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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 420                      **Hearing Date:** April 21, 2015  
**Author:** Huff  
**Version:** April 6, 2015  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JM

**Subject:** *Prostitution*

## HISTORY

**Source:** Alameda County District Attorney and Los Angeles County District Attorney

**Prior Legislation:** SB 1366 (Lieu) - Ch. 714, Stats. 2014  
SB 982 (Huff) - Held in Senate Appropriations, 2014  
AB 12 (Swanson) - Ch. 75, Stats. 2011  
AB 17 (Swanson) - Ch. 211, Stats. 2009

**Support:** Peace Officers Research Association of California; California Police Chiefs Association; California District Attorneys Association

**Opposition:** California Public Defenders Association; California Attorneys for Criminal Justice

## PURPOSE

*The purpose of this bill is to define and divide the crime of prostitution into three separate forms: 1) the defendant agreed to receive compensation for a lewd act; 2) the defendant provided compensation, or agreed to provide compensation, for a lewd act to an adult; and 3) the defendant provided compensation, or agreed to provide compensation, to a minor in exchange for a lewd act, regardless of which party made the initial solicitation.*

*Existing law* requires the California Department of Justice to collect data from law enforcement agencies about “the amount and types of offenses known to the public authorities.” (Pen.Code § 13000 and 13002.) DOJ must:

- Prepare and distribute forms and electronic means for reporting crime data.
- Recommend the form and content of records to “ensure the correct reporting of data...” and instruct agencies in the collecting, keeping and reporting of crime data.
- Process, interpret and analyze crime data.

*Existing law* requires law enforcement agencies, as specified, district attorneys, the Department of Correction and other entities to do the following:

- Install and maintain records for reporting statistical data.
- Report data to DOJ “in the manner [DOJ] prescribes.” (Pen. Code § 13020.)

*Existing law* provides that prostitution involves any lewd act between persons for money or other consideration. (Pen. Code § 647, subd. (b); CALCRIM 1154)

*Existing decisional law* defines a lewd act as “touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person’s body for the purpose of sexual arousal or gratification.” (CALCRIM 1154, citing *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256; See, *Wooten v. Superior Court* (2001) 93 Cal.App.4th 422, pp. 431–433.)

*Existing law* provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of a misdemeanor. The crime includes an element that the defendant specifically intended to engage in an act of prostitution and some act was done in furtherance of the agreed upon act. (Pen. Code § 647, subd. (b).)

*Existing law* provides that where any person is convicted for a second prostitution offense, the person shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)

*Existing law* provides that where any person is convicted for a third prostitution offense, the person shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)

*Existing law* provides that where a defendant is convicted of a prostitution offense in which the defendant sought to procure or procured the "sexual services of a prostitute who was a minor, the following shall apply:

- The defendant shall, in addition to any other fine or penalty, be ordered to pay up to \$25,000; and
- Upon appropriation by the Legislature, the proceeds of the fine shall "be available to fund programs and services for commercially sexually exploited minors in the counties" of conviction. (Pen. Code §§ 261.9 and 647, subd. (b).)

*This bill* divides prostitution into three separate crimes. Each crime includes an element that the defendant takes some act beyond manifestation of an agreement to engage in an act of prostitution.

- One crime is committed by the person who agreed to pay another person to engage in a lewd act.
- A separate crime is committed by the person who agreed to receive compensation for a lewd act.
- A third crime is committed by a person who solicits a minor for a lewd act in exchange for compensation, or who accepts an offer by a minor to engage in a lewd act in exchange for compensation paid to the minor.

## RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for this Bill

According to the author:

Research proves that demand for sex acts drives the market for exploitation, especially among children. Under current law, any person who offers to engage in or engages in any act of prostitution is guilty of disorderly conduct. It's time we call purchasing of sex acts what it is and separate out the buyers from the sellers, who more often than not – are victims of sex trafficking.

Currently there is no distinction in law between an adult who is selling sexual acts, from the adult who is purchasing sexual acts, or from an adult who is purchasing sex from a minor. SB 420 focuses on the demand side of human trafficking, by amending Penal Code Section 647, to separate the buyers and sellers of human trafficking and prostitution.

