with the terms
18 of the deferred disposition, the court may:

19 (i) Revoke the deferred disposition and enter an order of
20 disposition; or

21 (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

22 (8) At any time following deferral of disposition the court may,
23 following a hearing, continue supervision for an additional one-year
24 period for good cause.

25 (9)(a) At the conclusion of the period of supervision, the court
26 shall determine whether the juvenile is entitled to dismissal of the
27 deferred disposition only when the court finds:

28 (i) The deferred disposition has not been previously revoked;

29 (ii) The juvenile has completed the terms of supervision;

30 (iii) There are no pending motions concerning lack of compliance
31 pursuant to subsection (7) of this section; and

32 (iv) The juvenile has either paid the full amount of restitution,
33 or, made a good faith effort to pay the full amount of restitution
34 during the period of supervision.

35 (b) If the court finds the juvenile is entitled to dismissal of the
36 deferred disposition pursuant to (a) of this subsection, the juvenile's
37 conviction shall be vacated and the court shall dismiss the case with
38 prejudice, except that a conviction under RCW 16.52.205 shall not be

1 vacated. Whenever a case is dismissed with restitution still owing,
2 the court shall enter a restitution order pursuant to RCW 13.40.190 for
3 any unpaid restitution. Jurisdiction to enforce payment and modify
4 terms of the restitution order shall be the same as those set forth in
5 RCW 13.40.190.

6 (c) If the court finds the juvenile is not entitled to dismissal of
7 the deferred disposition pursuant to (a) of this subsection, the court
8 shall revoke the deferred disposition and enter an order of
9 disposition. A deferred disposition shall remain a conviction unless
10 the case is dismissed and the conviction is vacated pursuant to (b) of
11 this subsection or sealed pursuant to RCW 13.50.050.

12 (10)(a)(i) Any time the court vacates a conviction pursuant to
13 subsection (9) of this section, if the juvenile is eighteen years of
14 age or older and the full amount of restitution ordered has been paid,
15 the court shall enter a written order sealing the case.

16 (ii) Any time the court vacates a conviction pursuant to subsection
17 (9) of this section, if the juvenile is not eighteen years of age or
18 older and full restitution ordered has been paid, the court shall
19 schedule an administrative sealing hearing to take place no later than
20 thirty days after the respondent's eighteenth birthday, at which time
21 the court shall enter a written order sealing the case. The
22 respondent's presence at the administrative sealing hearing is not
23 required.

24 (iii) Any deferred disposition vacated prior to June 7, 2012, is
25 not subject to sealing under this subsection.

26 (b) Nothing in this subsection shall preclude a juvenile from
27 petitioning the court to have the records of his or her deferred
28 dispositions sealed under RCW 13.50.050 (11) and (12).

29 (c) Records sealed under this provision shall have the same legal
30 status as records sealed under RCW 13.50.050.

31 **Sec. 3.** RCW 13.40.210 and 2009 c 187 s 1 are each amended to read
32 as follows:

33 (1) The secretary shall set a release date for each juvenile
34 committed to its custody. The release date shall be within the
35 prescribed range to which a juvenile has been committed under RCW
36 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning
37 offenders the department determines are eligible for the juvenile

1 offender basic training camp program. Such dates shall be determined
2 prior to the expiration of sixty percent of a juvenile's minimum term
3 of confinement included within the prescribed range to which the
4 juvenile has been committed. The secretary shall release any juvenile
5 committed to the custody of the department within four calendar days
6 prior to the juvenile's release date or on the release date set under
7 this chapter. Days spent in the custody of the department shall be
8 tolled by any period of time during which a juvenile has absented
9 himself or herself from the department's supervision without the prior
10 approval of the secretary or the secretary's designee.

11 (2) The secretary shall monitor the average daily population of the
12 state's juvenile residential facilities. When the secretary concludes
13 that in-residence population of residential facilities exceeds one
14 hundred five percent of the rated bed capacity specified in statute, or
15 in absence of such specification, as specified by the department in
16 rule, the secretary may recommend reductions to the governor. On
17 certification by the governor that the recommended reductions are
18 necessary, the secretary has authority to administratively release a
19 sufficient number of offenders to reduce in-residence population to one
20 hundred percent of rated bed capacity. The secretary shall release
21 those offenders who have served the greatest proportion of their
22 sentence. However, the secretary may deny release in a particular case
23 at the request of an offender, or if the secretary finds that there is
24 no responsible custodian, as determined by the department, to whom to
25 release the offender, or if the release of the offender would pose a
26 clear danger to society. The department shall notify the committing
27 court of the release at the time of release if any such early releases
28 have occurred as a result of excessive in-residence population. In no
29 event shall an offender adjudicated of a violent offense be granted
30 release under the provisions of this subsection.

