

TITLE XXI

Protection of the Elderly

Of the Standing Rock Sioux Tribal Code of Justice



**Approved and Amended by
Standing Rock Sioux Tribal Council
October 20, 2009 – Ordinance No. 312-09
Resolution No. 605-09**

ORDINANCE NO. 312-09

NOW THEREFORE BE IT RESOLVED, that the TITLE XXI - PROTECTION OF THE ELDERLY of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby amended and replaced with the attached new TITLE XXI - PROTECTION OF THE ELDERLY; and

ATTACHED PAGES

1-13

RESOLUTION NO. 605-09

BE IT FURTHER RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV of the Constitution of the Standing Rock Sioux Tribe, as amended, the foregoing **ORDINANCE NO. 312-09**, repealing all prior Ordinances regarding the **TITLE XXI - PROTECTION OF THE ELDERLY**, which is hereby **APPROVED**; and

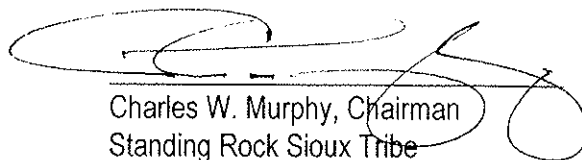
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of [17] members of whom 15 constituting an quorum, were present at a meeting, thereof, duly are regularly called, noticed, convened and held on the 20th day of **OCTOBER, 2009**, and that the foregoing resolution was adopted by the affirmative vote of 14 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 20th DAY OF OCTOBER, 2009.

ATTEST:


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe



Adele M. White, Secretary
Standing Rock Sioux Tribe

[Official Tribal Seal]

Meeting Date: 10-20-2009
Motion # 36

Title XXI. PROTECTION OF THE ELDERLY

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TITLE 21. PROTECTION OF THE ELDERLY

CHAPTER 1. POLICY AND DEFINITION

21-01. Policy

It is the policy of the Standing Rock Sioux Tribe to protect elderly persons from abuse and neglect, both from their family members and from others, and to maintain their dignity, privacy and right to self-determination. It is also the policy of the Tribe to create and support an Elderly Protection Team that will have the administrative capability to investigate elder abuse and to bring legal action against it. The Tribe also supports the full prosecution of all those people who abuse or neglect the elderly. This Title supersedes any North or South Dakota law that is designed to protect the elderly.

21-02. Jurisdiction

Under this Title, the Tribal Court and the EPT have jurisdiction over any elderly Indian person residing or found upon the Standing Rock reservation, and over any tribal member who is temporarily located off the reservation or who has been placed off the reservation pursuant to Chapter 21-404.

21-03. Definitions

1. **Abuse**: Any act done intentionally, willfully, or in knowing disregard of the possible consequences of such action, or any omission, that results in physical injury or pain, mental injury or anguish, unreasonable confinement, malnutrition, financial exploitation, or the deprivation of necessary services to maintain the physical health or mental health of the elder. In the case of a caretaker, the Tribe need not demonstrate that the caretaker intended to harm the elderly, but only that he did not conform his behavior to what is expected of those who care for the elderly.

2. **Caretaker**: Any individual or institution responsible for the care of an elderly person, either as the result of a voluntary or contractual assumption of the responsibility or by court order. If the elderly person and a family member live in the same household there shall be a presumption that the family member is a caretaker. In the case of a prosecution under this Chapter or an investigation by the EPT or Tribal Court, the family member can rebut this presumption by demonstrating that the elder was not reliant upon the family member for assistance and was totally independent. In other situations, the Tribal Court and EPT shall determine based upon the totality of the circumstances whether an individual is a caretaker.

3. **Elderly Person**: A person sixty (60) years of age or older.

