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# Federal and State Responses to Domestic Minor Sex Trafficking: The Evolution of Policy

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Domestic minor sex trafficking (DMST) is a rapidly growing problem in the United States, yet legislative efforts to address victim needs have begun only recently. DMST is an issue that spans several areas of social work practice, as emerging research shows that most children and youths exploited in commercial sex have typically experienced prior abuse, neglect, or other forms of trauma. Many have been involved with the child welfare and juvenile justice systems and are often lured by promises of love, security, protection, and belonging. Policy development to address DMST is still relatively new and evolving at both federal and state levels, but the general trend is to recognize such minors as victims rather than perpetrators of sex crimes. In this article the authors trace the development of legislation addressing DMST at the federal and state levels, with a particular focus on states' "safe harbor laws" that provide limited or total criminal immunity and a varying range of services to victims. Although space limitation precludes a detailed discussion of specific state laws, comparative analysis of representative provisions are discussed, highlighting social work application and further policy and research implications.

KEY WORDS: *commercial sexual exploitation; domestic minor sex trafficking; safe harbor laws; Trafficking Victims Protection Act*

I ncreasing attention is being focused on the commercial sexual exploitation of children, also referred to as domestic minor sex trafficking (DMST) (Clayton, Krugman, & Simon, 2013; Shields & Letourneau, 2015). The U.S. policy on DMST, defined as the sexual exploitation of individuals under 18 years of age within the United States for financial or other gain, has its origins in the landmark federal law *Victims of Trafficking and Violence Protection Act of 2000* (sometimes referred to as *Trafficking Victims Protection Act*, or TVPA) (P.L. 106-386). Under the TVPA, sexually exploited minors are considered victims rather than perpetrators of crime, regardless of the absence of force, fraud, or coercion applicable to adult victims (§ 103[8][A]). TVPA has been reauthorized multiple times, but it was not until 2013 that it specifically addressed DMST. In 2015 Congress passed the *Justice for Victims of Trafficking Act (JVTA)* (P.L. 114-22), affecting many existing laws directly relevant to social work.

In addition, most states have enacted laws related to DMST; however, there are several different responses regarding criminal accountability of the minors and the availability of specialized

services under *safe harbor laws*—laws that provide partial or whole immunity to minors who engage in commercial sex. Because social work practice is directly affected by policy (Rome, 2013), it is critical that decision makers, administrators, academics, and practitioners understand not only the substance of the laws, but also their dynamic and diverse nature and the gaps they create.

## BACKGROUND

As a threshold issue, we use the term "victim" throughout this article to refer to children and youths who have been subjected to DMST, consistent with federal policy instruments and due to their status as minors in need of protection and treatment. A *victim* is defined as "a person [who has been] harmed, injured, or killed as a result of a crime . . . or other event or action" (Oxford Dictionaries, n.d.), and abundant research has shown a strong link between such abuse and later difficulties with mental, physical, and social health, as well as sexual assault and revictimization (Briere & Elliott, 2003; Lalor & McElvaney, 2010). We also use the term "survivor" when referring to former victims.

## Forms of Exploitation

DMST covers a wide range of settings and control dynamics. Exploited minors are most often involved in “survival sex,” in which they are trading sex for basic needs (Warf et al., 2013); working for a pimp; performing in pornographic acts or films; and working as sex slaves to criminal groups, tourists, and at major sporting events (Estes & Weiner, 2005; Mitchell, Finkelhor, & Wolak, 2010). In Mitchell et al.’s (2010) study of a nationally representative sample of youths arrested for prostitution, 57 percent were being exploited by organized businesses such as escort services, massage parlors, hotels, criminal gangs, and Web sites, as well as small-time actors such as a boyfriend as pimp. The next 31 percent were solo cases, in which the youths reported working on their own, although they may have been controlled by a third party. The remaining 12 percent were exchanging money for sex with adults in the family or otherwise known to the child.

