~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

May 20, 2010

**H. 4202**

Introduced by Reps. Mitchell, Long, Dillard, Cobb‑Hunter and Sellers

S. Printed 5/120/10--S.

Read the first time April 20, 2010.

**A** **BILL**

TO AMEND SECTION 16‑3‑930, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES, SO AS TO PROVIDE A MANDATORY MINIMUM PENALTY OF FIVE YEARS FOR A PERSON WHO COMMITS THE OFFENSE AND INCREASE THE MAXIMUM PENALTY TO THIRTY YEARS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16-1-60 of the 1976 Code is amended to read:

“Section 16-1-60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16‑3‑10); criminal sexual conduct in the first and second degree (Sections 16‑3‑652 and 16‑3‑653); criminal sexual conduct with minors, first and second degree (Section 16‑3‑655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16‑3‑656); assault and battery with intent to kill (Section 16‑3‑620); kidnapping (Section 16‑3‑910); trafficking in persons (Section16-3-930); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); carjacking (Section 16‑3‑1075); drug trafficking as defined in Section 44‑53‑370(e) or trafficking cocaine base as defined in Section 44‑53‑375(C); manufacturing or trafficking methamphetamine as defined in Section 44‑53‑375; arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); burglary in the first degree (Section 16‑11‑311); burglary in the second degree (Section 16‑11‑312(B)); engaging a child for a sexual performance (Section 16‑3‑810); homicide by child abuse (Section 16‑3‑85(A)(1)); aiding and abetting homicide by child abuse (Section 16‑3‑85(A)(2)); inflicting great bodily injury upon a child (Section 16‑3‑95(A)); allowing great bodily injury to be inflicted upon a child (Section 16‑3‑95(B)); criminal domestic violence of a high and aggravated nature (Section 16‑25‑65); abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43‑35‑85(E)); taking of a hostage by an inmate (Section 24‑13‑450); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); and attempt to commit any of the above offenses (Section 16‑1‑80)~~; and taking of a hostage by an inmate (Section 24‑13‑450)~~. Only those offenses specifically enumerated in this section are considered violent offenses.”

SECTION 2. Section 16-1-90(A) of the 1976 Code is amended to read:

“(A) The following offenses are Class A felonies and the maximum terms established for a Class A felony, as set forth in Section 16‑1‑20(A), apply:

10-11-325(B)(2) Detonating an explosive or destructive device or

igniting an incendiary device upon the capitol

grounds or within the capitol building resulting

in death to a person where there was not malice

aforethought

16-3-50 Manslaughter‑‑voluntary

16-3-652 Criminal sexual conduct

First degree

16-3-655(C)(2) Criminal sexual conduct, 1st degree, with minor

less than 16, 2nd offense

16-3-656 Assault with intent to commit criminal sexual

conduct

First degree

16-3-658 Criminal sexual conduct where victim is legal

spouse (separated)

First degree

16-3-910 Kidnapping

16-3-920 Conspiracy to commit kidnapping

16-3-930 Trafficking in persons

16-3-1075(B)(2) Carjacking (great bodily injury)

16-11-110(A) Arson in the first degree

16-11-330(A) Robbery while armed with a deadly weapon

16-11-380(A) Entering bank with intent to steal money,

securities for money, or property, by force,

intimidation, or threats

16-11-390 Safecracking

16-11-532(D)(2) Injuring real property when illegally obtaining

nonferrous metals and the act results in the

death of a person

16-23-720(A)(2) Detonating a destructive device or causing an

explosion, or intentionally aiding, counseling,

or procuring an explosion by means of detonation

of a destructive device which results in the

death of a person where there was not malice

aforethought

24-13-450 Taking of a hostage by an inmate

43-35-85(F), 16-3-1050(F) Abuse or neglect of a vulnerable adult resulting in

death

44-53-370 Prohibited Acts A, penalties (b)(1) (narcotic drugs

in Schedules I(b) and (c), LSD, and Schedule II)

second, third, or subsequent offense

44-53-370(e)(2)(a)2 Prohibited Acts A, penalties (trafficking in

cocaine, 10 grams or more but less than 28 grams)

Second offense

44-53-370(e)(2)(b)2 Prohibited Acts, penalties (trafficking in cocaine,

28 grams or more but less than 100 grams)

Second offense

44-53-370(e)(5)(a)2 Prohibited Acts, penalties (trafficking in LSD, 100

dosage units or more but less than 500 dosage

units)

Second offense

44-53-370(e)(5)(b)2 Prohibited Acts, penalties (trafficking in LSD, 500

dosage units or more but less than 1,000 dosage

units)

Second offense

44-53-370(e)(5)(a)3 Prohibited Acts, penalties (trafficking in LSD, 100

dosage units or more, but less than 500 dosage

units)