4. **Elderly Protection Team**: A Team appointed the Standing Rock Tribal Council that shall have the responsibility and legal authority to investigate reports of elderly abuse, provide protective services to those person, and where necessary, initiate actions in the Tribal Court on behalf of elderly persons who lack the capacity to consent to protective services. The membership of the EPDT shall include, but not be limited to, the following members:

- a) A member of the HEW Committee (2 year term)
- b) A member of the Judicial Committee (2 year Term)
- c) One representative from the Indian Health Service (2 year term)
- d) One representative from the BIA Social Services (2 year term)
- e) Two elderly representatives, one from North Dakota and one from South Dakota, appointed by the Tribal Council (4 year term)
- f) Two representatives from the Standing Rock Housing Authority, one from North Dakota and one from South Dakota (2 year term)
- g) One representative from the Housing Authority Board of Commissioners (2 year term)
- h) One from the law enforcement services, either BIA or tribal (2 year term)
- i) One representative from the Community Health
- j) One member of the Economics Committee (2 year term)

5. **Exploitation**: Illegal or improper use of the financial resources of an elderly person without that person's consent or in circumstances where the consent could not be obtained because of the incapacity of person. The EPT is authorized in cases of alleged exploitation to request that the elder submit to a mental health capacity evaluation. In the case of a representative payee appointed by the Social Security Administration or other federal agency, this may include the failure to expend those benefits on behalf of the elderly person. The Elderly Protection team shall have the authority to enact regulations governing the appropriate care to be provided an elder's financial resources.

6. **Guardian**: An adult or institution appointed to take care of the person or property of another. The guardian is subject to standards of care for the elderly person and is subject to regulation by the Court including the posting of an appropriate bond if deemed necessary.

7. **Guardian ad litem**: An adult appointed by the Court to represent the legal interests of an elderly person in a court proceeding. This person shall not exercise the legal rights of a guardian and his/her rights to speak on behalf of the elderly or disabled may be discontinued after court proceedings.

8. **Mental Injury or Anguish**: Fear, agitation confusion, apprehension of harm, or any other mental state or condition caused by the actions or omission of another person that crates in a reasonable person the concern for that person's physical or financial security.

9. **Neglect:** An action taken or the failure to act when a reasonable person would act, that results in the unnecessary infliction of physical pain, mental injury or anguish, financial exploitation, or other injury to an elderly person. This section shall not include medical neglect if the elderly person is receiving treatment solely by spiritual means that the elderly person consents to. The Court may however intervene to provide for other medical services when necessary.
10. **Protective Services:** Services that are necessary to protect an elderly person from further harm and to alleviate the impact of prior abuse.
11. **Reckless:** Conduct that a reasonable person under the totality of the circumstances would not engage in, or would engage in, in cases of omissions, and that represents a gross deviation from the standard of care expected of a guardian, caretaker or other person.
12. **“Lack of Capacity”** shall mean that the person is unable to appreciate the nature of the services being offered or, because of the abuse or neglect the person is suffering, lacks the free will to consent to such services.
13. **Conservator:** A person or entity that is appointed by the Tribal Court to protect the financial and other resources of an elder and to expend those resources on the elder’s behalf.
14. **Elderly Discrimination:** Any action taken to deny to an elderly person the right to partake of any legal right or benefit offered to other tribal members, solely due to the age of the person.

Chapter 2: REPORTS OF ABUSE

21-201 Obligations to Report

Any person having reasonable cause or belief that an elderly person is being abused or has recently been abused shall immediately report such abuse to the EPT (through its Director or a team member who must immediately report to the Director of EPT) or a law enforcement officer. Any law enforcement officer who receives such a report shall immediately inform the EPT. The obligation to report does not extend to abused elderly persons although those persons are welcome to report. Reports must be in writing. The failure to report shall be punished according to Chapter 7 of this Title. In those cases where the failure to report results in the financial loss to the elderly person, the Court must also order restitution upon conviction.

21-202 Contents of Report

An initial report may be made orally, but must be followed upon in writing to comply with this subsection and shall contain as much of the following information as known by the reporter: the name, address, date, time and age of the elderly person, the name and address of the person causing the neglect or abuse of the elderly, the nature and extent of the abuse/neglect, and any other pertinent information. A medical record shall suffice as a report as shall a police report. The EPT Director shall develop a form for use by the program and community and shall disseminate that form in the community.

21-203. Immunity

Any person who in good faith makes a report pursuant to this Chapter or who testifies in any judicial proceeding arising from the report shall be immune from any civil or criminal liability because of such report or testimony. No elected official, Director of EPT and Staff, or member of the EPT shall be subject to a suit for money damages for actions taken in the course of his official duties in carrying out this Chapter, or in the reasonable belief that such actions were within the scope of their duties under this Chapter.

