



## INTRODUCTION

After several weeks of lengthy committee meetings and floor debates, the crossover deadline has passed. With a substantial number of bills moving, controversy was sure to follow. Controversial policies included new abortion measures, a gun bill, and a bill banning surgical gender transition procedures for minors. Of course, those are just the bills that make the headlines, there are hundreds of other bills that moved through the process with very little review or debate so we are going through those to see where we need to intervene. Please see below for some of the bills that made their way around the General Assembly last week.

### ABORTION BILL

On Tuesday evening, Republicans unveiled their long-anticipated abortion bill. As expected, the bill further restricts abortions in the state by prohibiting elective abortions after the first 12 weeks instead of the state's current 20-week policy. It would allow abortions up until the 20th week in instances of rape or incest or up until the 24th week if there is a life-limiting anomaly in the unborn child. In cases of a medical emergency for the pregnant woman, abortions would be allowed at any time.

Senate Bill 20, the "Care for Women, Children, and Families Act", would also make a variety of additional changes to healthcare laws in our state. One of its noteworthy changes would allow for independent practice by Certified Nurse Midwives, repealing the 40-year-old requirement for a signed physician "supervision" agreement and also a "fix" to the law regarding guns and domestic violence victims.

Senate Bill 20 bill would also criminalize certain actions, like providing or advertising abortion-inducing drugs in some circumstances. It would increase penalties for assault on a pregnant woman and create a misdemeanor crime of domestic violence, which currently does not exist in State law.

The 46-page bill would also appropriate funds for a number of programs. The bill would appropriate funds for long-term birth control, expand funds for the Safe Sleep North Carolina Campaign, and increase the Medicaid rate for obstetrics maternal bundle payments. The bill provides State employees with eight weeks of paid leave after giving birth to a child and four weeks of paid leave if they become a parent in another manner.



## NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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FOR MORE INFORMATION:

Colleen Kochanek  
Ashley Matlock Perkinson  
Rachel E. Beaulieu  
P.O. Box 1038  
Wake Forest, NC 27588  
919.809.5600

[colleen@kochaneklawgroup.com](mailto:colleen@kochaneklawgroup.com)  
[ashley@perkinsonlawfirm.com](mailto:ashley@perkinsonlawfirm.com)  
[rachel@beaulieuedlaw.com](mailto:rachel@beaulieuedlaw.com)  
[www.kochaneklawgroup.com](http://www.kochaneklawgroup.com)

The policy measure was released as a conference report, which is an agreed-upon proposal between conferees from both chambers and can only receive an “up or down” vote without opportunity for amendments. Speaker Moore expressed his satisfaction over the new policy move to reporters, but appeared to leave the door open for further restrictions down the road. While many Republican leaders praised the news, Lt. Gov. Mark Robinson was notably quiet. When asked by reporters why the Gubernatorial candidate hasn’t released a statement after many previous comments over abortion, he told them he was “tired” and “not interested” in discussing it anymore.

House and Senate Democrats spent hours debating the bill in their respective chambers on Wednesday and Thursday. It was adopted by both the House and Senate on party lines, a vote count strong enough to override a veto from our Democratic Governor. It is now on its way to Gov. Cooper, who has already expressed his strong opposition to this bill. "It will effectively ban access to reproductive freedom earlier and sometimes altogether for many women because of new restrictions and requirements. This is why Republicans are ramming it through with no chance to amend. I will veto this extreme ban and need everyone's help to hold it," Gov. Cooper said in a statement.

### **HOUSE BILL 189, FREEDOM TO CARRY NC**

Another firearm bill made its way through a couple committees last week. House Bill 189 would allow the carrying of a concealed handgun without a concealed handgun permit by any U.S. citizen that is at least 18 years old, except as otherwise prohibited by law. It would also allow elected officials to carry a concealed handgun while performing their duties if they have a concealed handgun permit.

