

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

May 17, 2007

Tim Shea
Sr. Staff Attorney
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Dear Tim:


The Board of Juvenile Court Judges has reviewed the proposed revisions to Utah Rule of Juvenile Procedure 7. The Board has concerns about the deletion of the following subparagraph:

~~(d)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.~~

Specifically, the Board is concerned that the deletion of subparagraph (d)(7) prevents juvenile court judges from issuing verbal warrants or "pick-up orders" when requested by a probation officer after hours and on weekends. After thorough discussion, the Board decides to solicit a legal memo on the issue from its law clerk. However, the Board will be unable to obtain a complete memo prior to the end of the comment period on May 18, 2007. In the interim, the Board wishes to express its concerns and to request that any revision to Rule 7 contain a clarification regarding the appropriate procedure for issuing a verbal warrant in these circumstances, if any.

Please feel free to contact me on behalf of the Board with any questions or concerns regarding the Board's comments.

Sincerely,


Charles Behrens, Chair
Board of Juvenile Court Judges

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

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July 3, 2007

Carol Verdoia
URJP Committee Chairperson
Office of the Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140833
Salt Lake City, Utah 84114-0833

Re: Revisions to Rule 7 of the Utah Rules of Juvenile Procedure

Dear Ms. Verdoia:

On May 17, 2007 the Board of Juvenile Court Judges submitted an official comment to Tim Shea regarding the proposed revisions to Rule 7 of the Utah Rules of Juvenile Procedure. The Board expressed concerns about the deletion of the following subparagraph:

~~(d)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.~~

The Board requested additional time to solicit a legal memo from its law clerk on the question of whether a verbal "pick-up order" constitutes a verbal warrant prohibited by the deletion of Rule 7(d)(7). At its June 8th meeting, the Board reviewed the enclosed legal memo from its law clerk which indicates that a pick-up order does not constitute a verbal warrant. Accordingly, the Board proposes the incorporation of the following language into Rule 7:

This rule shall not limit the authority of a court to issue pick-up orders for juveniles under the continuing jurisdiction of the court. Pick-up orders may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile, and shall be supported by an affidavit from the requesting authority the next court business day.

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Carol Verdoia

July 3, 2007

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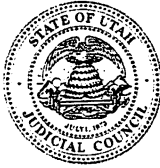
The Board requests that you review the proposed language at your July 13th URJP Committee meeting and consider it for submission to the Supreme Court. The Board recognizes that, depending on the placement of the proposed language, the URJP Committee may need to consider other revisions to produce consistency with the existing language of Rule 7. Please feel free to contact me on behalf of the Board with any questions or concerns that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Behrens", with a long, sweeping horizontal line extending to the right.

Charles D. Behrens, Chair
Board of Juvenile Court Judges

cc: Brent Johnson
Maile Verbica



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Ray Wahl, Juvenile Court Administrator

From: Maile Verbica, Law Clerk

Date: May 29, 2007

RE: Juvenile Pick-up Orders (or Warrants)

ISSUE: Is a pick-up order equivalent to a warrant, under Utah law, when issued by a juvenile court?

BRIEF ANSWER: No. While pick-up orders are not defined by statute, the term appears in case law signifying a court order to take someone into custody. The Juvenile Court Act of 1996 authorizes taking juveniles into custody through one of four methods: (1) without a warrant, in exigent circumstances; (2) with a warrant; (3) with an order; or (4) with parental consent. Since warrants and orders are listed separately, with different requirements, they cannot be considered synonyms. Furthermore, the Juvenile Court Act grants courts broad powers to issue orders that relate to the guidance, rehabilitation, placement, and control of minors. Pick-up orders fit squarely within these parameters. In sum, pick-up orders are not warrants, but are valid orders issued by the courts to take juveniles into custody.

ANALYSIS: The Utah Supreme Court has directed state courts to "retain copies of all warrants issued and the documents supporting the requests for such warrants." *Anderson v. Taylor*, 2006 UT 79, ¶ 26, 149 P.3d 352. While some warrants authorize law enforcement personnel to pick up an individual and take him or her into custody, the question at hand is whether all such orders, often called "pick-up orders," are warrants. This memorandum will first discuss the nature of pick-up orders, followed by a discussion of whether pick-up orders are warrants.