Third or subsequent offense

44-53-370(e)(5)(b)3 Prohibited Acts, penalties (trafficking in LSD, 500

dosage units or more, but less than 1,000 dosage

units)

Third or subsequent offense

44-53-370(e)(6)(d) Prohibited Acts, penalties (trafficking in

flunitrazepam, 5 kilograms or more)

44-53-370(e)(8)(a)(ii) Trafficking in MDMA or ecstasy, 100 dosage units

but less than 500‑‑Second offense

44-53-370(e)(8)(a)(iii) Trafficking in MDMA or ecstasy, 100 dosage units

but less than 500‑‑Third or subsequent offense

44-53-370(e)(8)(b)(ii) Trafficking in MDMA or ecstasy, 100 dosage units

but less than 1000‑‑Third or subsequent offense

44-53-370(e)(8)(b)(iii) Trafficking in MDMA or ecstasy, 100 dosage units

but less than 1000‑‑Third or subsequent offense

44-53-370(g)(1)(b) Prohibited Acts A, penalties (distribution of

narcotic drugs in Schedules I(b) and (c), LSD,

and Schedule II with intent to commit a crime)

Second offense

44-53-370(g)(1)(c) Prohibited Acts A, penalties (distribution of

narcotic drugs in Schedules I(b) and (c), LSD,

and Schedule II with intent to commit a crime)

Third or subsequent offense

44-53-375(B)(2) Manufacture, distribution of methamphetamine or

cocaine base, second offense

44-53-375(B)(3) Manufacture, distribution, etc., methamphetamine,

or cocaine base

Third or subsequent offense

44-53-375(C)(1)(b) Trafficking in ice, crank, or crack cocaine (10

grams or more but less than 28 grams)

Second offense

44-53-375(C)(2)(b) Trafficking in ice, crank, or crack cocaine (28

grams or more but less than 100 grams)

Second offense

55-1-30(3) Unlawful removing or damaging of airport facility

or equipment when death results

56-5-1030(B)(3) Interference with traffic‑control devices or

railroad signs or signals prohibited when death

results from violation

58-17-4090 Penalty for obstruction of railroad”

SECTION 3. Section 16-1-90(D) of the 1976 Code is amended to read:

“(D) The following offenses are Class D felonies and the maximum terms established for a Class D felony, as set forth in Section 16‑1‑20(A), apply:

10-11-325(A) Possessing, having readily accessible, or

transporting onto the capitol grounds or within

the capitol building an explosive, destructive,

or incendiary device

16-1-55 Accessory after the fact of a Class A, B, or C

Felony

~~16-3-930~~ ~~Knowingly subjecting another person to forced labor~~

~~or services, or recuiting, harboring,~~

~~transporting, providing, or obtaining by any~~

~~means a person knowing that the person will be~~

~~subject to forced labor or services~~

16-3-1090(B) Assist another person in committing suicide

16-3-1730(C) Stalking within ten years of a conviction of

harassment or stalking

16-11-312 Burglary‑‑second degree

16-11-325 Common law robbery

16-11-525(D)(1) Injuring real property when illegally obtaining

nonferrous metals and the act results in great

bodily injury to person

16-15-140 Committing or attempting lewd act upon child under

16

16-15-355 Disseminating obscene material to a minor 12 years

or younger

16-23-720(C) Possessing, manufacturing, transporting,

distributing, possessing with the intent to

distribute any explosive device, substance, or

material configured to damage, injure, or kill a

person, or possessing materials which when

assembled constitute a destructive device

16-23-720(D) Threaten by means of a destructive weapon

16-23-720(E) Harboring one known to have violated provisions

relating to bombs, weapons of mass destruction

and destructive devises

16-23-730 Communicating or transmitting to a person that a

hoax device or replica is a destructive device or

detonator with intent to intimidate or threaten

injury, obtain property, or interfere with the

ability of a person or government to conduct its

affairs

16-23-750 Communicating or aiding and abetting the

communication of a threat or conveying false

information concerning an attempt to kill,

injure, or intimidate a person or damage property

or destroy by means of an explosive, incendiary,

or destructive device (second or subsequent

offense)

24-3-210 Furloughs for qualified inmates of state prison

system‑‑Failure to return (See section 24-13-410)

24-13-410(B) Escaping or attempting to escape from prison or

possessing tools or weapons used to escape

24-13-470 Inmate throwing bodily fluids on a correctional

facility employee

43-35-85(B) Abusing or neglecting a vulnerable adult that

results in great bodily injury

43-35-85(D), 16-3-1050(E) Abuse or neglect of a vulnerable adult resulting in

great bodily injury

44-53-370(b)(1) Prohibited Acts A, penalties (narcotic drugs in

Schedule I (b) and (c), LSD, and Schedule II)