The bill was approved by the House Judiciary 2 Committee and the House Rules Committee last week, and was calendared to be heard on the House floor on Wednesday. On Wednesday, the bill was pulled from the House calendar. It appeared there was some hesitancy among House Republicans over moving this forward without at least more time for consideration. While there are some ways to move a policy measure forward if it does not meet the crossover deadline, generally policy-only bills need to meet that deadline to stay in play for the remainder of session. Given that a number of other gun-related bills have already passed this session, the fact that this one did not meet the deadline could suggest that this policy will not push forward this session. Furthermore, Senator Berger suggested to reporters that now is not the time for another firearm bill given the others that have already been considered and passed. “We have passed a substantial bill dealing with some concerns about (the) Second Amendment. We’ve done away with the pistol purchase permit, which was the No. 1 goal of many of the gun rights groups for a long period of time,” Senate leader Berger told reporters. “I just don’t know if there’s a need for us to delve into additional issues dealing with guns and people’s Second Amendment rights.”

### **HOUSE BILL 600, REGULATORY REFORM ACT OF 2023**

The House’s Regulatory Reform Act was approved by the House in a vote of 113-72. The 20-page bill would amend a number of laws related to state and local government, agriculture, energy, environment, natural resources, and other various regulations. Among other things, the bill would:

- Codify medical record retention requirements for health care providers to retain medical records for a minimum of ten years from the date of service to which the medical record pertains, or in the case of a minor, until the patient’s 28th birthday;
- Make various changes to the NC HIE Network Exchange Act;
- Exempt certified reflexologists from oversight by the NC Board of Massage and Bodywork Therapy;
- Amend laws for disposal of animals surrendered to an animal shelter;

- Make modifications to stormwater permitting and stormwater treatments;
- Modify requirements for development in vegetative buffers;
- Authorize the Utilities Commission to allow owners' associations to charge for the costs of providing water and sewer services;
- Prohibit counties from regulating by ordinance certain off-site wastewater systems;
- Prohibit sale of nutrient offsets from municipal nutrient offset banks to third parties;
- Limit local government zoning authority;
- Make changes in funding sources for the Department of Information Technology's procurement activities;
- Make clarifying changes to Chapter 50B (Domestic Violence); and
- Expand the homeschool cooperative exemption to the definition of childcare.

## **HOUSE BILL 808, SURGICAL GENDER TRANS./MINORS**

House Bill 808 was approved by the House on nearly party lines last week, with two Democrats joining their Republican colleagues to vote in favor of the measure. This controversial bill would prohibit healthcare practitioners from providing or referring out surgical gender transition procedures to individuals under 18 years of age. It is now headed to the Senate.

## **BILL UPDATES**

HOUSE BILL 189, Freedom to Carry NC, was amended in the House Judiciary 2 and Rules Committees to:

- amend the proposed provision that would allow any person who is a US citizen and is at least 18 years old to carry a concealed handgun in North Carolina unless prohibited otherwise by law to:
  - require the person to complete an approved firearm safety and training course;
  - require an approved firearms safety and training course to include instruction in the State's laws on the carrying of a concealed handgun and the use of deadly force;
  - require the North Carolina Criminal Justice Education and Training Standards Commission to prepare and publish general guidelines for courses and qualifications of instructors which would satisfy these requirements, including online courses that document attendance and require active participation;
  - require every instructor of an approved course to file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission; and
  - make a violation of the general concealed carry requirements a Class 3 misdemeanor;
- remove the provisions that repealed specified statutes concerning pistol permits;
- make it a Class 2 misdemeanor to carry a concealed weapon in: (1) an area prohibited by a rule adopted by the Legislative Services Commission concerning State legislative buildings and grounds; (2) any area prohibited by federal law; or (3) a law enforcement or correctional facility; and
- make carrying a concealed weapon on any private premises where notice is given by posting a conspicuous notice or statement by the person in legal possession or control of the premises that carrying a concealed handgun is prohibited, an infraction punishable by a fine of no more than \$500.