Pick-up orders. There is no statutory mention or definition of "pick-up orders" in Utah. The Utah Administrative Code utilizes the term in one section. UTAH ADMIN. CODE R. 512-32-6 (2007) (prohibiting disclosure of a child's communicable disease in pick-up-orders filed with the

juvenile court, but allowing reference to high risk behaviors). “Pick-up order” is a generic term referring to an order to take someone into custody. Although it is sometimes used interchangeably with “warrant,” it has also been used to indicate the lack of a warrant. Compare Paul Wake, *Helping Children through the Juvenile Justice System: A Guide for Utah Defense Attorneys*, 15 BYU J. PUB. L. 31, 36 n.20 (2000-2001) (“If a child is picked up because a judge issued a bench warrant (sometimes called a pick-up order) pursuant to UTAH CODE ANN. § 78-3a-112 (2000) and UTAH R. JUV. P. 39, the child will go to detention.”), with *State ex rel. M.C. v. State*, 2003 UT App 429, ¶ 3 (Utah Ct. App. 2003) (distinguishing a pick-up order from a bench warrant: “The juvenile court issued a bench warrant for M.C.’s mother and a ‘pick-up’ order for [three-month-old] M.C.”), and *Karr v. Smith*, 774 F.2d 1029, 1030 (10th Cir. 1985) (holding that while plaintiff’s arrest following issuance of a ‘pick-up order’ was a warrantless arrest, it was not unlawful because it was supported by probable cause).

The term “pick-up order” has been used in delinquency cases, *see, e.g., State ex rel. M.V. v. State*, 1999 UT App 104, ¶ 13 (“After confirming M.V. was truant and learning of the outstanding juvenile court pick-up order, the officer took M.V. into custody and transported him to youth detention.”), in child welfare cases, *see, e.g., In re E.R.*, 2001 UT App 66, ¶ 2 (“[T]he juvenile court issued a pick-up order authorizing DCFS to remove the children from Parents’ custody.”), and in custody cases, *see, e.g., In re B.T.D.*, 2003 UT App 99, ¶ 10 (“The court ultimately . . . awarded custody of the children to Gunderman, and issued a pick-up order.”). Pick-up orders are not unique to juvenile court. *Id.*; *see also United States v. Clarke*, 110 F.3d 612, 613 (8th Cir. 1997) (“ ‘Pick-up orders’ are entered in the KCPD computer when officers believe that probable cause exists to arrest an individual for a particular crime.”).

Orders or warrants. The Juvenile Court Act of 1996 governs taking juveniles into custody, and authorizes doing so by order as well as by warrant. UTAH CODE ANN. §§ 78-3a-106, -112, -113 (2007). In all, it enumerates four different types of authorization: first, without a warrant, when there are exigent circumstances, §§ 78-3a-106(2)(a), -113; second, with a warrant, §§ 78-3a-106(2)(b), -106(3), -112(1), -112(3), -112(6), -301(5); third, with a court order, §§ 78-3a-106(2)(c), -113(5)(c); *cf.* UTAH CODE JUD. ADMIN. R. 4-701 (authorizing a bench warrant or order, but requiring that if a bench warrant is issued for juveniles, it must be flagged when issued for juveniles); UTAH ADMIN. CODE R. 512-32-6 (2007) (recognizing the validity of pick-up orders by requiring compliance with specific guidelines when the child has a communicable disease); and fourth, with parental consent, UTAH CODE ANN. § 78-3a-106(2)(d) (2007).

The inquiry at hand concerns mainly the second and third of these, warrants and orders. The bare fact that orders are listed separately from warrants lends support to the position that such orders are not simply warrants by another name. “In interpreting the meaning of a statute or ordinance, we begin first by looking to the plain language of the ordinance. When examining the plain language, we must assume that each term included in the ordinance was used advisedly.” *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208. Therefore, when “warrant” appears in a statute in addition to “order,” particularly in the phrase “warrant *or* order,” the word “order” is not a synonym for, but an alternative to, “warrant.”

An order is an alternative to a warrant in Section 78-3a-106(2) of the Utah Code, which requires exigent circumstances, a warrant, a court order, *or* parental consent in order to take a child into custody:

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);

(c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or

(d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.

