



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 410

131st General Assembly  
(As Passed by the House)

**Reps.** Rezabek and Hayes, Brenner, Blessing, Henne, Manning, Patmon, Amstutz, Anielski, Antonio, Arndt, Baker, Barnes, Boyd, Grossman, McClain, Ryan, Sheehy, Slaby, R. Smith, Sweeney, Young, Rosenberger

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## BILL SUMMARY

### "Habitual" and "chronic" truancy

- Changes the threshold for "habitual truancy" from a specified number of days to a specified number of hours.
- Eliminates the term "chronic truant" and, instead, provides that a child of compulsory school age who has been adjudicated an habitual truant who violates the court order regarding that adjudication may be further adjudicated a "delinquent child."

### Prohibition on suspension or expulsion for truancy

- Prohibits a school district or school from suspending, expelling, or removing a student from school solely on the basis of a student's unexcused absences and removes "excessive truancy" from the specifications for a school district's zero tolerance policy for violent, disruptive, or inappropriate behavior.

### District and school policies on addressing truancy

- Modifies the components of the required policy on addressing and ameliorating student absences and requires the establishment of an absence intervention team for each student who is absent from school for a number of days that exceeds the threshold for an habitual truant.
- Requires the attendance officer to notify a student's parent, guardian, or custodian in the event the student is absent with or without legitimate excuse for 38 or more hours in one school month or 65 hours in a school year.

- Requires each absence intervention plan to state that the attendance officer must file a complaint not later than 60 days after the date the plan was developed, if the child has refused to participate in, or failed to make satisfactory progress on, the intervention plan or an alternative to adjudication.
- Requires a school district or school to (1) make at least three meaningful, good faith attempts to secure participation of the student's parent, guardian, custodian, guardian ad litem, or temporary custodian within the seven school days allotted to forming an absence intervention team and (2) investigate whether failure to respond to those attempts triggers mandatory reporting to child protective services.
- Requires each school district and school to report to the Department of Education the occurrence of certain triggering events with respect to a student's absences, including whenever a child has received enough unexcused absences that the child is considered an habitual truant.
- With specified exceptions, generally requires a complaint to be filed in juvenile court against a student (and against any person who fails to cause the child's attendance at school) on the 61st day after the implementation of an absence intervention plan, provided that the school district made meaningful attempts to reengage the student and the student refused to participate or failed to make satisfactory progress, as determined by the team.

### **Juvenile court complaints**

- Requires the juvenile court, upon the filing of a complaint that a child is unruly based on the child's habitual truancy, to consider an alternative to adjudication and provides that the court must consider the complaint only as a matter of last resort.
- Requires the juvenile court to provide notice of any adjudication of an unruly child for being an habitual truant or adjudication of a delinquent child for violating a court order regarding the child's adjudication as an unruly child for being an habitual truant to the school district and school in which the child was enrolled at the time of filing the complaint.
- Requires the juvenile court, when submitting its annual report, to specify the number of children placed in alternatives to adjudication, the number who successfully complete those programs, and the number who fail to complete those programs and were therefore adjudicated unruly.

## State Board of Education model policy on absence intervention

- Requires the State Board of Education to develop a model policy for violent, disruptive, or inappropriate behavior, including excessive absences, that stresses preventative strategies and alternatives to suspension or expulsion, for use by schools in complying with the modified requirements.

## Consequences for failure to send a child to school

- Clarifies that the parent, guardian, or custodian of an adjudicated truant child must provide a surety bond in the sum of not more than \$500 as required by the court.
- Specifies that an act that contributes to an adjudication of a child as a delinquent child because of the violation of a court order with respect to truancy is a first degree misdemeanor.

## Affirmative defense

- Permits the defendant of an habitual truancy complaint to assert as an affirmative defense the fact that the student did participate in or made satisfactory progress on the absence intervention plan or other alternatives to adjudication.

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## TABLE OF CONTENTS

|  |    |
|--|----|
| "Habitual" and "chronic" truancy .....                             | 4  |
| Conforming changes .....   | 4  |
| Prohibition on suspension or expulsion for truancy .....           | 5  |
| School policies on absences .....                                  | 6  |
| New or amended policy required.....                                | 6  |
| Notice of excessive absences .....                                 | 6  |
| Absence intervention team.....                                     | 7  |
| Parental engagement with absence intervention process .....        | 8  |
| School district reporting requirements .....                       | 9  |
| Filing of complaint in juvenile court.....                         | 9  |
| Extension and tolling of plan to account for summer months .....   | 10 |
| Alternatives to adjudication .....                                 | 10 |
| Notice of adjudication.....  | 11 |
| Annual report by juvenile court.....                               | 11 |
| State Board of Education model policy.....                         | 11 |
| Consequences for failure to send a child to school .....           | 12 |
| Prosecutorial burden of proof; affirmative defense .....           | 12 |
| Background: compulsory school age and attendance requirements..... | 12 |



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## CONTENT AND OPERATION

### "Habitual" and "chronic" truancy

Continuing law requires any child of compulsory school age residing in the state to attend a public or private school that meets the minimum education standards established by the State Board of Education, unless the child is legitimately excused from attendance including being excused for home instruction (see "**Background: compulsory school age and attendance requirements**" below). A child who is not excused and does not attend school as required is truant and may face school disciplinary consequences or may be prosecuted under the juvenile justice system, if the truancy persists. The law imposes its greatest concern over a student's unexcused absences when they rise to the level of "habitual" or "chronic" truancy. The bill revises the statutory definition of "habitual" truancy and removes the statutory definition of "chronic" truancy.

Under the bill, "habitual truant" means any child of compulsory school age who is absent without legitimate excuse for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year.<sup>1</sup> Currently, an "habitual truant" is one who is absent for five or more consecutive school days, seven or more school days in one month, or 12 or more school days in a school year.