## Victim Demographics and Risk Factors

Despite the rising concern regarding DMST, the number of children involved remains elusive. Early on, Estes and Weiner (2001, 2005) estimated the prevalence of DMST in the United States to be approximately 100,000 victims, with potentially up to 300,000 children at risk. Shared Hope (2015), a leading nongovernmental organization, also uses the 100,000 estimate, without specifying the source. The National Center for Missing and Exploited Children (NCMEC) (n.d.) reported that one in six of the 10,000 who ran away from home in 2014 were likely to become DMST victims, up from one in seven in 2013. The most recent, and perhaps the most reliable, estimation effort by Stransky and Finkelhor (2008) led them to conclude that there is no reliable number, citing that the range reported is between 1,400 to 2.4 million. This is not surprising given the clandestine nature of DMST and the complexities in identifying victims (Golke, 2011; Hanna, 2002; Rand, 2010; Smith, Vardaman, & Snow, 2009; Urban Institute, 2014).

The risk factors leading to victimization also remain somewhat elusive. The average age at which children are pulled into DMST ranges between 11 and 15 years (Musto, 2013; Reid, 2011; Smith, 2008; Smith et al., 2009), with some even younger being targeted for greater control and longer-term profitability (Birckhead, 2011; Boxill & Richardson, 2007;

Smith, 2008). Although victims come from all backgrounds, increased risk is linked to a history of running away (Estes & Weiner, 2001, 2005; Urban Institute, 2014), past child abuse or neglect, dysfunctional family of origin, involvement in juvenile delinquency or gangs, and high crime neighborhoods (Clayton et al., 2013; Kotrla, 2010; Mitchell et al., 2010; Twill, Green, & Traylor, 2010). A number of studies have found a strong link between prior sexual abuse and later victimization in DMST (Brannagin & Van Brunschot, 1997; Dalla, 2000; Lloyd, 2011; Wilson & Widom, 2010). Given the trauma they have endured, victims are vulnerable to recruiting techniques involving seduction, coercion, and promise of protection occurring at shopping malls, bus and train stations, and even schools (Kotrla, 2010; Smith et al., 2009). The rise in Internet use among youths, especially on social networking sites, has sharply increased risk (Shapkarova, 2013). Although both academic literature and organizational reports largely refer to the victims as female, there seems to be no national statistics on the gender breakdown of the victims; nor are we able to find reliable information on the ethnic background of the victims. However, in a sizable ( $N = 3,946$ ) study conducted in New York City during 2005–2006 (Curtis, Terry, Dank, Dombrowski, & Khan, 2008), boys outnumbered girls and African American youths were the largest single ethnic group, although there was a significant proportion of white, Hispanic, and other youths who identified themselves as multiracial. Although this is a credible study, the degree to which it represents other areas of the United States is not known.

## Macro-Level Contributing Factors

DMST is believed to be fanned by several macro factors. The market forces of supply and demand for commercial sex are the driving force not only in the United States, but globally (ECPAT, n.d.; Roby & Tanner, 2009). The commercial sex industry is extremely lucrative, generating approximately \$100 billion annually in the global market (Luscombe, 2014). A study conducted by the Urban Institute (2014) in eight U.S. cities found that the annual estimated earnings from underground commercial sexual activities ranged from \$290 million in Atlanta to \$39.9 million in Denver. It also showed that child pornography, a form of DMST, was increasing at a rapid rate but that research is critically needed to more fully understand victim dynamics. Buyers are either unaware

of or unaffected by the age, detainment, and cruel treatment of the minors, and the public remains largely unaware of DMST (Perin, 2012; Smith et al., 2009), even though increased attention has been focused on international human trafficking (Kotrla, 2010). Finally, the low rates of prosecution and the relatively lax punishment, combined with the lack of resources for victims, are barriers to curbing DMST (Geist, 2012; Reid, 2011). With the most recent legislative changes both at the federal and state levels, however, prosecutorial tools have been enhanced.

## FEDERAL POLICY DEVELOPMENT

The past decade and a half have seen a rapid development of both federal and state laws to address DMST, and the process is still evolving. Although DMST was not addressed explicitly until the *Violence Against Women Reauthorization Act of 2013* (VAWRA) (P.L. 113-4), the protection of minor sex trafficking victims coming into the United States from foreign countries was addressed in the original 2000 TVPA. The trend regarding both foreign minor sex trafficking and DMST has been to emphasize protection and treatment, over criminal sanctions against children and youths involved in commercial sexual activities. In this section, we provide an overview of the federal legislation, highlighting the provisions most relevant to service providers such as child protection investigators and case managers, probation officers, law enforcement, victim advocates, adolescent treatment counselors, judiciary personnel, and others.