SB 420 is a necessary first step in addressing the demand side of human trafficking. By making a distinct separation in the Penal Code, between the individuals involved in prostitution, we can see real numbers that will tell us how many children and adults are being purchased for sex. By US Department of State estimates, sex trafficking is a \$32 billion industry in this country and 50 percent of trafficking victims are minors.

Easy access to the Internet enables human beings to become ensnared and sold across state lines. The FBI has determined that three of the nations' thirteen High Intensity Child Prostitution areas are located here in California. Data generated by SB 420 is essential for crafting solutions to a disturbing public safety enemy in our communities, especially among at-risk youth.

### 2. Sponsor and Author Seek to Focus Prosecution Efforts on The Demand Side of Prostitution

The background provided by the author and sponsor notes that the narrow or current purpose of this bill is to collect data on the comparative numbers of arrests in prostitution cases for 1) buyers of sex acts from adults, 2) buyers of sex acts from minors, and 3) sellers of sex acts. The author's background states that the broader goal in this bill is to "focus on the demand side of human trafficking...." These efforts are premised on the understanding that prostitution is integral to and inextricably tied to human trafficking.

It thus appears that the data from this bill will be used to eventually support higher penalties for prostitution purchasers. As the bill separates prostitution into separately defined and charged offenses, different procedures, penalties and other outcomes and goals can easily be amended into the law. It remains to be seen whether treating purchasers and buyers of sexual acts differently can reduce human trafficking and provide needed services to sellers.

### **3. Sexual Acts with Minors – Regardless of the Payment of Compensation – Constitutes a Sex Crime**

This bill would separately define prostitution in which the person who provides, agreed to provide, sexual services is a minor. Sexual conduct with a minor constitutes a felony in most instances, regardless of whether anything of value was offered or exchanged for the sexual acts. If the minor involved in commercial sex of was under the age of 14, the defendant has committed the felony of lewd conduct, with a prison term of three, six or eight years, or five, eight or 10 years if coercion is involved (Pen. Code § 288, subds. (a)-(b).) Soliciting an act of prostitution from a minor under the age of 14 could likely be prosecuted as attempted lewd conduct. The prison or jail term for an attempt is generally one-half the punishment for the completed crime. Where the defendant solicited or employed a minor who was 14 or 15 years old, and the defendant was at least 10 years older than the minor, the defendant has committed an alternate felony-misdemeanor.

Any defined sex act – sodomy, sexual penetration, oral copulation or sexual intercourse – with a minor is a crime. The penalties depend on the relative ages of the defendant and the minor and whether the crime involved some form of force, coercion or improper advantage. A defendant charged with a prostitution-related offense involving a minor could also be charged and convicted of a sex crime in the same case. Generally, because the defined sex crime and the sexual commerce offense would involve a single transaction or act, the defendant could only be punished for one offense – the offense carrying the greatest penalty. (Pen. Code § 654.)

**DO MOST PROSTITUTION INCIDENTS IN WHICH AN ADULT SOUGHT TO PURCHASE SEX FROM A MINOR CONSTITUTE ATTEMPTED OR COMPLETED SEX CRIMES?**

### **4. Accurate and Full Data Collection on Individually Defined Forms of Prosecution**

The narrow or initial purpose of this bill is to collect data to determine how many adults are arrested for and convicted of paying for sexual acts, how many adults are arrested for and convicted of selling sexual acts and how many adults are arrested for and convicted of paying for sexual services from minors. The bill divides the prosecution statute – Penal Code Section 647, subdivision (b) - into three paragraphs reflecting each form of the crime. In order for the data to be valuable and accurate, reporting agencies will need to specifically note the paragraph under which a defendant was arrested and convicted. Representatives from DOJ explained: “The way [crime reports] appears in the system is entirely dependent on the law enforcement agency or court that enters the offense into the system. One agency may enter PC 647(b)(2) while another may only enter PC 647(b).”

Prosecutors will likely record the specific paragraph under which the defendant is convicted - PC 647 (b)(2) for example. However, police officers and sheriff’s deputies might not specifically record the paragraph of arrest unless instructed to do so. Further, it may not be apparent to officers and deputies what specific form of prostitution would be charged by the prosecutor in any particular case. That could cause some confusion and inaccuracy in the data.