31 (3)(a) Following the release of any juvenile under subsection (1)
32 of this section, the secretary may require the juvenile to comply with
33 a program of parole to be administered by the department in his or her
34 community which shall last no longer than eighteen months, except that
35 in the case of a juvenile sentenced for rape in the first or second
36 degree, rape of a child in the first or second degree, child
37 molestation in the first degree, or indecent liberties with forcible
38 compulsion, the period of parole shall be twenty-four months and, in

1 the discretion of the secretary, may be up to thirty-six months when
2 the secretary finds that an additional period of parole is necessary
3 and appropriate in the interests of public safety or to meet the
4 ongoing needs of the juvenile. A parole program is mandatory for
5 offenders released under subsection (2) of this section and for
6 offenders who receive a juvenile residential commitment sentence ((ef))
7 for theft of a motor vehicle, possession of a stolen motor vehicle, or
8 taking a motor vehicle without permission 1. A juvenile adjudicated
9 for unlawful possession of a firearm, possession of a stolen firearm,
10 theft of a firearm, or drive-by shooting may participate in aggression
11 replacement training, functional family therapy, or functional family
12 parole aftercare if the juvenile meets eligibility requirements for
13 these services. The decision to place an offender ((en)) in an
14 evidence-based parole program shall be based on an assessment by the
15 department of the offender's risk for reoffending upon release and an
16 assessment of the ongoing treatment needs of the juvenile. The
17 department shall prioritize available parole resources to provide
18 supervision and services to offenders at moderate to high risk for
19 reoffending.

20 (b) The secretary shall, for the period of parole, facilitate the
21 juvenile's reintegration into his or her community and to further this
22 goal shall require the juvenile to refrain from possessing a firearm or
23 using a deadly weapon and refrain from committing new offenses and may
24 require the juvenile to: (i) Undergo available medical, psychiatric,
25 drug and alcohol, sex offender, mental health, and other offense-
26 related treatment services; (ii) report as directed to a parole officer
27 and/or designee; (iii) pursue a course of study, vocational training,
28 or employment; (iv) notify the parole officer of the current address
29 where he or she resides; (v) be present at a particular address during
30 specified hours; (vi) remain within prescribed geographical boundaries;
31 (vii) submit to electronic monitoring; (viii) refrain from using
32 illegal drugs and alcohol, and submit to random urinalysis when
33 requested by the assigned parole officer; (ix) refrain from contact
34 with specific individuals or a specified class of individuals; (x) meet
35 other conditions determined by the parole officer to further enhance
36 the juvenile's reintegration into the community; (xi) pay any court-
37 ordered fines or restitution; and (xii) perform community restitution.
38 Community restitution for the purpose of this section means compulsory

1 service, without compensation, performed for the benefit of the
2 community by the offender. Community restitution may be performed
3 through public or private organizations or through work crews.

4 (c) The secretary may further require up to twenty-five percent of
5 the highest risk juvenile offenders who are placed on parole to
6 participate in an intensive supervision program. Offenders
7 participating in an intensive supervision program shall be required to
8 comply with all terms and conditions listed in (b) of this subsection
9 and shall also be required to comply with the following additional
10 terms and conditions: (i) Obey all laws and refrain from any conduct
11 that threatens public safety; (ii) report at least once a week to an
12 assigned community case manager; and (iii) meet all other requirements
13 imposed by the community case manager related to participating in the
14 intensive supervision program. As a part of the intensive supervision
15 program, the secretary may require day reporting.

16 (d) After termination of the parole period, the juvenile shall be
17 discharged from the department's supervision.

18 (4)(a) The department may also modify parole for violation thereof.
19 If, after affording a juvenile all of the due process rights to which
20 he or she would be entitled if the juvenile were an adult, the
21 secretary finds that a juvenile has violated a condition of his or her
22 parole, the secretary shall order one of the following which is
23 reasonably likely to effectuate the purpose of the parole and to
24 protect the public: (i) Continued supervision under the same
25 conditions previously imposed; (ii) intensified supervision with
26 increased reporting requirements; (iii) additional conditions of
27 supervision authorized by this chapter; (iv) except as provided in
28 (a)(v) and (vi) of this subsection, imposition of a period of
29 confinement not to exceed thirty days in a facility operated by or
30 pursuant to a contract with the state of Washington or any city or
31 county for a portion of each day or for a certain number of days each
32 week with the balance of the days or weeks spent under supervision; (v)
33 the secretary may order any of the conditions or may return the
34 offender to confinement for the remainder of the sentence range if the
35 offense for which the offender was sentenced is rape in the first or
36 second degree, rape of a child in the first or second degree, child
37 molestation in the first degree, indecent liberties with forcible
38 compulsion, or a sex offense that is also a serious violent offense as

1 defined by RCW 9.94A.030; and (vi) the secretary may order any of the
2 conditions or may return the offender to confinement for the remainder
3 of the sentence range if the youth has completed the basic training
4 camp program as described in RCW 13.40.320.