21-204 Failure to Report

Any person failing to make a report as required by this Chapter shall be punished in accordance with Chapter 7. In those cases where the failure to report results in the financial loss to the elderly person, the Court must also order restitution upon conviction.

21-205 Filing of False Report

Any person that files a written report knowing the same to be false and without any basis in fact and with the malicious intent to harm another shall be guilty of a Class B misdemeanor subject to the penalty of a maximum of 30 days in the tribal jail and a fine of \$100. In those cases where the filing of a false report results in the financial loss to the person, the Court must also order restitution upon conviction. Upon conviction, the Defendant shall also reimburse the EPT for its costs in investigating the false report.

**CHAPTER 3.
INVESTIGATION AND PROVISION OF PROTECTIVE SERVICES**

21-301 EPT Investigations

Upon the receipt of a report of abuse or neglect of any elderly person, the EPT shall make a prompt and thorough investigation to determine whether there is or has been abuse or neglect and whether the elderly person is in need of protective services. In the absence of special

circumstances, the investigation shall include, at a minimum, an interview of the alleged victim, his or her caretaker, and the person allegedly causing harm if different from the caretaker, a visit to the residence of the elderly person, and interviewing those persons who may have knowledge of the accusations. If the report indicates that the person is in imminent harm this investigation must be conducted within seven (7) days if possible. In conducting this investigation, the EPT is authorized to seek law enforcement intervention and court intervention to obtain search warrants and other legal writs, if these documents would aid in the investigation. If necessary the EPT is authorized to conduct an investigation off-reservation if related to abuse and neglect on the reservation. The EPT is authorized in cases of alleged exploitation to request that the elder submit to a mental capacity evaluation.

21-302 Cooperation by Other Agencies

The BIA, Indian Health Services, and any other public and private agencies shall assist the EPT, at its request, in making the investigation. If confidential information is needed from such agency, the EPT shall obtain the consent of the elderly person or his guardian before a release of such records. If the guardian is the alleged suspect, or the elderly person is unable to consent to a release, the EPT may seek a legal order directing the release of such information.

21-303 Provision of Protective Services

a) Upon completion of the investigation, if the EPT determines that the elderly or disabled person has been abused or neglected and is in need of protective services, the EPT shall develop a plan for the provision of such services. Where the abuse or neglect was the result of the actions of a family member, a primary purpose of the plan shall be to restore and promote family harmony and the plan shall be designed to achieve this result. Services to be provided shall include, but not be limited to, the following:

- (1) Assistance in obtaining needed counseling services for the abused elderly person and/or the abuser if appropriate;
- (2) Mediation between the abuser and the abused person if appropriate (Resorting to mediation, however, does not bar a criminal prosecution for elder abuse if justified);
- (3) Assistance in locating and making arrangements for alternative living arrangements on a temporary basis or removing the abuser from the home;
- (4) Assistance in obtaining medical care, food, clothing, and household goods.

To assist in the provision of such services the EPT shall develop a list of local agencies that may provide such services.

b) Where the EPT determines that the elderly or disabled person is a victim of financial exploitation the EPT may work with the appropriate agencies and institutions to implement appropriate safeguards to prevent future abuses including contacting the funding agency such as the Social Security Administration and the Veterans Administration to notify these agencies of the results of the investigation.

21-304 Consent to Protective Services

The EPT shall not provide protective services to an elderly person unless that person consents in writing on the form provided by EPT, except as provided in Chapter 4 of this Title. If the elder withdraws his/her consent to services that withdrawal shall not be effective if the matter has been filed in any Court.

21-305 Interference with Provision of Services

No person shall interfere in the investigation of alleged abuse or neglect or in the provision of services to those persons needing them who have consented to the delivery of those services, or prevent those services by intimidation, threat, or coercion. No person shall attempt to intimidate or influence any member of the EPT, EPT Director or staff, to drop an investigation or to make a finding of no abuse or neglect by the use of tactics designed to achieve such an objective. If such interference does occur the person shall be prosecuted and punished in accordance with Chapter 7 of this Title. In those cases where the interference results in the financial loss to the elderly person, the Court must also order restitution upon conviction.