An order is also an alternative to a warrant in Section 78-3a-113(5)(c), which allows admitting a minor to detention either "based on the guidelines or [when] the minor has been brought to detention pursuant to a judicial order or [Juvenile Justice Services] division warrant." In this context, one may argue that "order" simply distinguishes a judicial warrant from a division warrant. However, "we must assume that each term included . . . was used advisedly," and understand order to mean order, and not warrant. *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208.

The Utah Code specifies that courts can address a juvenile's failure to appear by issuing a bench warrant, § 78-3a-112. However, in parking, traffic and infraction cases, Rule 4-701(2)(C) of the Code of Judicial Administration allows courts to address a juvenile's failure to appear with either a "bench warrant *or* order to take the defendant into custody" (emphasis added).

Furthermore, a pick-up order was not the equivalent of a warrant in the Tenth Circuit case of *Karr v. Smith*. 774 F.2d 1029 (10th Cir. 1985). Karr filed a Section 1983 claim challenging his arrest for destruction of property. *Id.* at 1031. The *Karr* court found that while Karr's arrest pursuant to a pick-up order was a warrantless arrest, it was not unlawful because it was supported by probable cause. *Id.* at 1031-32. Although this is a federal court case, it supports the concept that pick-up orders are not necessarily synonymous with warrants, depending upon the jurisdiction. *Compare State v. Bell*, 780 P.2d 175 (Kan. Ct. App. 1989) (emphasizing that the defendant was in custody pursuant to a pick-up order and that "[n]o warrant for [his] arrest had been issued"), with *In re O.M.*, 565 A.2d 573, 584 (D.C. 1989) (asserting that a juvenile pick-up order is the equivalent of an arrest warrant).

Having determined that an order is not the same as a warrant under the Juvenile Court Act of 1996 ("Act"), the question remains whether the orders specified in the Act include pick-up orders. The Act describes the authorized orders as those issued by a court, "after the parent or guardian of the child is given notice and an opportunity to be heard," so that a peace officer (or child welfare worker) may "remove a child from the child's home or school, or take a child into protective custody." UTAH CODE ANN. § 78-3a-106(2) (2007). This describes a pick-up order.

There is an additional phrase prohibiting the peace officer or child welfare worker from “enter[ing] the home of a child who is not under the jurisdiction of the court.” *Id.* This language begs the question, what about juveniles who *are* under the jurisdiction of the court? May a peace officer enter their homes without exigent circumstances, a warrant, an order, or parental consent? The Act fails to answer that question explicitly. However, it seems unlikely that the legislature would authorize a court to issue a pick-up order for a child who is *not* under its jurisdiction, but withhold authorization to issue a similar order for a child over whom it exercises continuing jurisdiction. A more likely interpretation is that the continuing jurisdiction of the court allows a peace officer to enter the child’s home at the discretion of the court.

With respect to juveniles who *are* under the jurisdiction of the court, the Act authorizes probation officers to take them into custody. “A probation officer may also take a minor into custody . . . if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.” § 78-3a-113(2)(b). Under this section, the continuing jurisdiction of the court expands the ability to take a juvenile into custody – extending it from peace officers to probation officers. Similarly, the Utah Rules of Juvenile Procedure Rule 7(f), amended April 2007, states: “This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.” It is unlikely that the Act would prevent courts from issuing orders allowing peace officers to do what probation officers are freely able to do.

Indeed, the Act confers broad powers on juvenile courts, allowing them to “order appropriate measures to promote guidance and control . . . order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court’s jurisdiction . . . and to establish appropriate authority over these minors by means of placement and control orders.” UTAH CODE ANN. § 78-3a-102(5)(b)-(d) (2007). Pick-up orders fit squarely within these parameters, since they relate to the guidance, rehabilitation, placement, and control of the minors.

The Utah Supreme Court requires “the plain language of a statute [] to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters.” *State v. Schofield*, 2002 UT 132, ¶ 8, 63 P.3d 667 (internal quotation marks omitted). Read together, the various provisions of the Juvenile Court Act of 1996¹ support the proposition that pick-up orders are not warrants, but valid orders issued by the courts to take juveniles into custody.

In conclusion, the Juvenile Court Act of 1996 authorizes both warrants and orders, including pick-up orders, as separate and distinct tools courts can use to accomplish their purposes.

¹ UTAH CODE ANN. §§ 78-3a-102(5)(b)-(d), -106, -112, -113 (2007).

You may remember that I will be unable to attend our meeting Friday the 13th. I have been drafted to do a wedding for my niece on Friday in Vernal. However, I did want to make a few comments on Rule 7.