### Victims of Trafficking and Violence Protection Act of 2000

The TVPA was a landmark U.S. federal legislation that, for the first time, sharply divided victims from perpetrators in cases of sex and labor trafficking. Commercial sex acts performed by an adult under force, fraud, or coercion for the profit of a third party, is defined as *sex trafficking*. If a minor is directed by an adult to perform such acts for exploitive purpose, no show of force, fraud, or coercion is necessary. Their age, combined with psychological and physical manipulation, was legally viewed as adequate proof of unlawful coercion and control over these children (Hardy, Compton, & McPhatter, 2013). Trafficking activities cover recruitment, harboring, transportation,

provision, or obtaining of a person (TVPA, § 103 [8][B]). The three major goals of TVPA are often cited as the three P's—(1) *protection* of victims, (2) *prosecution* of those involved in the chain of trafficking and exploitation of the victims, and (3) *prevention* of both labor and sex trafficking.

### Subsequent Reauthorizations of TVPA

The TVPA was reauthorized in 2003, 2005, 2008, and 2013. Under the 2008 *William Wilberforce Trafficking Victims Protection Reauthorization Act* (P.L. 110-457), traffickers who have “reasonable opportunity to observe” can no longer claim ignorance of the victim’s age (codified at 18 U.S.C. § 1591[c]). VAWRA (P.L. 113-4) explicitly addressed DMST of children (§ 1241) for the first time in federal legislative history, defining the *minor victim of sex trafficking* as an individual who is younger than 18 years of age, that is a victim of sex trafficking under the TVPA or under a comparable state law, or an individual between 18 and 20 years of age who was victimized while under age 18 and was receiving services as a victim (§ 1241[a]). Furthermore, VAWRA provided grants for state or local governments that had developed a workable multidisciplinary plan to combat DMST through residential treatment and rehabilitation for victims; focused on training of law enforcement and social services providers; and engaged in prevention, deterrence, and prosecution of DMST. The act specifically required that the minor victim would not be required to collaborate with law enforcement as a condition of receiving services, which would include short- and long-term housing, 24-hour emergency social services, case management services, mental health counseling, and legal services. VAWRA provided specific model law provisions for enacting state safe harbor laws, which provide criminal immunity to minors who are taken into custody for commercial sexual activities (discussed in further detail in the States’ Safe Harbor Laws section).

### Model Laws

Early federal efforts to encourage states in addressing human trafficking resulted in the 2004 Model State Anti-Trafficking Statute, which incorporated the experiences and lessons learned at the federal level (Council of State Governments, n.d.). The model law focused heavily on the prosecution of

perpetrators and sought to help states to harmonize many disparate criminal provisions related to trafficking. It also facilitated increased uniformity in definitions and concepts across state lines and between state- and federal-level interactions, such as when victims sought assistance from federal programs. Many states subsequently passed state anti-trafficking legislation; however, these were criminal laws applicable to the general population, and minors engaged in commercial sexual activity were often arrested, particularly if the children were “self-employed” and exploitation by a third party could not be established.

On this point VAWRA mandated the U.S. attorney general to promulgate a model safe harbor provision that states could adopt in dealing with DMST. The model safe harbor law would

- treat an individual under 18 years of age who has been arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim of a *severe form of trafficking in persons*;
- not require the minor to prove fraud, force, or coercion in order to receive the protections as a victim of sex trafficking;
- prohibit the charging or prosecution of an individual thus arrested for prostitution; and
- require the referral of that individual to appropriate service providers, including comprehensive service or community-based programs that provide assistance to child victims of commercial sexual exploitation (VAWRA, 2013, § 1243).

Because states can exercise their own discretion in using model laws, and the 2015 JVTA ties passage of state safe harbor laws to federal funding, variations will likely continue to remain under these broad federal guidelines.