21-306 Reports to the Tribal Prosecutor

Whenever the EPT finds probable cause to believe that abuse or neglect has occurred under this Chapter, it shall inform the Tribal Prosecutor who shall then have access to the records upon which the finding was made. The Tribal Prosecutor/Tribal Court must notify the EPT in writing in fourteen (14) days of receiving a report why it has declined to prosecute in a case referred from the EPT.

21-307 Records of EPT

Except as provided for under tribal law, the records of the EPT shall be kept confidential and not subject to disclosure to any agency absent appropriate court process such as a subpoena. Upon the death of an elderly person, the records regarding any investigation of the abuse of that person shall be filed with the Tribal Court and kept sealed by the Court

**Chapter 4:
LACK OF CAPACITY AND CONSENT TO PROTECTIVE SERVICES**

21-401 Petitions to Court to Determine Capacity

If the EPT determines that an elderly person is being abused or neglected, and is in imminent danger of substantial physical, mental, or financial injury, and who lacks the capacity to consent to protective services, it may petition the Tribal Court for an order authorizing the delivery of services and for the appointment of a guardian or conservator. The petition must allege specific facts to show that the person is in need of protective services and is unable to consent to the same. The EPT is also authorized to file with the Tribal Court an application for a temporary and permanent restraining order to prevent the abuse or neglect of the elderly.

21-402 Definition of Lack of Capacity

For purposes of this Chapter, "lack of capacity" shall mean that the person is unable to appreciate the nature of the services being offered or, because of the abuse or neglect the person is suffering, lacks the free will to consent to such services.

21-403 Rights of the Elderly Person

The elderly person shall be immediately notified that a petition has been filed in the Tribal Court, the reasons for the petition, and the date and time of the hearing. The elderly person shall be entitled to appropriate service of process and shall also be explained the petition by the Court or other person if necessary. The person shall have the right to be present at the hearing, to be represented by a guardian ad litem if requested, by an attorney of his/her own choosing, and to present testimony on his/her own behalf. The Court may order the guardian of the elderly person to produce the elderly person in court for a hearing under the subsection.

21-404 Temporary Order for Protection or Guardianship

If the EPT determines that the person is in immediate need of protective services, it may petition the Tribal Court for a temporary order of guardianship to permit the EPT or other person to immediately render assistance to the person. The petition in support must show specific facts to bring the person under this Chapter and jurisdiction of the Court and is in need of emergency protective services and is either unable to consent or is not free to consent because of threats or coercion. The temporary order shall remain in effect for no longer than fourteen (14) working days, at which time the Court shall hold a hearing after due and effective notice. If no hearing is held within those fourteen (14) days the temporary order shall expire unless this period is waived or the Court grants a continuance because of emergency extenuating circumstances. For purposes of determining jurisdiction, it is irrelevant that an elderly person has been temporarily placed off the reservation. An elderly person who is placed off reservation for care, either in a hospital or nursing home, remains a resident of the Standing Rock Reservation for all purposes. In no case may the Court appoint the EPT as the guardian over an elder unless EPT has requested such appointment or has been made a party to the case and consents to the appointment.

21-405 Hearing: Determination by the Court

a) At the hearing the EPT or other petitioning party shall present evidence that the elderly person is in need of protective services and lacks capacity to consent or is not free to consent because of threats or coercion. If the Court determines by clear and convincing evidence that the elderly person is in danger of mental or physical harm, or is being financially exploited, it may enter an order authorizing the delivery of services. The order may include the appointment of a guardian ad litem, who shall not be a team member, but who may be the EPT director, and who shall have the authority to consent to necessary care or to refuse services on behalf of the abused person. The GAL may also be authorized to gather information about the financial resources of the elderly person and to correspond with other agencies.

b) The Court may appoint a conservator to oversee the financial matters of the elderly person. The financial guardian shall be required to file monthly financial reports with the Court showing receipt and expenditure of funds. Forms for this shall be provided by the EPT. Copies of such reports shall also be made available to the EPT Director.

c) In any case where the EPT is the guardian, the EPT shall review the order every sixty (60) days to determine whether the need for services still exists and shall have the discretion to request the Court to close the case or amend the order. Upon closing of the case, the records of the EPT shall be deemed sealed order. Upon closing of the case, the records of the EPT shall be deemed sealed unless otherwise directed by the Court and upon death of the Elderly person shall be submitted to the Tribal Court as required under Chapter 307 authority to bring an action before the Tribal Court to terminate any pre-existing guardianship if it is demonstrated by the EPT that the guardian is not exercising due care in caring for the elderly person or the elderly person's financial affairs.