**The bill as amended was approved by the House Judiciary 2 and Rules Committees and was calendared to be considered by the full House; however, the bill was removed from the House calendar and sent back to the House Rules Committee.**

HOUSE BILL 534, Age Verification to Protect Children Act. The provisions of this bill were removed in the House Judiciary 2 Committee and replaced with provisions would enact the Pornography Age Verification Enforcement Act (PAVE Act) to:

- require any commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the internet from a website that contains a substantial portion of such material to perform reasonable age verification methods to verify the age of the individuals attempting to access the material;
- provide that any commercial entity that violates this requirement may be liable for a civil penalty of not more than \$5,000 for each day of violation, and allow the Attorney General to request and the court to impose an additional civil penalty not to exceed \$10,000 for each violation against a commercial entity found by the court to have knowingly failed to perform reasonable age verification methods to verify the age of the individuals attempting to access the material;
- provide that this requirement does not apply to any bona fide news or public interest broadcast, website, video, report, or event and is not to be construed to affect the rights of any news-gathering organization; and
- provide that no internet service provider, or its affiliates or subsidiaries, search engine, or cloud service provider will be held to have violated the PAVE Act solely for providing access or connection to or from a website or other information or content on the internet or a facility, system, or network not under the control of that provider, including transmission, downloading, intermediate storage, access software, or other related capabilities, to the extent such provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

**The bill as amended was approved by the House Judiciary 2 Committee and will next be considered by the House Rules Committee.**

HOUSE BILL 576, Health Care Practitioner Transparency Act, was amended by the House Judiciary 1 committee to allow the requirement that a practitioner's last name be included on an ID be waived when the practitioner has a safety concern. **The bill as amended was approved by the House Judiciary I Committee and the full House and will next be considered by the Senate Rules Committee.**

HOUSE BILL 600, Regulatory Reform Act of 2023, was amended by the House Regulatory Reform committee to add language requiring health care providers to retain medical records for a minimum of 10 years from the date of service, and in the case of a minor for 10 years after the patient has reached 18 years of age. It expands the law concerning stroke center designations to add categories for Acute Stroke Ready Hospital, Primary Stroke Center, Thrombectomy-Capable Stroke Center and Comprehensive Stroke Center. A hospital would be required to apply to the Department of Health and Human Services for such a designation. DHHS shall recognize any hospital with the relevant designations if the hospital is certified as such by the American Heart Association or another nationally recognized organization. Any hospital that receives such a certification shall report the information to DHHS within 90 days. **The bill as amended was approved by the House Regulatory Reform Committee and the full House and will next be considered by the Senate Rules Committee.**

HOUSE BILL 773, Let Parents Choose/Sammy's Law of 2023, was amended in the House Commerce Committee to:

- amend the term *large social media platform* to specify that the service must have more than 30,000 monthly active users in the State (was, 1 million monthly active users in the United States) or generates more than \$15 million in annual gross revenue from activities in the State (was, had to generate more than \$500 million in annual gross revenue, adjusted annually for inflation);
- specify that the term *large social media provider* does not include the following: (1) an Internet service provider, electronic mail, or online service application; (2) a website consisting primarily of news, sports, entertainment, or other information or content that is not user generated but is preselected or curated by the provider and for which chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of that information or content; (3) interactive video game service; or (4) e-commerce or online shopping;
- amend the definition of *third-party safety software provider* to no longer require that the person is engaging for commercial purposes or affecting commerce; and
- require every large social media platform provider to obtain a permit from the Department before operating in the State.

**The bill as amended was approved by the House Commerce Committee and will next be considered by the House Committee on Families, Children, and Aging Policy.**

HOUSE BILL 808, Surgical Gender Trans./Minors, was amended by the House Health committee to rework the section of the bill pertaining to limitations on health care providers regarding surgical gender transition procedures on minors. The original version of the bill prohibited specific procedures such as surgeries that sterilize or artificially construct genital tissue or mastectomies and established exceptions to the prohibition. The new version instead specifies what gender transition procedures are allowed for minors and states that all others are unlawful. The allowable procedures in the new version are largely similar to the exceptions in the original bill and include services to a person with a medically verifiable disorder of sex development or a person who does not have normal sex chromosome structure or sex hormone function. Additional allowable procedures are breast reduction causing a physical disorder and any procedure that a physician certifies is medically necessary to treat a physiological condition. The prohibition on use of state funds or government health plans for the performance of gender transition procedures now only applies to minors instead of all patients. The original definitions are almost entirely replaced to conform with the current version of the bill. **The bill as amended was approved by the full House and will next be considered by the Senate Rules Committee.**

