

SF2673 - 0 - Court Sentencing; Mandatory Minimum Sentences

Chief Author: **Warren Limmer**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed: **2/12/2022 9:43:03 PM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Corrections Dept Public Defense Board
 Sentencing Guidelines
 Comm

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund	-	-	1,328	4,634	8,317	
Public Defense Board						
General Fund	-	-	1,034	2,749	2,749	
State Total						
General Fund	-	-	2,362	7,383	11,066	
Total	-	-	2,362	7,383	11,066	
Biennial Total			2,362			18,449

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	14.8	51.5	92.4
Public Defense Board					
General Fund	-	-	20	20	20
Total	-	-	34.8	71.5	112.4

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Alyssa Holterman Rosas **Date:** 2/12/2022 9:43:03 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	1,328	4,634	8,317
Public Defense Board					
General Fund	-	-	1,034	2,749	2,749
Total	-	-	2,362	7,383	11,066
Biennial Total			2,362		18,449
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Corrections Dept					
General Fund	-	-	1,328	4,634	8,317
Public Defense Board					
General Fund	-	-	1,034	2,749	2,749
Total	-	-	2,362	7,383	11,066
Biennial Total			2,362		18,449
2 - Revenues, Transfers In*					
Corrections Dept					
General Fund	-	-	-	-	-
Public Defense Board					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

SF2673 - 0 - Court Sentencing; Mandatory Minimum Sentences

Chief Author: **Warren Limmer**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed: **2/12/2022 9:43:03 PM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

SF2673 amends Minn. Stat. § 609.11 (Minimum Sentences of Imprisonment), subdivision 8, which authorizes the court on motion of the prosecutor or on its own motion to sentence a defendant without regard to certain mandatory minimum sentences if the court finds substantial and compelling reasons to do so, by limiting the authority to only sentence without regard to those mandatory minimum sentences under section 609.11, subdivision 4, offenses involving a dangerous weapon.

Assumptions

It is assumed that the provisions of the bill will not increase case filings as the bill does not create any new criminal offenses. Rather, the bill only impacts the sentences that may be imposed for existing felony offenses.

Expenditure and/or Revenue Formula

This bill is not anticipated to have a significant fiscal impact on the judicial branch as it will not increase case filing rates or measurably increase the judicial branch resources required to process these cases.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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SF2673 - 0 - Court Sentencing; Mandatory Minimum Sentences

Chief Author: **Warren Limmer**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed: **2/12/2022 9:43:03 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	1,328	4,634	8,317	
Total	-	-	1,328	4,634	8,317	
Biennial Total			1,328		12,951	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	14.8	51.5	92.4
Total	-	-	14.8	51.5	92.4

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	-	1,328	4,634	8,317	
Total	-	-	1,328	4,634	8,317	
Biennial Total			1,328		12,951	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	1,328	4,634	8,317	
Total	-	-	1,328	4,634	8,317	
Biennial Total			1,328		12,951	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-		-	

Bill Description

The proposed legislation would amend M.S. 609.11, subdivision 8, to limit the applicability of waiver to subdivision 4, which applies to the commission of offense while using a dangerous weapon other than a firearm. The remaining mandatory minimums, from which this bill would remove the applicability of subdivision 8, include commission of an enumerated offense while possessing or using a firearm, and possession of a firearm or ammunition by one previously convicted of a crime of violence.

Assumptions

The Minnesota Sentencing Guidelines Commission (MSGC) assumes that due to the pandemic, future cases involving dangerous weapons would be similar in numbers, offense, and weapon type to cases sentenced in 2019 rather than cases sentenced in 2020. There were 722 firearms cases sentenced in 2019.

The MSGC assumes this bill would prohibit, in all applicable cases, any mitigated dispositional departure from the Sentencing Guideliness as well as any mitigated durational departure below the mandatory minimum duration.

MSGC monitoring data indicates the mitigated dispositional departure rate for the 722 cases that were sentenced in 2019 was 38.5 percent (278 cases). Of the 444 remaining cases that received commitments to prison, 13.1 percent (58 cases) received a sentence that was shorter than the mandatory minimum duration.

The MSGC assumes that in the future all of the 722 firearms cases would receive executed prison sentences of at least the mandatory minimum duration.