**CHAPTER 5:
LONG-TERM GUARDIANSHIPS AND COMMITMENTS**

21-501 Lack of capacity to consent to Long-Term Care

a) Where an elderly person lacks the capacity to consent to admission into a long-term care facility, a relative or the EPT, in the absence of a competent relative of the person, must seek a court order appointing the person or the EPT as a guardian before ordering the removal of an elderly person from the home and placement in a long-term care facility. Such guardianship shall be of a limited nature and the EPT, if appointed as guardian, shall not be liable for medical and other expenses incurred by the ward.

b) The Court shall grant a request for guardian appointment if the Court determines that the person lacks the capacity to consent to such care, or is not free to consent because of threats or coercion, and upon a finding that the commitment to such a facility is in the

elderly person's interests. The Court shall be required to inquire of the person his wished regarding the placement;

- c) The EPT shall be notified by the Court of all appointments of this type and shall immediately bring to the Court's attention any information it may have pertinent to the suitability of the guardian or the placement.
- d) All guardianships under this Chapter shall be reviewed initially sixty (60) days after appointment and thereafter on an annual basis. The EPT shall receive copies from the Court of the hearing dates and shall be permitted to participate in said hearings.
- e) Any guardianship appointment made under this Chapter or prior to its enactment shall automatically be terminated upon the death of an elderly person and the right to manage the affairs of the deceased elderly person shall be governed by that person's will or probate proceedings;
- f) In all cases possible, the elderly person shall be placed in a long-term residential care facility on or near the reservation if available.
- g) A guardianship appointment under the Chapter shall not include, unless specifically authorized by the Tribal Court, the right of the guardian to make decisions to withdraw life-sustaining medical care from an elder.

21-502 Guardian Appointments

The EPT shall be provided a list of all elderly person guardianships with the name of the guardian by the Tribal Court upon the request of the Director and copies of all monthly accountings required under this Chapter. The EPT shall have the authority to bring an action before the Tribal Court to terminate any pre-existing guardianship if it is demonstrated by the EPT that the guardian is not exercising due care in caring for the elderly person or the elderly person's financial affairs.

21-503 Loan Applications

Any person who has been appointed as a guardian, who seeks to make a long or short-term loan utilizing the income or future income of an elderly person, or who purports to use that person as a co-signer, shall be reported to the EPT in order for the Program to ensure that the elderly is not exploited and the funds being requested actually will benefit the elderly. The EPT Director shall make a recommendation to disapprove any loan that he finds would not benefit the elderly person if that elderly person is a client of the EPT. Any person that seeks to use the funds of an elderly person improperly may be prosecuted under this Chapter for Elder Abuse and punished accordingly.

21-504 EPT Protective Payee Program

In any case where the EPT or its Director have been appointed the guardian over the person or finances of an elderly person, the EPT shall assure that the Director has obtained a sufficient bond or surety to handle the financial affairs of the elderly. The Director is authorized to designate certain person as qualified to be payees for the elderly on the reservation and may provide appropriate training for those persons. The Director shall make quarterly reports to the EPT on the number of persons who have been qualified as payee and shall also report such information to the Social Security Administration and other federal agencies.

21-505 EPT Investigation

In any case where a person has petitioned the Court for a guardianship over an elderly person, the Court may direct the EPT to conduct an investigation to determine the suitability of that person to serve as a guardian. Such an investigation shall include a review of any existing reports on prior incidents of abuse or neglect by the person seeking appointment as a guardian, the suitability of the placement being sought for the elderly person, and any other circumstances that may be relevant to the person's suitability. Upon completing the report it shall be filed with the Court and kept confidential and not released except by order of the Court. The EPT and its Director shall not be subject to suit for the filing of the report and the assertions made therein.