5 (b) The secretary may modify parole and order any of the conditions
6 or may return the offender to confinement for up to twenty-four weeks
7 if the offender was sentenced for a sex offense as defined under RCW
8 9A.44.130 and is known to have violated the terms of parole.
9 Confinement beyond thirty days is intended to only be used for a small
10 and limited number of sex offenders. It shall only be used when other
11 graduated sanctions or interventions have not been effective or the
12 behavior is so egregious it warrants the use of the higher level
13 intervention and the violation: (i) Is a known pattern of behavior
14 consistent with a previous sex offense that puts the youth at high risk
15 for reoffending sexually; (ii) consists of sexual behavior that is
16 determined to be predatory as defined in RCW 71.09.020; or (iii)
17 requires a review under chapter 71.09 RCW, due to a recent overt act.
18 The total number of days of confinement for violations of parole
19 conditions during the parole period shall not exceed the number of days
20 provided by the maximum sentence imposed by the disposition for the
21 underlying offense pursuant to RCW 13.40.0357. The department shall
22 not aggregate multiple parole violations that occur prior to the parole
23 revocation hearing and impose consecutive twenty-four week periods of
24 confinement for each parole violation. The department is authorized to
25 engage in rule making pursuant to chapter 34.05 RCW, to implement this
26 subsection, including narrowly defining the behaviors that could lead
27 to this higher level intervention.

28 (c) If the department finds that any juvenile in a program of
29 parole has possessed a firearm or used a deadly weapon during the
30 program of parole, the department shall modify the parole under (a) of
31 this subsection and confine the juvenile for at least thirty days.
32 Confinement shall be in a facility operated by or pursuant to a
33 contract with the state or any county.

34 (5) A parole officer of the department of social and health
35 services shall have the power to arrest a juvenile under his or her
36 supervision on the same grounds as a law enforcement officer would be
37 authorized to arrest the person.

1 (6) If so requested and approved under chapter 13.06 RCW, the
2 secretary shall permit a county or group of counties to perform
3 functions under subsections (3) through (5) of this section.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.40 RCW
5 to read as follows:

6 (1)(a) The juvenile rehabilitation administration of the department
7 of social and health services must compile and analyze data regarding
8 juvenile offenders who have been found to have committed the offense of
9 unlawful possession of a firearm under RCW 9.41.040 and made their
10 initial contact with the criminal justice system between January 1,
11 2005, and December 31, 2013. Information compiled and analyzed must
12 include:

13 (i) Previous and subsequent criminal offenses committed by the
14 offenders as juveniles or adults;

15 (ii) Where applicable, treatment interventions provided to the
16 offenders as juveniles, including the nature of provided interventions
17 and whether the offenders completed the interventions, if known; and

18 (iii) Gang association of the offenders, if known.

19 (b) The department of corrections and the caseload forecast council
20 must provide any information necessary to assist the juvenile
21 rehabilitation administration in compiling the data required for this
22 purpose. Information provided may include individual identifier level
23 data, however such data must remain confidential and must not be
24 disseminated for purposes other than as identified in this section or
25 otherwise permitted by law.

26 (2) The juvenile rehabilitation administration shall report its
27 findings to the appropriate committees of the legislature no later than
28 October 1, 2014.

29 **Sec. 5.** RCW 13.50.010 and 2013 c 23 s 6 are each amended to read
30 as follows:

31 (1) For purposes of this chapter:

32 (a) "Juvenile justice or care agency" means any of the following:
33 Police, diversion units, court, prosecuting attorney, defense attorney,
34 detention center, attorney general, the legislative children's
35 oversight committee, the office of the family and children's ombuds,
36 the department of social and health services and its contracting

1 agencies, schools; persons or public or private agencies having
2 children committed to their custody; and any placement oversight
3 committee created under RCW 72.05.415;

4 (b) "Official juvenile court file" means the legal file of the
5 juvenile court containing the petition or information, motions,
6 memorandums, briefs, findings of the court, and court orders;

7 (c) "Records" means the official juvenile court file, the social
8 file, and records of any other juvenile justice or care agency in the
9 case;

10 (d) "Social file" means the juvenile court file containing the
11 records and reports of the probation counselor.

12 (2) Each petition or information filed with the court may include
13 only one juvenile and each petition or information shall be filed under
14 a separate docket number. The social file shall be filed separately
15 from the official juvenile court file.