The MSGC estimates the provisions of this bill would result in the eventual need for 919 additional prison beds each year. The estimated year-by-year prison bed impact would be an additional 139 beds in FY2023, 395 beds in FY2024 and 607 beds in FY2025, eventually reaching 919 beds in FY2032 and each subsequent year.

The impact on supervision caseloads statewide is not expected to be significant as there would be an offset of individuals who would go to or remain in prison rather than be placed on probation or supervised release.

Prison bed costs are based on a marginal per diem cost of \$41.80 for FY2023, \$42.42 for FY2024, and \$43.18 for FY2025 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual costs are estimated by multiplying the number of prison beds by the subsequent annual per diem. Unless

otherwise noted, prison beds are phased out on a quarterly basis.

Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 including benefits.

This bill would be effective August 1, 2022 and apply to crimes committed on or after that date..

Expenditure and/or Revenue Formula

Costs/(Savings) for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	0	139	395	607
Cost of Prison Beds (in 000s)	\$0	\$0	\$1,328	\$4,634	\$8,317
FTEs	0	0	14.8	51.5	92.4

Long-Term Fiscal Considerations

Costs would increase each year, reaching \$14,484,000 in FY2033 and each subsequent year.

Local Fiscal Impact

There would be some savings to local correctional resources as result of this bill. The MSGC estimates there would be 278 fewer probationary cases being supervised each year statewide, and 253 fewer cases serving local conditional confinement (a savings of 88 jail beds statewide).

References/Sources

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

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SF2673 - 0 - Court Sentencing; Mandatory Minimum Sentences

Chief Author: **Warren Limmer**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed: **2/12/2022 9:43:03 PM**
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	1,034	2,749	2,749	
Total	-	-	1,034	2,749	2,749	
Biennial Total			1,034			5,498

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	20	20	20
Total	-	-	20	20	20

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	1,034	2,749	2,749	-
Total		-	-	1,034	2,749	2,749
Biennial Total					1,034	5,498
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	1,034	2,749	2,749	-
Total		-	-	1,034	2,749	2,749
Biennial Total					1,034	5,498
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total					-	-

Bill Description

The provisions of Minn.Stat. Section 609.11 sets out the mandatory minimum sentences of imprisonment when a person commits a crime while using or possessing firearms, including ammunition, or a dangerous weapon. Currently, Minn.Stat. 609.11, subdivision 8, permits waiver of the mandatory minimum sentences for firearms (subd. 5) or dangerous weapons (subd. 4) offenses. This bill eliminates waiver of the mandatory minimum for firearm offenses, and limits waiver to subdivision 4, which applies to commission of an offense while using a dangerous weapon other than a firearm. With the changes in the bill the MSGC is assuming that the bill prohibits all departures from the mandatory minimums for offenses listed in M.S. 609.11, subd 9 and M.S. 624.712, Subd 5. The MSGC states that the bill would also prohibit, in all applicable cases, any mitigated dispositional departure from the Sentencing Guidelines, as well as any mitigated durational departure below the mandatory minimum duration.

Assumptions

According to MSGC monitoring data, in 2019 the mitigated dispositional departure rate for the 722 cases to which subd. 5 applied was 38.5 percent. Based on the MSGC numbers there would now be 278 cases where there would be no incentive for a plea agreement (722 x 38.5%) and those cases would likely go to trial. Public defenders handle approximately 90% of all felony cases, so the estimate is that 250 of these cases will be public defender cases.

Expenditure and/or Revenue Formula

Trial Level

A conservative estimate of a 70% trial rate this would mean an additional 175 trials annually. Assuming a week-long trial with an additional week of preparation, there would be a need for an additional 14,000 hours of public defender time. This equates to 7.5 FTE attorney positions. The boards Weighted Caseload Standards call for 2.0 additional legal secretary/assistants, 1.0 investigator, 1.0 dispositional advisor position, and 1 paralegal position to support these attorney positions. On the trial level the annual costs would be \$1,388,000. Assuming a phase in of the positions over the second this would mean a 2023 cost of \$694,000 on the trial level.