**CHAPTER 6:
RECORD KEEPING AND ACCESS TO RECORDS**

21-601 EPT Records

The EPT shall keep a separate file for each report of abuse and each guardianship report it compiles. The files shall include the original complaint or court order regarding the guardianship, all records regarding the investigation of the report or guardian report, any services provided, and the report to the Court on the same.

21-602 Confidentiality of EPT Records

The EPT records shall be kept confidential and may not be disclosed to any person without appropriate judicial process. The elderly person who is the subject of a report shall have access to his file for review purposes only upon the execution of an appropriate written consent. The tribal court may have access to the file for an appropriate prosecution under Chapters 4 and 7 of this Ordinance.

CHAPTER 7: PENALTIES FOR ABUSE

21-701 Prosecution under Title IV of the Code

Any person, who commits an act of abuse or neglect of an elderly person, as those terms are defined herein, may be criminally prosecuted for the crime of "Elder Abuse" under this Chapter and Chapter IV of the Code. The Crime of "Elder Abuse" shall be a Class A Misdemeanor punishable by up to 180 days in the tribal jail and a \$500 fine plus costs and any restitution to the elderly person. If the crime involves the physical abuse of an elderly person, the penalty imposed by the Court shall include a mandatory minimum jail sentence of at least ten (10) days and a minimum fine of \$200 for a first offense, thirty (30) days and a \$500 fine for the second offense and sixty (60) days and a \$500 fine for any subsequent offense. The Court shall also impose a special assessment of \$25 payable to the EPT in any case where an EPT investigation was conducted. The Court may also impose a restraining order upon any person convicted of Elder Abuse to prevent that person from contacting or intimidating the Elderly person. The Court may also require the Defendant to perform community service. Neither the Tribe nor the EPT shall be liable should a Defendant be injured while performing community service.

21-702 Mandatory Arrest

Any law enforcement officer shall arrest any person at any place, with or without a warrant, if that officer has probable cause to believe that:

1. Abuse of an elderly has occurred, even if that abuse did not result in the infliction of bodily harm to the elderly person.
2. It is readily apparent to the officer upon observation or reports from others that the elderly person is being neglected or financially exploited;
3. The officer may make an arrest even if the abuse or neglect did not occur in his/her presence;
4. In making such an arrest, the officer shall assure that the Elderly person is cared for after the arrest and may make arrangements to remove the elderly person and place him/her in another home for his/her safety.
5. A police officer shall file a criminal complaint for Elder Abuse in any case when he makes an arrest under this subsection.
6. The EPT shall receive any and all copies of complaints, and police reports in support of complaints, for Elder Abuse filed under this Chapter and Chapter IV.

CHAPTER 8: ELDERLY DISCRIMINATION PROHIBITED

21-801 Discrimination prohibited

No tribal program or entity shall discriminate against the elderly in the provision of tribal services or programs. Any allegations of such discrimination may be investigated by the EPT and the EPT shall have the authority to confer with the Tribal program to attempt to resolve the complaints of discrimination and to assure that any practice of a tribal program resulting in discrimination can be eliminated. All reports of discrimination by any tribal program or entity shall be reported to the Chairman by the EPT for appropriate action.

CHAPTER 9: SEVERABILITY, REPEAL AND ADOPTION

21-901 Severability

If any section or provision of this Code is held to be invalid, the remaining sections or provisions of this Code shall remain in full force and effect.

21-902 Repeal of Inconsistent Ordinances

All prior inconsistent ordinances or codes or portions thereof relating to protection of the elderly, specifically sections of Title XXI are hereby repealed when this Code is approved and adopted by the Tribal Council.

21-903 Adoption

The Elderly Protection Code shall be adopted when approved by resolution by the Standing Rock Sioux Tribal Council. The approval resolution shall be attached hereto.

TITLE XXI

Protection of the Elderly

Of the Standing Rock Sioux Tribal Code of Justice



**Approved and Amended by
Standing Rock Sioux Tribal Council
October 20, 2009 – Ordinance No. 312-09
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