HOUSE BILL 809, Hospital Violence Protection Act, was amended by the House Health committee to add an exception to the requirement in the original bill that hospitals with emergency departments must have a law enforcement officer present at all times. In the current version, a hospital would not be required to have a law enforcement officer present if the findings of the security risk assessment required by the bill show that a different level of security is necessary and appropriate. A hospital that makes such a determination shall include the basis for it in its security risk assessment and request an exemption from the Department of Health and Human Services and shall provide workplace violence prevention training to staff and practitioners. The new version of the bill also makes changes to the reporting requirements, including adding a requirement for hospitals to share with DHHS annually the number of assaults occurring at the hospital that required law enforcement involvement, the number of incidences where patient behavioral health and substance use issues resulted in violence. The effective date of the bill was also modified to a one year delay so that Hospitals could prepare for the security changes. **The bill as amended was**

**approved by the House Health Committee and the full House and will next be considered by the Senate Rules Committee. The North Carolina College of Emergency Physicians supports this legislation.**

SENATE BILL 20, Care for Women, Children, and Families Act. This bill is the long-awaited Abortion Bill that was worked on by the House and Senate Republican caucuses. Most of those in Raleigh knew that some changes were coming and there were many predictions about what those would be, but this was the first look that everyone got as to the result of negotiations. The language was added to a conference report by members of the House and Senate to an existing bill regarding the safe surrender of infants. Rolling out this controversial legislation was planned carefully and by placing the language in a conference report, the majority party could avoid committee hearings, attempted amendments to the bill and a long-drawn-out barrage of press coverage. The 46-page bill was rolled out on Tuesday and completely approved by both chambers by Thursday and sent to the Governor. The Republican leadership is confident that they will be able to overturn any veto by the Governor by keeping all Republicans on board. The Governor is taking his time in vetoing the bill, trying to convince moderate Republicans to sustain his veto and reject the bill. The Governor has already announced that he will veto the bill on Saturday and is traveling the State trying to bring attention to the issue which will end on Saturday in Raleigh with a large demonstration against the bill.

The legislation would make abortions illegal after the twelfth week of pregnancy and would prohibit partial birth abortions at any time. Exceptions to these prohibitions are:

- when a qualifying physician determines a medical emergency exists;
- through 20<sup>th</sup> week of pregnancy when the pregnancy is the result of rape or incest;
- through the 24<sup>th</sup> week of pregnancy if a qualifying physician determines a life-limiting anomaly, as defined by the bill, exists.

A physician who advises, procures, or causes an abortion after the twelfth week of pregnancy would be required to record and provide to the Department of Health and Human Services (DHHS) the method used by the physician to determine the probable gestational age of the unborn child and the measurements and an ultrasound image of the unborn child. A physician who procures or causes an abortion after the twelfth week of pregnancy would be required to record and provide to DHHS the findings and analysis by which the physician determined there existed a medical emergency, a life-limiting anomaly, or the pregnancy was caused by rape or incest. This information would not be considered a public record and would be for statistical purposes only. The confidentiality of the patient and physician would be protected. DHHS would be required to collect annually from facilities that perform abortions statistical summary reports concerning medical and demographic information of the abortions provided at the locations. The reports would be for statistical purposes only and the confidentiality of the patient relationship would be required to be protected.

No healthcare provider who objects on moral, ethical or religious grounds would be required to perform or participate in medical procedures that result in an abortion. No healthcare institution would be required to provide abortion services. DHHS shall annually inspect any facility where abortions are performed and shall publish on its website the results of any such inspections conducted since January 1, 2013.

If a physician determines a life-limiting anomaly exists, before performing an abortion the physician must provide the following information to the pregnant woman:

- the basis for the life-limiting diagnosis;

- the risks associated with the life-limiting anomaly and the means of performing the abortion;
- life-limiting anomalies may result in live births with variable lengths of life;
- the likelihood and length of survival after birth, including referrals for neonatal and perinatal palliative care consultations;
- information regarding options other than abortion.

The woman and the physician would be required to sign a document confirming that all of the above required information was provided. A physician who performs an abortion because of a life-limiting anomaly would report to DHHS the identity of the physician who diagnosed the anomaly and the physician who performed the abortion, the probably gestational age of the unborn child, the pregnant woman's age and race and the number of her previous pregnancies, live births, and abortions. This information would not be considered public record.