Appellate Level

Assuming a trial win rate of 35% we would assume 65% of the cases would be appealed (115) cases. An appellate attorney should handle no more than 18-19 cases in a year which would mean a need for 6 additional attorney staff, and 1.5 legal secretary/assistant positions. There would also be a need for trial transcripts in these cases. Based on past experience there are approximately 200 pages per day of trial, at rate of \$4.25 per page, cost is \$850 per day or \$4,250

per trial, or \$488,750 annually. Annually this amounts to \$1,363,000. We would not expect to see appeals until later in the fiscal year, so phasing these positions in over the last three months of the year would mean a FY 2023 cost of \$340,000

Staffing totals would be 13.5 attorneys, 3.5 legal secretary/Assistants 1 investigator, 1 paralegal, and 1 dispositional advisor position.

Due to the serious and complex nature of these cases it would require that a season attorney and staff handle the cases. The salary for an attorney at the middle of the range is \$86,222 with benefits and associated non personnel costs the annual cost is \$125,881. The salary for an investigator at the middle of the range is \$59,497 with benefits and associated non personnel costs the annual cost is \$95,441. The salary for a paralegal at the middle of the range is \$59,497 with benefits and associated non personnel costs the annual cost is \$95,441. The salary for a dispositional advisor at the middle of the range is \$60,765 with benefits and associated non personnel costs the annual cost is \$96,885. The salary for a legal secretary/assistant at the middle of the range is \$45,752 with benefits and associated non personnel costs the annual cost is \$79,785.

Assuming a phase in of positions during FY 2023 the costs would be \$1,034,000 with on going annual costs of \$2,749,000.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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SF2673 - 0 - Court Sentencing; Mandatory Minimum Sentences

Chief Author: **Warren Limmer**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed: **2/12/2022 9:43:03 PM**
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Jim Carlson **Date:** 2/11/2022 10:44:28 AM
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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

Minn. Stat. § 609.11 establishes mandatory minimum sentences of imprisonment for committing an enumerated offense while using (or, in some cases, merely possessing) firearms, other dangerous weapons, or, in some cases, ammunition. This bill amends Minn. Stat. § 609.11 by amending subdivision 8, which permits waiver of these mandatory minimums, to limit the applicability of waiver to subdivision 4, which applies to commission of offense while using a dangerous weapon other than a firearm. The remaining mandatory minimums, from which the bill removes the applicability of subdivision 8, are displayed in Table 1:

Table 1. Mandatory Minimums in Minn. Stat. § 609.11 Related to Firearms or Ammunition

Offense	Minimum sentence of imprisonment	Minimum sentence of imprisonment (second or subsequent offense)	Citation Minn. Stat. § 609.11
Commission of a listed offense (see Minn. Stat. § 609.11, subd. 9) while using or possessing a firearm	3 years	5 years	Subd. 5(a)
Possession of firearm or ammunition by one previously convicted of a "crime of violence" (Minn. Stat. § 624.712, subd. 5)	5 years	5 years	Subd. 5(b)

The bill is effective August 1, 2022, and applies to crimes committed on or after that date

Assumptions

Due to the ongoing COVID-19 health pandemic, case volume data in 2020 is unreliable (fell by more than 30%) and therefore the 2020 data is not being used for fiscal note assumptions. Therefore, it is assumed that future cases involving dangerous weapons will be similar in numbers, offense, and weapon type to cases sentenced in 2019 when there were 722 firearms cases sentenced that were subject to Minn. Stat. § 609.11 provisions.

By removing the applicability to subd. 5 of the waiver provisions of subd. 8 and leaving intact the "shall be committed" language of subd. 5 and the "no early release" provision of subd. 6, the bill converts the subd. 5 mandatory minimums into provisions that closely resemble the mandatory minimum found to be nonwaivable in *State v. Turck* (Minn. App. 2007). It is therefore assumed that the bill prohibits all departures from the mandatory minimums shown in Table 1.

The Minnesota Sentencing Guidelines provide that whenever there is a mandatory minimum specified in statute, the presumptive disposition is commitment to prison for the term specified or the duration in the appropriate cell on the applicable grid, whichever is longer. Therefore, this bill will also prohibit, in all applicable cases, any mitigated dispositional departure from the Sentencing Guidelines, as well as any mitigated durational departure below the mandatory minimum duration. According to MSGC monitoring data, in 2019 the mitigated dispositional departure rate for the 722 cases to which subd. 5 applied was 38.5 percent and, of the 44 cases that received commitments to prison, 58 (13.1%) received a sentence that was shorter than the mandatory minimum duration.