First offense

44-53-370 Prohibited Acts A, penalties (g)(2)(a)

(distribution of controlled substances with

intent to commit a crime)

First offense

44-53-375(B)(1) Manufacture, distribution, etc., methamphetamine or

cocaine

First offense

44-53-445(B)(2) Distribution, manufacture, sale, or possession of

crack cocaine within proximity of a school

44-53-577 Unlawful to hire, solicit, direct a person under 17

years of age to transport, conceal, or conduct

financial transaction relating to unlawful drug

activity

50-21-113(A)(1) Operating a moving water device while under the

influence of alcohol or drugs where great bodily

injury results

56-5-2945(A)(1) Causing great bodily injury by operating vehicle

while under influence of drugs or alcohol”

SECTION 4. Section 16-3-20(C)(a)(1) of the 1976 Code is amended to read:

“(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) trafficking in persons;

~~(c)~~(d) burglary in any degree;

~~(d)~~(e) robbery while armed with a deadly weapon;

~~(e)~~(f) larceny with use of a deadly weapon;

~~(f)~~(g) killing by poison;

~~(g)~~(h) drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;

~~(h)~~(i) physical torture;

~~(i)~~(j) dismemberment of a person; or

~~(j)~~(k) arson in the first degree as defined in Section 16‑11‑110(A).”

SECTION 5. Section 16-3-652(1)(b) of the 1976 Code is amended to read:

“(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.”

SECTION 6. Section 16-3-655(D)(2)(a) of the 1976 Code is amendment to read:

“(2) In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(i) The victim’s resistance was overcome by force.

(ii) The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.

(iii) The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.

(iv) The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.

(v) The crime was committed by a person with a prior conviction for murder.

(vi) The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.

(vii) The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.

(viii) The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.

(ix) The crime was committed during the commission of burglary in any degree, ~~or~~ kidnapping, or trafficking in persons.”

SECTION 7. Section 16‑3‑930 of the 1976 Code is amended to read:

“Section 16‑3‑930. (A) A person who knowingly subjects another person to forced labor or services, or recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony known as trafficking in persons for forced labor or services and, upon conviction, must be imprisoned for not more than ~~fifteen~~ thirty years.

(B) ‘Forced labor or services’ means any type of labor or services performed or provided by a person rendered through another person’s exertion of physical, financial, or other means of control over the person providing the labor or services.

(C) This section does not apply to labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.”

SECTION 8. Section 17-25-45(C) of the 1976 Code is amended to read:

“(C) As used in this section:

(1) ‘Most serious offense’ means:

16-1-40 Accessory, for any offense enumerated in this item

16-1-80 Attempt, for any offense enumerated in this item

16-3-10 Murder

16-3-30 Killing by poison

16-3-40 Killing by stabbing or thrusting

16-3-50 Voluntary manslaughter

16-3-85(A)(1) Homicide by child abuse

16-3-85(A)(2) Aiding and abetting homicide by child abuse

16-3-210 Lynching, First degree

16-3-430 Killing in a duel

16-3-620 Assault and battery with intent to kill

16-3-652 Criminal sexual conduct, First degree

16-3-653 Criminal sexual conduct, Second degree

16-3-655 Criminal sexual conduct with minors, except where evidence

is presented at the criminal proceeding and the court,

after the conviction, makes a specific finding on the

record that the conviction obtained for this offense

resulted from consensual sexual conduct where the victim

was younger than the actor, as contained in Section

16-3-655(3)

16-3-656 Assault with intent to commit criminal sexual conduct,

First and Second degree

16-3-910 Kidnapping

16-3-920 Conspiracy to commit kidnapping

16-3-930 Trafficking in persons

16-3-1075 Carjacking

16-11-110(A) Arson, First degree

16-11-311 Burglary, First degree

16-11-330(A) Armed robbery

16-11-330(B) Attempted armed robbery

16-11-540 Damaging or destroying building, vehicle, or other property

by means of explosive incendiary, death results

24-13-450 Taking of a hostage by an inmate

25-7-30 Giving information respecting national or state defense to

foreign contacts during war

25-7-40 Gathering information for an enemy

43-35-85(F) Abuse or neglect of a vulnerable adult resulting in death

55-1-30(3) Unlawful removing or damaging of airport facility or

equipment when death results

56-5-1030(B)(3) Interference with traffic‑control devices or railroad signs

or signals prohibited when death results from violation

58-17-4090 Obstruction of railroad, death results.”