I am OK with the Warrants vs. pick up orders distinction, but we may need to watch our forms. We use only one form in 8th which is entitled "Warrant for Detention." I believe the form was developed by the AOC and may have broad use throughout the state. See attached.

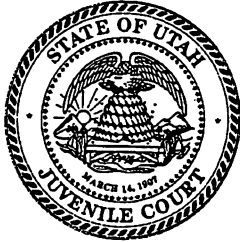
The problem I see needing a fix is to have an accurate and reliable record of the facts upon which a judge bases a pick-up order or warrant. I do not see a big problem nor have I ever heard of a problem of a probation officer representing to DT that an order is authorized and in fact no judge has authorized the order. However, I have had probation officers orally exaggerate the facts in order to get me to issue a pick-up order. When I review the affidavit, after the fact, the exaggerated facts are not present.

I favor being able to issue a "pick-up order" over the telephone. We should not require the judge physically sign an order at 2:00 AM. That is problematic. I do not believe DT has had a problem with PO's fraudulently representing that an order has been authorized. DT should accept PO's oral representations that the Judge has authorized an order. In the alternative, and a better fix might be to make probation violations a "holdable offense." In the adult world, probation can put a probationer in jail on a 72 hour hold without judicial approval. This is my preferred approach and would solve most of these issues. .

However, I favor the probation officer putting the facts in writing to present to the judge to support the pick-up order. A probation officer can easily write out the facts (at any place and at any time of day or night) on an affidavit form and read those to the judge over the phone for his or her consideration. If the judge has a question, the probation officer can easily amend or annotate the affidavit for the record. If a question arises about the facts upon which the judge based his or her order, we at least have an affidavit. The paper work can be finalized the next business day. The judge can review the affidavit while his or her mind is fresh and verify that it contains the facts he or she remembers.

This approach has some advantages. The judge and others handling the detention hearing have more of the facts and are not as lost. With this approach, the affidavit is more complete because the judge has control over what is in the affidavit while he or she has the probation officer on the phone. When the judge asks questions, he or she can direct those additional facts be added on the spot. Otherwise, the judge gets whatever the probation officer wants to put in the affidavit after the fact. I have personally noticed a difference in what I hear on the phone and what I get in the affidavit. Some probation officers are willing to exaggerate a little on the phone, but reluctant to put the same facts in writing. Requiring a written affidavit be read to the judge will produce more reliable and credible facts. There should also be a reliable record of the facts upon which a pick-up order or warrant is based. This was my primary objective in the rule revisions.

Sorry for the length. Thank you for taking my comments. Please behave in my absence.



EIGHTH DISTRICT JUVENILE COURT

FOR ** COUNTY

STATE OF UTAH

STATE OF UTAH, in the interest

WARRANT FOR DETENTION

**

Case No: **

D.O.B. **

Address: **

A person under 18 years of age

TO ANY PEACE OFFICER AND THE PERSON IN CHARGE OF DETENTION: It appearing to the Court, by sworn affidavit, that detention of the above-named minor is necessary because; ** therefore, you, any peace officer of the State of Utah, are hereby ordered to take into custody immediately and convey said minor into the custody of the person in charge of detention at the nearest detention facility, and you, the person in charge of detention, are ordered to receive said minor into your custody and to keep safely said minor until further order of this Court or until otherwise legally discharged.

BY THE COURT:

Dated: **

Judge Larry A. Steele

Warrant Expiration Date: **

PLEASE RETURN WARRANT TO THE COURT UPON EXPIRATION DATE

RECEIVING AGENCY/S

<input type="checkbox"/> Sheriff _____	<input type="checkbox"/> DCFS _____	Sent to Receiving Agency/s
<input type="checkbox"/> Police _____	<input type="checkbox"/> Case Worker _____	(Date) _____
<input type="checkbox"/> Detention _____	<input type="checkbox"/> Other _____	By: _____
		<input type="checkbox"/> Critical Message

<input type="checkbox"/> Warrant RECALLED: (Date) _____	NOTE: Please DESTROY your copy of the above Warrant for Detention _____ _____ _____	Sent to Receiving Agency/s (Date) _____ By: _____ <input type="checkbox"/> Critical Message
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Katie Gregory - Rules question

From: Maile Verbica
To: Gregory, Katie
Date: 7/3/07 10:51AM
Subject: Rules question

Hey Katie --

It was fun seeing you having a life outside the AOC on Saturday (not that anything is wrong with life in the AOC, mind you...) Don and Erin enjoyed meeting you. After you told us about the cat in your back yard, Erin starting showing me posters in our neighborhood for lost cats. She's pretty convinced that all lost cats now live in your back yard. It's pretty nice for her -- she's very invested in animals, and now she's not worried about the lost ones any more.