The number of cases and departure rates for offenses to which the mandatory minimums applied are shown in Table 2.

Table 2. Mandatory Minimums in Minn. Stat. § 609.11, Cases and Departures, 2019 Sentences

Offense	Minimum Sentence of Commitment to Prison	Annual Cases	Mitigated Dispositions (Probation instead of Prison)	Mitigated Durational Departure from Prison Commits (Shorter Prison Durations)
Commit listed crime while using or possessing firearm	36 months	235	99 (42%)	6 of 136 (4%)
Commit listed crime while using or possessing firearm (2nd or subseq.)	60 months	14	2 (14%)	2 of 12 (17%)
Prohibited felon in possession of firearm or ammo	60 months	473	177 (37%)	50 of 296 (17%)
Total		722	278	58

It is assumed that in the future a similar number of annual cases (722), with similar underlying offenses and criminal histories, will be sentenced for offenses involving firearms, and that all will receive executed prison sentences of at least the mandatory minimum duration. Of cases now receiving mitigated dispositional departures, it is assumed that those now receiving stays of execution will instead receive executed sentences at the previously pronounced duration, unless the mandatory minimum duration is greater; and that those now receiving stays of imposition will instead receive executed sentences at the mandatory minimum duration, even if the Sentencing Guidelines presume a longer duration.

Expenditure and/or Revenue Formula

N/A

Long-Term Fiscal Considerations

Based on the assumptions above, the eventual estimated prison-bed impact is a need of 919 beds annually by year 2032: 858 beds from cases that will move from probation to prison; and 61 beds from cases that will continue to receive prison but for more time; i.e., at least the mandatory minimum duration. This eventual prison-bed cost is displayed, by statutory mandatory minimum and by type of mitigated departure eliminated by the bill, in Table 3.

Table 3. Estimated Prison-Bed Impact Detail

Offense	Mandatory Minimum	Number of annual mitigated dispositions eliminated	Prison bed cost of change	Number of annual mitigated durations reduced or eliminated	Prison bed cost of change	Total prison bed cost of change
Commit listed crime while using or possessing firearm	36 months	99	+255 beds	6	+3 beds	+258 beds
Commit listed crime while using or possessing firearm (2nd or subseq.)	60 months	2	+9 beds	2	+1 beds	+10 beds
Prohibited felon in possession of firearm or ammo	60 months	177	+593 beds	50	+58 beds	+651 beds
Total	--	278	+858 beds	58	+61 beds	+919 beds

The timing of the prison-bed need is 139 beds in 2023, 395 beds in 2024, 607 beds in 2025, 722 beds in 2026, 774 beds in 2027, 796 beds in 2028, 826 beds in 2029, 873 beds in 2030, 892 beds in 2031, and 919 beds in 2032 and every year after (as displayed in Table 4).

Table 4. Prison-Bed Timing

Year	Estimated Prison-Beds Needed
2023	139
2024	395
2025	607
2026	722
2027	774
2028	796
2029	826
2030	873
2031	892
2032	919

Local Fiscal Impact

Because this bill mandates that all offenders subject to the mandatory minimums in subd. 5 will receive prison sentences, there will be some savings to local jurisdiction from people no longer receiving probation sentences. In 2019, 253 (91%) of the 278 firearms cases which did not receive a prison sentence had local jail time pronounced as part of their probation sentence. The average pronounced duration was 189 days (serve 2/3 = 127 days). It is estimated that the provisions of this bill will result in 278 fewer offenders receiving probation sentences and thus 278 fewer offenders under local supervision.

It will also result in 253 fewer offenders serving local jail time which will result in a savings of 88 jail beds statewide ($253 \times 127 = 32,131$ jail days $\div 365 = 88$ beds).

References/Sources

2019 MSGC Monitoring data.

State v. Turck, 728 N.W.2d 544 (Minn. App. 2007), *review denied* (Minn. May 30, 2007).

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