SECTION 9. Section 23-3-430(C) of the 1976 Code is amended to read:

“(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

(1) criminal sexual conduct in the first degree (Section 16‑3‑652);

(2) criminal sexual conduct in the second degree (Section 16‑3‑653);

(3) criminal sexual conduct in the third degree (Section 16‑3‑654);

(4) criminal sexual conduct with minors, first degree (Section 16‑3‑655(1));

(5) criminal sexual conduct with minors, second degree. If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16‑3‑655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;

(6) engaging a child for sexual performance (Section 16‑3‑810);

(7) producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);

(8) criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656);

(9) incest (Section 16‑15‑20);

(10) buggery (Section 16‑15‑120);

(11) committing or attempting lewd act upon child under sixteen (Section 16‑15‑140);

(12) peeping, voyeurism, or aggravated voyeurism (Section 16‑17‑470);

(13) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;

(15) kidnapping (Section 16‑3‑910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(16) kidnapping (Section 16‑3‑910) of a person under eighteen years of age except when the offense is committed by a parent;

(17) trafficking in persons (Section 16‑3‑930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

~~(17)~~(18) criminal sexual conduct when the victim is a spouse (Section 16‑3‑658);

~~(18)~~(19) sexual battery of a spouse (Section 16‑3‑615);

~~(19)~~(20) sexual intercourse with a patient or trainee (Section 44‑23‑1150);

(~~20)~~(21) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:

(a) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16‑15‑375(5);

(b) perform a sexual activity in the presence of the person solicited (Section 16‑15‑342); or

~~(21)~~(22) administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44‑53‑370(f), except petit larceny or grand larceny.”

SECTION 10. Section 23-3-490(D)(1) of the 1976 Code is amended to read:

“(D) For purposes of this article, information on a person adjudicated delinquent in family court for an offense listed in Section 23‑3‑430 must be made available to the public in accordance with the following provisions:

(1) If a person has been adjudicated delinquent for committing any of the following offenses, information must be made available to the public pursuant to subsections (A) and (B):

(a) criminal sexual conduct in the first degree (Section 16‑3‑652);

(b) criminal sexual conduct in the second degree (Section 16‑3‑653);

(c) criminal sexual conduct with minors, first degree (Section 16‑3‑655(1));

(d) criminal sexual conduct with minors, second degree (Section 16‑3‑655(2) and (3));

(e) engaging a child for sexual performance (Section 16‑3‑810);

(f) producing, directing, or promoting sexual performance by a child (Section 16‑3‑820); ~~or~~

(g) kidnapping (Section 16‑3‑910); or

(h) trafficking in persons (Section 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.”

SECTION 11. Section 23-3-535(B) of the 1976 Code is amended to read:

“(B) It is unlawful for a sex offender who has been convicted of any of the following offenses to reside within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground:

(1) criminal sexual conduct with a minor, first degree;

(2) criminal sexual conduct with a minor, second degree;

(3) assault with intent to commit criminal sexual conduct with a minor; ~~or~~

(4) kidnapping a person under eighteen years of age; or

(5) trafficking in persons of a person under eighteen years of age except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.”

SECTION 12. Section 23-3-540(G)(1) of the 1976 Code is amended to read:

“(G) This section applies to a person who has been:

(1) convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses:

(a) criminal sexual conduct with a minor in the first degree (Section 16‑3‑655(A));

(b) criminal sexual conduct with a minor in the second degree (Section 16‑3‑655(B)). If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from illicit consensual sexual conduct, as contained in Section 16‑3‑655(B)(2), provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, then the convicted person is not required to be electronically monitored pursuant to the provisions of this section;

(c) engaging a child for sexual performance (Section 16‑3‑810);

(d) producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);

(e) criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656) involving a minor;

(f) committing or attempting lewd act upon child under sixteen (Section 16‑15‑140);

(g) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(h) kidnapping (Section 16‑3‑910) of a person under eighteen years of age except when the offense is committed by a parent; ~~or~~

(i) trafficking in persons (Section 16-3-930) of a person under eighteen years of age except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense; or”

SECTION 13. Section 44-53-370(f) of the 1976 Code is amended to read:

“(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

(1) kidnapping, Section 16‑3‑910;

(2) trafficking in persons, Section 16-3-930;

~~(2)~~(3) criminal sexual conduct in the first, second, or third degree, Sections 16‑3‑652, 16‑3‑653, and 16‑3‑654;

~~(3)~~(4) criminal sexual conduct with a minor in the first or second degree, Section 16‑3‑655;

~~(4)~~(5) criminal sexual conduct where victim is legal spouse (separated), Section 16‑3‑658;

~~(5)~~(6) spousal sexual battery, Section 16‑3‑615;

~~(6)~~(7) engaging a child for a sexual performance, Section 16‑3‑810;

~~(7)~~(8) committing lewd act upon child under sixteen, Section 16‑15‑140;

~~(8)~~(9) petit larceny, Section 16‑13‑30 (A); or

~~(9)~~(10) grand larceny, Section 16‑13‑30 (B).”

SECTION 14. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 15. This act takes effect upon approval by the Governor.

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