Another impediment to full and accurate data collection is the fact, as discussed in Comment #3, that sex with a minor is a crime. If a minor and an adult are involved in a prostitution incident, numerous outcomes involving sex crimes and prostitution could occur. For example, the police could arrest both parties for prostitution, but the prosecutor could charge the adult with a sex

crime, or prostitution, or both. The prosecutor could charge the minor with no crime, or file a prostitution charge. The adult could be initially charged with a sex crime but plead guilty to a prostitution offense, perhaps if the minor appeared to be an adult. In sum, it may be difficult to determine the extent of prostitution involving minors from arrest and conviction data.

If committee members approve the bill, they may wish to inquire as to whether DOJ should be directed to instruct agencies on the reporting of prostitution offenses. Committee members may also wish to inquire whether it could be assured that prostitution involving minors could be accurately reported and tracked.

### **5. Seattle Law Enforcement Assisted Diversion Program for Prostitution and Drug Offenders**

The Seattle Police Department and other agencies and entities have implemented a program of Law Enforcement Assisted Diversion (LEAD). LEAD officers take drug offenders and sellers of prostitution services – categories of offenders that may often overlap - directly to services and treatment. The process bypasses the court system, saving court resources and time.

The second evaluation of the program was recently released by the University of Washington. Short and long term recidivism is significantly lower for LEAD participants than for offenders in the court system<sup>1</sup>, with better results over the long term. LEAD programs could be one of the programs or efforts in helping street-level sex workers transition out of their plight. Without services to assist sex workers with underlying problems of drug abuse, lack of housing and exploitation, focusing prosecution efforts on sex purchasers will not likely produce optimum results.

### **6. Recidivism Studies on Persons Convicted of Purchasing Sex – Effects of Special Programs**

A study<sup>2</sup> in 2002 in the *Western Criminology Review* of a now defunct first-offender program in Portland (SEEP) found very low recidivism rates for *all* prostitution arrestees regardless of whether they were referred to SEEP and participated, were referred to SEEP but did not attend, or were not referred to the program. The study considered only a two-year period and a relatively small number of offenders. The researchers inferred that an arrest, per se, could have deterred offenders, as the crime involves significant shame. The authors also questioned if the offenders continued to solicit prostitutes but simply learned how to avoid arrest. They could not say whether the education from the SEEP program would have led the participants to avoid prostitution for a substantial time in the future.

A number of cities around the country have adopted special first-offender prostitution diversion programs that educate men arrested for soliciting an act of prostitution about the harms caused by or attendant to the commercial sex trade. Initial reports of the effectiveness of the programs have been sharply criticized in peer-reviewed studies.<sup>3</sup> The study from the *Western Criminology Review* (noted above) found that recidivism rates attributable to FOPP programs are difficult to measure, as johns arrested for prostitution offenses can easily learn how to avoid arrest. Further, the increasing shift of prostitution to the Internet makes it difficult to measure recidivism.

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<sup>1</sup> <http://leadkingcounty.org/lead-evaluation/>

<sup>2</sup> <http://wcr.sonoma.edu/v3n2/monto.html>.

<sup>3</sup> <http://rightswork.org/wp-content/uploads/2012/09/John-Schools.Lovell.Jordan.7.12.pdf>.

DOES RESEARCH INDICATE THAT AN ARREST, PER SE, MAY BE A SUBSTANTIAL DETERRENT FOR MEN WHO SOLICIT PROSTITUTES?

### **7. Limited Studies of the Demographics of Prostitution Customers**

According to a John Jay College study of commercially, sexually exploited homeless youth in New York often sought out customers, rather than being solicited by adults. Particularly in Manhattan, or through the Internet, CSEC (commercially sexually exploited children) sought older white customers who were perceived to have more money. (See Comment # 8) However, the range of customers was relatively wide.

A draft University of Chicago study by Steven Levitt and Sudhir Alladi Venkatesh (Freakonomics) considered of street-level prostitution in certain Chicago neighborhoods known for prostitution, including a neighborhood where prostitution was controlled by pimps and a neighborhood where prostitutes were independent.<sup>4</sup> Levitt estimated that there were 1,200 acts of prostitution per arrest, indicating that even street-level prostitution customers generally need not fear arrest. The Chicago study noted that more upscale prostitution occurred over the Internet and through escort services, where the likelihood of arrest was low.