My question for you -- being a rules committee guru -- is whether there is a rule for when a rule of procedure and a statute seem to conflict. For example, Rule 15(e) of the Utah Rules of Juvenile Procedure requires completion of a non-judicial adjustment within 60 days, with the possibility of a court-authorized extension of 60 days. Yet section 78-3a-502(2)(c) seems to allow 90 days for the same thing:

In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than 90 days without leave of a judge of the court, who may extend the period for an additional 90 days.

Utah Code Ann. § 78-3a-502(2)(c)

90

Do you know which should be followed?

Maile

Katie Gregory - Re: Rule 7 memo

From: Maile Verbica
To: Gregory, Katie
Date: 6/19/07 12:12PM
Subject: Re: Rule 7 memo

Katie --

Okay, this is a day late (and a dollar short?), but I do have one other concern about Rule 7. When I looked back over the rule as a whole, I realized that the proposed language seems incompatible with sub-section c, which deals with the same issue we're addressing, but uses only the term warrant (thereby limiting the concept):

(c) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(c)(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(c)(2) has violated a court order

I think we would want to add the term "order" (e.g.: "A warrant or order for immediate custody..."). In fact, if that change were made, some of the other language would be redundant. The second sentence of the proposed language could be added as a sub-section (c)(3), as follows:

Pick-up orders may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

I apologize for my lapse. I was focusing on replacing the language that was deleted, when I should have focused on working with the language that was still there. What do you think?

Maile

>>> Katie Gregory 06/18/07 03:54PM >>>
 Thanks!

>>> Maile Verbica 06/18/07 03:45PM >>>
 Sure -- it's attached.

>>> Katie Gregory 06/18/07 03:40PM >>>

Maile--

Can you send me an electronic copy of your memo on the pick up order issue--I only have a paper one.
 Thanks
 Katie

You may remember that I will be unable to attend our meeting Friday the 13th. I have been drafted to do a wedding for my niece on Friday in Vernal. However, I did want to make a few comments on Rule 7.

I am OK with the Warrants vs. pick up orders distinction, but we may need to watch our forms. We use only one form in 8th which is entitled "Warrant for Detention." I believe the form was developed by the AOC and may have broad use throughout the state. See attached.

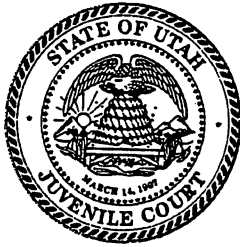
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However, I favor the probation officer putting the facts in writing to present to the judge to support the pick-up order. A probation officer can easily write out the facts (at any place and at any time of day or night) on an affidavit form and read those to the judge over the phone for his or her consideration. If the judge has a question, the probation officer can easily amend or annotate the affidavit for the record. If a question arises about the facts upon which the judge based his or her order, we at least have an affidavit. The paper work can be finalized the next business day. The judge can review the affidavit while his or her mind is fresh and verify that it contains the facts he or she remembers.

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EIGHTH DISTRICT JUVENILE COURT

FOR ** COUNTY

STATE OF UTAH

STATE OF UTAH, in the interest

**

D.O.B. **

Address: **

A person under 18 years of age

WARRANT FOR DETENTION

Case No: **

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BY THE COURT:

Dated: **

Judge Larry A. Steele

Warrant Expiration Date: **

PLEASE RETURN WARRANT TO THE COURT UPON EXPIRATION DATE

RECEIVING AGENCY/S

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<input type="checkbox"/> Police _____	<input type="checkbox"/> Case Worker _____	(Date) _____
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		<input type="checkbox"/> Critical Message

<input type="checkbox"/> Warrant RECALLED: (Date) _____	NOTE: Please DESTROY your copy of the above Warrant for Detention _____ _____	Sent to Receiving Agency/s (Date) _____ By: _____ <input type="checkbox"/> Critical Message
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