16 (3) It is the duty of any juvenile justice or care agency to
17 maintain accurate records. To this end:

18 (a) The agency may never knowingly record inaccurate information.
19 Any information in records maintained by the department of social and
20 health services relating to a petition filed pursuant to chapter 13.34
21 RCW that is found by the court to be false or inaccurate shall be
22 corrected or expunged from such records by the agency;

23 (b) An agency shall take reasonable steps to assure the security of
24 its records and prevent tampering with them; and

25 (c) An agency shall make reasonable efforts to insure the
26 completeness of its records, including action taken by other agencies
27 with respect to matters in its files.

28 (4) Each juvenile justice or care agency shall implement procedures
29 consistent with the provisions of this chapter to facilitate inquiries
30 concerning records.

31 (5) Any person who has reasonable cause to believe information
32 concerning that person is included in the records of a juvenile justice
33 or care agency and who has been denied access to those records by the
34 agency may make a motion to the court for an order authorizing that
35 person to inspect the juvenile justice or care agency record concerning
36 that person. The court shall grant the motion to examine records
37 unless it finds that in the interests of justice or in the best

1 interests of the juvenile the records or parts of them should remain
2 confidential.

3 (6) A juvenile, or his or her parents, or any person who has
4 reasonable cause to believe information concerning that person is
5 included in the records of a juvenile justice or care agency may make
6 a motion to the court challenging the accuracy of any information
7 concerning the moving party in the record or challenging the continued
8 possession of the record by the agency. If the court grants the
9 motion, it shall order the record or information to be corrected or
10 destroyed.

11 (7) The person making a motion under subsection (5) or (6) of this
12 section shall give reasonable notice of the motion to all parties to
13 the original action and to any agency whose records will be affected by
14 the motion.

15 (8) The court may permit inspection of records by, or release of
16 information to, any clinic, hospital, or agency which has the subject
17 person under care or treatment. The court may also permit inspection
18 by or release to individuals or agencies, including juvenile justice
19 advisory committees of county law and justice councils, engaged in
20 legitimate research for educational, scientific, or public purposes.
21 (~~The court shall release to the caseload forecast council records~~
22 ~~needed for its research and data-gathering functions. Access to~~
23 ~~records or information for research purposes shall be permitted only if~~
24 ~~the anonymity of all persons mentioned in the records or information~~
25 ~~will be preserved.)) Each person granted permission to inspect
26 juvenile justice or care agency records for research purposes shall
27 present a notarized statement to the court stating that the names of
28 juveniles and parents will remain confidential.~~

29 (9) The court shall release to the caseload forecast council the
30 records needed for its research and data-gathering functions. Access
31 to caseload forecast data may be permitted by the council for research
32 purposes only if the anonymity of all persons mentioned in the records
33 or information will be preserved.

34 (10) Juvenile detention facilities shall release records to the
35 caseload forecast council upon request. The commission shall not
36 disclose the names of any juveniles or parents mentioned in the records
37 without the named individual's written permission.

1 ((+10+)) (11) Requirements in this chapter relating to the court's
2 authority to compel disclosure shall not apply to the legislative
3 children's oversight committee or the office of the family and
4 children's ombuds.

5 ((+11+)) (12) For the purpose of research only, the administrative
6 office of the courts shall maintain an electronic research copy of all
7 records in the judicial information system related to juveniles.
8 Access to the research copy is restricted to the Washington state
9 center for court research. The Washington state center for court
10 research shall maintain the confidentiality of all confidential records
11 and shall preserve the anonymity of all persons identified in the
12 research copy. The research copy may not be subject to any records
13 retention schedule and must include records destroyed or removed from
14 the judicial information system pursuant to RCW 13.50.050 (17) and (18)
15 and 13.50.100(3).

16 ((+12+)) (13) The court shall release to the Washington state
17 office of public defense records needed to implement the agency's
18 oversight, technical assistance, and other functions as required by RCW
19 2.70.020. Access to the records used as a basis for oversight,
20 technical assistance, or other agency functions is restricted to the
21 Washington state office of public defense. The Washington state office
22 of public defense shall maintain the confidentiality of all
23 confidential information included in the records."

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By Committee on Human Services & Corrections

ADOPTED 03/06/2014

24 On page 1, line 2 of the title, after "offenders;" strike the
25 remainder of the title and insert "amending RCW 13.40.193, 13.40.127,
26 13.40.210, and 13.50.010; and adding a new section to chapter 13.40
27 RCW."

EFFECT: Allows the caseload forecast council to share information

with AOC and other agencies to assist them in gathering data for research purposes so long as the anonymity of persons named in the records is preserved. Language is removed that prohibits the judge from considering the juvenile's risk assessment in determining whether to refer the juvenile to a qualifying program.

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