Levitt found “many men making a few visits and a small number of men making very frequent visits.” He found 25 johns arrested twice and 2,969 johns who were arrested once. As in the Western Criminology Review study, Leavitt speculated that some men may have learned from one arrest how to avoid another. However, some johns may have been arrested multiple times because they were not good at distinguishing between an actual prostitute and a police decoy. A 2008 review in the Electronic Journal of Human Sexuality<sup>5</sup> of studies from cities across the country found wide variance in education, income and ethnicity among prostitution customers.

### **8. Sex Trafficking of Minors – Estimated Prevalence and Available Data**

#### *General Trafficking Prevalence Estimates and Data; 2007 California Data*

There appears to be general agreement that sex trafficking of children is increasing and profitable. However, the 2007 Final Report of the California Alliance to Combat Trafficking and Slavery Task Force<sup>6</sup> noted that California lacked comprehensive statistics on human trafficking. Thus, many statistics on human trafficking in general, and sex trafficking of children in particular, are estimates. The 2007 report did cite statistics from various sources, including a study finding that 80% of documented cases in California occurred in urban areas and the majority of victims were non-citizens. A U.S. State Department report of global trafficking estimated that minors constituted 50% of trafficking victims. (2007 Alliance to Combat Trafficking. Final Report, pp. 33-39.<sup>7</sup>) The State Department also noted that 14,500 to 17,500 persons are trafficked into the United States from other countries.<sup>8</sup>

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<sup>4</sup> <http://economics.uchicago.edu/pdf/Prostitution%205.pdf?q=venkatesh>. Levitt noted that the data was preliminary and cautioned those who would cite the report, the study has been widely read and cited.

<sup>5</sup> <http://www.ejhs.org/volume11/brewer.htm>.

<sup>6</sup> The task force was administered by the California Attorney General’s Office.

<sup>7</sup> [http://ag.ca.gov/publications/Human\\_Trafficking\\_Final\\_Report.pdf](http://ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf). The report includes citations to the each of the studies quoted in the report.

<sup>8</sup> <http://oag.ca.gov/human-trafficking/2012>, Ch. 3 p. 48.

The Federal Bureau of Investigation (FBI) conducts 24 Innocence Lost child sexual exploitation task forces and working groups across the country. Through 2007, 365 cases were opened and 281 child victims were located. The Shared Hope International non-profit organization has reported that approximately 100,000 domestic minors are sexually trafficked each year.<sup>9</sup> Numerous examples of trafficking cases were summarized in the California Alliance Report. In 2001, a Berkeley man was prosecuted for smuggling 15 girls from India for labor and sexual exploitation. In 2000, a man was prosecuted for bringing women and girls from Mexico and forcing them to work as prostitutes in Long Beach. (2007 Alliance to Combat Trafficking, Final Report, p. 18.)

***2012 Report of the California Attorney General on Human Trafficking***

The California Attorney General’s Human Trafficking in California 2012<sup>10</sup> report stated that human trafficking investigations and prosecutions have become more comprehensive and organized. There are nine human trafficking task forces in California, composed of local, state and federal law enforcement and prosecutors.

Data on human trafficking has improved, although the data still does not reflect the actual extent and range of human trafficking. <sup>11</sup>Data from 2010 through 2012 collected by the California task forces are set out in the following chart:

California Human Trafficking Task Forces Data 2010-2012

Investigations	2,552
Victims Identified	1,277
Arrests Made	1,798

Trafficking by Category

Sex Trafficking	56%
Labor Trafficking	23%
Unclassified or Insufficient Information	21%

**9. John Jay College of Criminal Justice Study on Commercially Exploited Children (CSEC) found that most CSEC were introduced to Commercial Sex by Peers**

Recent years have seen a great increase in awareness of and concerns about minors – most often girls - engaged in commercial sex activities. Organized, coerced trafficking has received the most attention. Sex trafficking of has been described as sexual slavery. Trafficked minors are isolated, controlled by and made dependent on their exploiters, and can even be perversely loyal because of the manufactured dependency.<sup>12</sup>

However, a detailed 2008 study by the Center for Court Innovation and John Jay College of Criminal Justice found that most of the minors engaging in commercial sex in New York City are homeless or runaway minors who engage in “survival sex” to obtain small amounts of money

<sup>9</sup> [http://www.sharedhope.org/Portals/0/Documents/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf).

<sup>10</sup> <http://oag.ca.gov/human-trafficking/2012>.

<sup>11</sup> <http://oag.ca.gov/human-trafficking/2012>, Ch. 3, pp. 47-53.