### **JVTA**

On May 29, 2015, President Obama signed into law the JVTA. Most relevant to DMST, the JVTA amends the Missing Children’s Assistance Act so that the phrase “child prostitution” is replaced with “child sex trafficking, including child prostitution” (§ 211). This change of terminology reinforces the major shift in perspective, from viewing minors engaged in commercial sex as criminals to

viewing them as victims. Of historic importance, the act expands the definition of child abuse under the [Victims of Child Abuse Act of 1990 \(42 U.S.C. § 13001\)](#), to include child victims of pornography. JVTA imposes additional penalties for sexual exploitation of children (including for pornography) and channels the funds to the newly created Domestic Trafficking Victims’ Fund to be used for programming and services for victims in fiscal years 2016–2020. It further authorizes block grants to support rescue and rehabilitation of victims through a holistic collaboration between law enforcement, social services, emergency responders, Children’s Advocacy Centers, victim service providers, and nonprofit organizations. It also mandates restorative services to victims and expands criminal sanctions to include buyers of commercial sex from children. Section 601 offers the safe harbor incentive, in which additional funding is provided to states that change their laws to prohibit charging or prosecution of children for engaging in commercial sex, and provide social services to them.

JVTA also changes many criminal provisions, for example by authorizing state courts to issue a wiretap warrant upon probable cause that it will provide evidence of a crime of human trafficking, child sexual exploitation, or child pornography production (§ 106). In section 8, JVTA targets the prosecution of people who “solicit or patronize” sex acts from victims as criminals of human trafficking. JVTA also requires the defendant who claims ignorance of the victim’s age to show it by clear and convincing evidence, a much higher standard than is required in civil cases but lower than the standard used in criminal adjudication. In addressing missing children, the act requires law enforcement agencies who file missing children reports with the National Crime Information Center to include a recent (last six months) photograph of the child, and requires NCMEC to be notified of each report of a child missing from foster care or child care institution (§ 116). The law also provides funding to train relevant staff on human trafficking in runaway and homeless youth victims and to provide holistic services to them, including street-based services.

Thus, the federal government has, since its passage of TVPA in 2000, aggressively pursued a course in strengthening protection for victims of DMST. These policy trends have included expanding definitions of victims to include those

who are self-employed, increasing categories of behaviors that constitute a crime related to DMST, increasing criminal and civil liabilities for perpetrators while decreasing criminal accountability for victims, encouraging and incentivizing state safe harbor laws, and promoting multidisciplinary coordination at both federal and state levels.

## STATES' POLICY RESPONSES

As noted earlier, the federal government has led the effort to address sex trafficking, including DMST, with the passage of TVPA. Central to this effort has been the federal government's promotion of the parallel development of laws at the state level, including the provision of model state laws to decriminalize commercial sex by minors. However, states' progress was initially slow as states continued to penalize prostitution by minors without further examination of their individual circumstances, or lacked the infrastructure and funding to provide specialized procedures and services. States' definitions of sex trafficking often differed from that of the TVPA, prompting Senator Dick Durbin (D-IL) to note that there was "a legal dichotomy in America in which the federal government views prostituted children as victims, yet most states treat them as criminals" (Crile, 2012, p. 1784). Since 2008, however, nearly three-quarters of the states have passed laws—often labeled as safe harbor laws—to provide criminal immunity to the victims of DMST and to extend specialized services, which may include diversion, case management through the child protection system (CPS), counseling, and reunification where appropriate.

### States' Safe Harbor Laws

Starting with New York's 2008 safe harbor law, 34 states had passed some form of safe harbor protection for DMST victims by late 2015 (Polaris Project, 2015), with notable variations in key provisions. Safe harbor laws typically include two major "bundles" of protection: (1) protecting minors from being prosecuted for prostitution, and (2) providing specialized services to victims of DMST (Polaris Project, 2015). In addition, safe harbor laws tend to mandate increased training, investigation, and perpetrator penalties (American Bar Association, 2013). Although these laws alone are not the whole solution to the DMST problem (Barnert et al., 2016), they set the parameters for stakeholder responsibilities, ideally

authorize resources, and facilitate state-level coordination of services.