The legislation requires voluntary and informed consent of the pregnant woman before an abortion and distinguishes between the consent for surgical and medical abortions. For surgical abortions, in addition to consent requirements in current law, the consent form must include:

- the woman is not being forced to have the abortion;
- she understands the abortion is intended to end her pregnancy;
- she understands the abortion has specific risks and may lead to specific complications;
- attestation she has had the opportunity to ask questions about her pregnancy, the development of the unborn child, and alternatives to abortion;
- confirmation she has been provided access to state-prepared information on informed consent;
- she has been given the name and phone number of a physician who has agreed to provide follow-up care;
- attestation she has received enough information to give informed consent;
- that she has a private right of action to sue the physician if she feels she has been coerced or misled;
- a statement that she will be given a copy of all forms and materials with all signatures.

The bill removes the language in current law that allows the required information to be provided by tape recording. The woman must sign and initial entries throughout the consent form, and the physician must sign a declaration form stating that the physician has explained in person the surgical abortion procedure to be used, provided all the information required, and answered all the woman's questions.

The consent requirements for a medical abortion are largely similar to those for surgical abortions. Additional requirements for medical abortions are the inclusion in the consent form information about Rh incompatibility, and **notice that the physician will schedule an in-person follow-up visit seven to 14 days after providing the abortion-inducing drugs to confirm that the pregnancy is fully terminated.**

The legislation also includes provisions that a physician prescribing, administering, or dispensing an abortion-inducing drug must examine the woman **in person** and:

- independently verify that the pregnancy exists;
- determine the woman's blood type, particularly in regards to Rh incompatibility;
- provide other medically indicated diagnostic tests;
- screen the woman for coercion or abuse;
- inform the woman she may see the remains of the unborn child during the abortion;

- verify the probably gestational age is no more than 70 days;
- document in the woman's medical chart the probable gestational age and intrauterine location of the pregnancy, and whether she received certain treatments.

At least 72 hours before the procedure, the physician performing the surgical or medical abortion shall provide the pregnant woman with the physician's full name and information regarding the physician's hospital admitting privileges and whether the procedure is covered by the woman's insurance.

A woman upon whom an abortion has been attempted or performed, or her parent or guardian if the patient is a minor, may bring an action against a person who performed an abortion in violation of the law within three years of the alleged violation. A minor patient may bring action up to three years after becoming 18 years old. A physician who violates this law shall be subject to discipline by the NC Medical Board, and a pharmacist who violates this law shall be subject to discipline by the NC Board of Pharmacy.

After performing an abortion, a health care provider shall report to DHHS the following information:

- identifying information of the physician;
- the location, date, and type of the abortion;
- the woman's demographic information and number of live births, previous pregnancies and previous abortions;
- the woman's preexisting medical conditions;
- the probable gestational age of the unborn child;
- the abortion-inducing drugs used;
- whether the woman returned for the follow-up appointment and the results of that examination;
- any specific complications the woman suffered as a result of the procedure;
- the amount of money billed to cover treatment for complications and whether it was billed to Medicaid, private insurance, or other means.

The legislation requires physicians to report to the US Food and Drug Administration on any complications from abortion-inducing drugs and to DHHS on any complications from a surgical abortion. DHHS shall produce a comprehensive annual statistical report based on data collected as required by the legislation. This report shall not include any information making it possible to identify any woman subject to a report in the legislation.

No healthcare provider or facility or drug manufacturer shall mail or provide directly to a pregnant woman an abortion-inducing drug. No individual or organization shall advertise or provide an internet service when its purpose is to promote the sale of an abortion-inducing drug to pregnant women.

The legislation **prohibits abortions if the woman is seeking an abortion because of the race, sex, or presence of Down syndrome in the unborn child.**

Physicians may perform surgical abortions during the first twelve weeks of pregnancy in a hospital, an ambulatory surgical facility, or a licensed abortion clinic. After the twelfth week, surgical abortions may only occur in a hospital. Abortion clinics must receive a license from DHHS; the annual licensing fee would be \$850 plus \$75 per operating room. Clinics must post licenses in a conspicuous place in the clinic. DHHS shall inspect or delegate to other state entities the authority



to inspect abortion clinics according to rules adopted by the NC Medical Care Commission. Anyone who operates an abortion clinic without a license is guilty of a Class 3 misdemeanor.