<sup>12</sup> Rachel Lloyd, *Girls Like Us*, pp.153-159 Harper Collins, 2011.

for food and other necessities. A significant number of these CSEC – commercially sexually exploited children – are gay, lesbian and transgender youth who left unsupportive families and communities. The study authors were surprised to find that most CSEC were recruited or initiated into survival sex by their peers, with no involvement by adult pimps. The John Jay study also reported that many CSEC were simply approached on the street by would-be customers, without any solicitation by the CSEC.<sup>13</sup> Also surprising, there were as many male CSEC as female in New York City.

Rachel Aviv's December 2012<sup>14</sup> profile of homeless young people in the *New Yorker* magazine noted the results of the John Jay study and then carefully documented the daily lives of a number of homeless young people on the New York City streets. They often formed informal communities or families for support. They sometimes shared repeat customers and money earned from commercial sex, technically acting as pimps for each other. Adults who purchase sex from CSEC are certainly aware that they are taking advantage of these children. Some men use violence against the homeless young people.

Aviv's profile documented that living on the streets and engaging in survival sex is perilous. The rate of HIV among homeless youth is triple that of the general population. Hunger, physical illness and psychiatric disorders are common.

## **10. Girls Collaborative Court Programs for Minors Engaged in Prostitution**

### ***Special Court Process***

The *New Yorker* profile described a patchwork of services that are not coordinated or comprehensive. As the CSEC understood, they are constantly in danger of becoming lifers on the street, with the attendant harms of that life. The John Jay study may not reflect the populations of CSEC in cities and areas other than New York. However, the study does indicate that approaches that rely mostly on enforcement of criminal laws against human trafficking and pimping will not likely solve many of the problems of young people who are exploited for commercial sex.

There has been a growing awareness of the value of special juvenile courts for the girls found to be involved in commercial sex. It has been argued that treating juvenile prostitution as a crime problem does little or nothing to address the underlying circumstances that bring minors to engage in commercial sex. Special collaborative courts can organize and monitor supervision and treatment of CSEC girls. Special STAR (Succeeding through Achievement and Resilience) courts have been implemented in Los Angeles as a pilot project that is reportedly being expanded.<sup>15</sup> Alameda County has an established an extensive Girls Court, with the participation of the sponsor of this bill. New York has created a network of 11 Human Trafficking Intervention Courts for juveniles who are at least 16 years old.<sup>16</sup>

It appears that collaborative courts for minors caught up in sexual commerce have focused almost exclusively on girls. However, the John Jay study and the *New Yorker* investigative article indicate that there are a substantial number of boys and transgender youth who are CSEC.

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<sup>13</sup> <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>, pp 48-49, 32-102.

<sup>14</sup> [http://www.newyorker.com/reporting/2012/12/10/121210fa\\_fact\\_aviv?currentPage=all&pink=HhM7xT](http://www.newyorker.com/reporting/2012/12/10/121210fa_fact_aviv?currentPage=all&pink=HhM7xT).

<sup>15</sup> <http://file.lacounty.gov/bos/supdocs/70403.pdf>.

<sup>16</sup> [http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html?\\_r=0](http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html?_r=0).

In New York, the John Jay study found that as many boys as girls were involved in sexual commerce. Arguably, collaborative courts should be organized or designed to handle whatever populations of CSEC are present in the community of the court or courts. Collaborative girls courts have only been implemented on a limited basis, likely because the court system and probation departments have limited funds.

### **11. Amendment to Correctly Define the Elements of Prostitution**

As currently drafted on April 6, 2015, the bill can be interpreted as defining prostitution solely in terms of a solicitation of another to engage in an exchange of compensation for a lewd act. However traditionally and under existing law, prostitution can also be committed by agreeing to engage in an exchanging compensation for a lewd act, or by engaging in an exchange of compensation for a lewd act.

The author, sponsor and the Los Angeles County District Attorney have agreed that the bill should be amended to include all the ways in which prostitution can be committed.

SHOULD THE BILL BE AMENDED TO CORRECTLY DESCRIBE PROSTITUTION AS INCLUDING AGREEING TO ENGAGING IN AN ACT OF PROSTITUTION OR ENGAGING IN AN ACT OF PROSTITUTION, NOT SOLELY SOLICITING AN ACT OF PROSTITUTION?

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