A gradual evolution can be seen from the very earliest to the most recent state policy approaches to DMST. For example, New York's Safe Harbour for Exploited Children Act of 2008 (New York Social Services Law § 447-a, n.d.; New York Social Services Law § 447-b, n.d.) classifies a minor who is arrested for prostitution as person in need of supervision (PINS), making the victim *eligible* for diversion and services through CPS. Once the victim is diverted to CPS, the victim can then access the available services established by each CPS district to assist DMST victims. Although New York's law was considered groundbreaking in 2008, it has been criticized on several fronts. For one, it fails to secure adequate funding for comprehensive and sustainable services, as state-sponsored victim services and programs tend to focus only on emergency and short-term services and are only provided "to the extent that funds are available" (New York Social Services Law § 447-b, n.d.), leaving the rest to local social services districts. In addition, victims who were 16 or 17 years of age were initially excluded from the PINS designation, and absent special considerations on a case-by-case basis, victims could be charged—and even convicted—as adults under the state's criminal law (New York Criminal Procedure Law [CPL] § 170.80). Even today, a defendant in a child sexual assault case can deny knowledge of the victim's age, shifting the burden of proof to the prosecution (CPL § 200.62).

More recent state safe harbor laws have addressed some of these issues, although not all. States such as Massachusetts, Washington, and Minnesota have increased the penalties and fines for adjudicated "johns" (purchasers of commercial sex) and pimps, allocating funds to victim services. Other states, including Tennessee, Nebraska, New Jersey, and Kentucky, have raised the age of diversion to all minors under 18. Minnesota's safe harbor law (Minnesota Statutes, 2015, § 260 et seq.) explicitly removes the requirement of the victims' cooperation with law enforcement in the investigations or trials of their pimps, underscoring the dynamic of "trauma bond" that victims form with the perpetrators. Minnesota also includes sexually exploited youths under 18 years of age in the definition of a child in need of protection and excludes them from the definition of a delinquent child

(Minnesota Statutes, 2015). Minnesota's No Wrong Door policy seeks to provide a victim-centered, trauma-informed, multidisciplinary and multiagency approach (Minnesota Department of Public Safety, 2013). It should be noted that it is not always possible for victims to avoid the juvenile justice system altogether if they have also committed other offenses such as theft or fraud in the process of survival; however, through multiagency collaboration, victims are more likely to receive specialized services.

### **Focus on Law Enforcement and Child Protection Services**

States have developed several different ways of involving their child welfare agency in DMST cases (Bounds, Julion, & Delaney, 2015). In states where prostitution is not completely decriminalized for all minors (for example, New York and Washington), minors arrested for prostitution are often granted a special status (that is, PINS) that enables them to be diverted away from the juvenile justice system and into the CPS channel. In other states, whose laws entirely decriminalize prostitution for minors (for example, Connecticut and Tennessee), children are immediately classified as victims and provided necessary services and shelter under the state's CPS (Shared Hope, 2015).

Beyond fulfilling immediate emergency needs of DMST victims, most states with safe harbor laws typically require CPS to create provisions addressing further victim protection. For example, in Florida the Department of Children and Family must conduct a thorough assessment of victims, and their cases must be handled by investigators and case managers who have received specialized training (Florida Statutes Title XXX: Social Welfare § 409.1754, n.d.). Washington provides crime victim compensation and victim-friendly court procedures such as having a support person and closed-circuit television testimony for victims under 14 years of age. Washington also provides educational and employment skills development support (Shared Hope, 2015). States differ in the range and nature of services provided to victims.

Because CPS and law enforcement (both state and federal) must work in tandem on DMST cases, cross-training is essential to strengthen collaboration and to harmonize their potentially conflicting interests: victim protection and conviction of perpetrators. For example, Florida's law mandates

training by the U.S. Department of Justice, and the inclusion of information on identifying and obtaining appropriate services for exploited children in the training (Florida Statutes Title XXX: Social Welfare § 409.1754). Several states outline the requirement for adequate law enforcement training on identification as well as awareness of the needs of DMST victims.

As another example of collaboration between law enforcement and CPS, under the Illinois Safe Children Act (Public Act 096-1464) upon determining that an individual taken into temporary custody for prostitution is under age 18, the law enforcement officer must file a report to the Department of Children and Family Services (DCFS). Within 24 hours from the time the victim is first brought into custody—which does not constitute an arrest—the DCFS is mandated to conduct an investigation into the child's history and circumstances, specifically looking for evidence of child abuse or child neglect. These mandatory investigations are critical for discerning each child's history, true age, and living conditions, creating a more comprehensive picture of the various factors contributing to the problem. In addition, increased pressure is placed on pimps and johns when faced with the feasible possibility of an investigation (Geist, 2012). Following the investigation, if the victim is confirmed to be under age 18, he or she is eligible for victim benefits.