The bill requires that if an abortion results in a child born alive, any health care practitioner present shall use all means to preserve the life of the child in the same manner as any other child born at the same gestational age and shall ensure the child is immediately transported and admitted to a hospital. The mother of a child born alive may not be prosecuted for a violation of this requirement. The woman upon whom an abortion was performed resulting in a child born alive may bring civil action against any person who violates this requirement.

The legislation makes changes to several other state laws, including allowing “Certified Nurse Midwives” (CNM’s) to practice without the supervision of a physician under certain requirements. Those requirements include completion of a midwifery education program and passing a national certification examination. Only certified nurse midwives may practice midwifery in a hospital or non-hospital setting. The new law would authorize nurse midwives to write prescriptions for drugs under certain conditions and directs the joint committee of the NC Medical Board and the Board of Nursing to adopt rules governing the approval of midwives to write prescriptions. The bill requires a certified nurse midwife with less than 24 months and 4000 hours of practice to practice under an agreement with a collaborating provider who is a physician. A certified nurse midwife who attends a planned birth outside a hospital setting shall discuss with the patient the risks and obtain a signed informed consent agreement from the patient. The midwife must also provide the patient with a written plan for emergent and nonemergent transfer to a health care facility. Planned home births shall be limited to low-risk pregnancies. **No physician, physician assistant, nurse or health care facility shall be held civilly liable for medical care provided during an emergency situation arising during the birth of an infant as a consequence of care provided by a certified nurse midwife who attends a planned birth outside a hospital setting.**

Regarding sexual offenses, the bill expands the types of offenses for which violent and repeat offenders are subject to satellite-based monitoring. It increases the punishment for assault on a pregnant woman to a Class A1 misdemeanor. It establishes the crime of Class A1 misdemeanor domestic violence for use of physical force or the threat of use of a deadly weapon against a person with whom the offender is or has been in certain relationships.

In other provisions, the bill appropriates \$3.5 million annually to DHHS for grants to local health departments and nonprofit community health centers to provide long-acting reversible contraceptives for underserved, uninsured or medically indigent patients. It directs DHHS to increase the Medicaid rate paid for obstetrics maternal bundle payments for pregnancy care and for group prenatal care visits. The bill also directs DHHS to maintain the child care subsidy market rates at the 75<sup>th</sup> percentile for children in three, four and five-star-rated child care centers and appropriates funds to implement this directive. It authorizes up to eight weeks of paid parental leave for state employees. **The bill as a conference report was approved by both the House and the Senate and will next be considered by the Governor who has already announced that he will veto the bill.**

SENATE BILL 206, Control Sub./Opioid/Vaccine/At Home Omnibus, was amended by the House Rules committee to remove the requirement that health care practitioners and pharmacies must provide educational information to patients receiving a prescription for Schedule II controlled substances. It also removes the section prohibiting further claims against pharmaceutical manufacturers of opioids to protect the state’s share of the National Opioid Settlement. The legislation adds new language to allow a waiver of the requirements in statutes regulating health

care facilities and services for hospitals that participate in the federal Acute Hospital Care at Home Program if the requirements conflict with a hospital's ability to participate in the program. Care provided to patients in their homes under the acute care at home program shall not count as licensed bed capacity and shall not require a home care license or certificate of need approval. **The bill as amended in the House Rules Committee and the full House was approved and will next be considered by the Senate Rules Committee.**

- Colleen Kochanek  
NCCEP Legislative Counsel  
Kochanek Law Group  
919.809.5601  
[colleen@kochaneklawgroup.com](mailto:colleen@kochaneklawgroup.com)  
[www.kochaneklawgroup.com](http://www.kochaneklawgroup.com)<sup>i</sup>

Ashley Matlock Perkinson  
Perkinson Law Firm  
919.210.8209  
[ashley@perkinsonlawfirm.com](mailto:ashley@perkinsonlawfirm.com)

Rachel E. Beaulieu  
Rachel E. Beaulieu Law Office, PLLC  
919.896.6296  
[Rachel@BeaulieuEdLaw.com](mailto:Rachel@BeaulieuEdLaw.com)

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