### **Multidisciplinary Coordination**

Beyond requiring the collaboration of law enforcement and child protection agencies, safe harbor laws generally require the establishment of a multidisciplinary task force and close ongoing coordination among all major players. Some states, including Connecticut, Kentucky, Louisiana, and Massachusetts, specifically mandate the formation of multidisciplinary teams to investigate cases and to plan, assess, and provide treatment to victims. The composition and function of these teams vary by state, and can include law enforcement officers, child welfare professionals, prosecutors, juvenile justice officers, educators, medical professionals, substance abuse treatment professionals, mental health workers, victim advocates, and others. The multidisciplinary teams can also work out an integrated process and standard operating procedures for handling DMST cases. Research has shown that the multidisciplinary approach increases the

acquisition of resources accessed by victims of child abuse and neglect (Hochstadt & Harwicke, 1985), and the effectiveness of such a team is best facilitated by colocation, key workers attending, appreciation for other agencies, and effective mechanisms of information sharing (Doyle, 2008).

### **SOCIAL WORK IMPLICATIONS**

Due to the multifaceted nature of DMST and the ongoing changes to policies at the federal and state levels, there are many implications for social workers on the policy, practice, and research fronts. Social workers are ideally suited for participation in the policy process due to the profession's stance on advocating for social justice for those who are marginalized in society in the larger context of the ecological model. Significant improvements are needed to ensure that all states enact safe harbor laws, and that the provisions allow immunity for victims and mandate specialized services based on individualized assessments. NASW state chapters in partnership with academic institutions can partner with other concerned groups to mobilize organized political action through collective advocacy, campaign for legislative change, and use the mass media and social media to raise awareness of DMST.

In terms of practice, social workers are already embedded in key agencies and government offices delivering child protection and juvenile justice services, as well as in courts and law enforcement agencies to varying degrees. They are also accustomed to working in multidisciplinary teams as part of the system's model. Hence, they are well situated to lead the effort to organize and facilitate multidisciplinary teams to address DMST and to provide specific services from CPS investigations, assessment, case management, mental health, and reunification services where appropriate. States' CPS should be supported by increased funding to participate more substantially in DMST-related work under the new federal and state policies. Also in great demand will be social workers trained in mental health services, especially in trauma-informed therapeutic methods. Clearly, social workers will be found at the center of coordinated work at state and local levels, as well as in delivering individual services.

Finally, much more research is needed to understand and address DMST at macro and micro levels, requiring partnerships between academia,

research institutes, and public and private agencies, involving multiple disciplines and institutions. As has been discussed, little is known about the factors that push and pull children and youths into DMST. Their lived experiences need to be explored to gain a better sense of the dynamics and realities to inform assessment and treatment methods. The motivations and methods of the perpetrators should also be illuminated to prevent further victimization among those that are found. Research is much needed to learn the most effective methods of treating victims. More at the macro level, regional differences within the United States may shed light on broad patterns of risk for vulnerable children and youths. The impact of state laws, the strength of law enforcement, and the responsiveness of the judiciary are also likely to be important factors to be researched in relation to DMST.

### **CONCLUSION**

Although victim numbers are not known, there is a wide acknowledgment that DMST is a rapidly growing problem in the United States. Most children and youths exploited in commercial sex have typically experienced prior abuse, neglect, or other forms of injuries. Many have been involved with the child welfare and juvenile justice systems, and are often lured by promises of love, security, protection, and belonging. Policy development is still an evolving process at both federal and state levels, and as practitioners grapple with limited resources and expertise on the ground, it is essential to understand the policy context and the legal mandates under which they labor. Although space limitation precludes a more thorough analysis of state's responses in this article, social workers and other professionals dealing with DMST are advised to access their state laws online or through the state's attorney general's office, and hold multidisciplinary and cross-training to stay updated and share information. As this area of law is rapidly changing, practitioners, academics, students, and others should be leading the charge to ensure that states' policies provide protection and services to minors, and to prevent further victimization in the justice process. Finally, this article has pointed out the lack of reliable research on victim prevalence, background, and experiences; and the need for the sharing of best practices in working with victims of DMST. **SW**

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