Under current law, "chronic truant" means any child of compulsory school age who is absent without legitimate excuse for seven or more consecutive school days, ten or more school days in one school month, or 15 or more school days in a school year. The bill removes that specification and instead provides that a child who has been adjudicated an habitual truant who violates a court order regarding that adjudication may further be adjudicated a delinquent child.<sup>2</sup>

### Conforming changes

The bill also makes the following conforming changes:

- Removes from the definition of "unruly child" any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant and, instead, retains in that definition simply "any child who is an habitual truant from school";<sup>3</sup>

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<sup>1</sup> R.C. 2151.011(A)(19).

<sup>2</sup> R.C. 2152.02.

<sup>3</sup> R.C. 2151.022(B).



- Removes other references to an habitual truant who previously has been adjudicated an unruly child for being an habitual truant;<sup>4</sup>
- Permits a juvenile court to address a child's truancy by issuing an order requiring the child not to be absent without legitimate excuse for 30 or more consecutive hours, 42 or more hours in a school month, or 72 hours in a school year rather than for a specified number of days;<sup>5</sup>
- Requires a juvenile court, when adjudicating a child unruly for truancy, to warn the parent, guardian, or custodian that the child's violation of a court order regarding the child's designation as an unruly child for being an habitual truant may result in a criminal charge against the parent, guardian, or custodian;<sup>6</sup>
- Regarding an excused absence for the sole purpose of traveling out of state to participate in an enrichment activity, modifies the limit from a maximum of four days per school year to a maximum of 24 hours per school year that the student's school is open for instruction;<sup>7</sup>
- Regarding procedures when a student of compulsory school age withdraws from school for reasons other than change of address, requires school officials to notify the child and the child's parent, guardian, or custodian and the Registrar of Motor Vehicles when the child has been absent more than 60 consecutive hours (rather than ten consecutive days under current law) in a single month or 90 hours (rather than 15 total days under current law) in a school year.<sup>8</sup>

### **Prohibition on suspension or expulsion for truancy**

Effective July 1, 2016, the bill expressly prohibits any public school from suspending, expelling, or removing a student from school solely on the basis of the student's unexcused absences.<sup>9</sup> Accordingly, the bill also modifies the requirement that

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<sup>4</sup> R.C. 2151.022(B), 2151.311(C)(1)(b)(i), 2151.35(A)(1), 2152.02(F)(4), 2152.021, 2152.19(A)(7)(a), (b) and (E)(1), and 2152.26.

<sup>5</sup> R.C. 2151.354(C)(1)(e) and 2152.19(A)(6).

<sup>6</sup> R.C. 2151.354(C)(2)(c) and 3321.38(A).

<sup>7</sup> R.C. 3321.041.

<sup>8</sup> R.C. 3321.13 and 4510.32.

<sup>9</sup> R.C. 3313.668. Conforming changes in R.C. 3313.66, 3314.03(A)(11)(d), 3321.191(F), 3326.11, and 3328.24.



each school district have a policy of zero tolerance for violent, disruptive, or inappropriate behavior by removing the words "excessive truancy" from that provision.<sup>10</sup>

## **School policies on absences**

### **New or amended policy required**

The bill requires each school district, educational service center, community school, and STEM school, beginning with the 2017-2018 school year, to adopt a new or amended policy to guide employees in addressing and ameliorating student absences that conforms to the bill's specifications. That policy *must* include as an intervention strategy all of the actions listed below "if applicable."<sup>11</sup> Under current law, the list of interventions is permissive. The bill's listed actions are:

- (1) Providing a truancy intervention plan for any student who is absent from school in an amount that surpasses the threshold for an habitual truant;
- (2) Providing counseling for an habitual truant (same as current law);
- (3) Requesting or requiring a parent, guardian, or custodian to attend a parental involvement program (same as current law);
- (4) Requesting or requiring a parent, guardian, or custodian to attend truancy prevention mediation programs (same as current law);
- (5) Notification of the Registrar of Motor Vehicles (same as current law); and
- (6) Taking legal action (same as current law).

The bill also removes a requirement that each school district incorporate into the policy as an intervention strategy the assignment of an habitual truant to an alternative school if an alternative school has been established.<sup>12</sup>

### **Notice of excessive absences**

The bill requires that the attendance officer of a public school notify a child's parent, guardian, or custodian if the child is absent *with or without* legitimate excuse

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<sup>10</sup> R.C. 3313.534.

<sup>11</sup> R.C. 3321.191(B)(1) to (6) and (C). The conditions triggering an intervention plan for a student are in R.C. 3321.191(C)(2)(a).

<sup>12</sup> R.C. 3321.191(A).



from the public school the child is supposed to attend for 38 or more hours in one school month, or 65 or more hours in a school year. That notice must be made, in writing, within seven days after the date of the absence that triggered the notice requirement. At that time notice is made, the bill also expressly permits the school to take any appropriate action as an intervention strategy contained in the school's new or amended policy.<sup>13</sup>

### **Absence intervention team**

Under the bill, within ten days after the absences of a student surpass the threshold for an habitual truant, the school principal or chief administrator or the district superintendent must assign the student to an absence intervention team.<sup>14</sup> Within 14 school days after the assignment, the team must develop an intervention plan for that student in an effort to reduce or eliminate further absences. As part of the absence intervention plan, the district or school may, in its discretion, contact the appropriate juvenile court and ask to have the student informally enrolled in the court's alternative to adjudication (see "**Alternatives to adjudication**" below). If a district or school chooses to have students informally enrolled in the alternative to adjudication, the district or school must develop a written policy regarding the use of, and selection process for, that program to ensure fairness.<sup>15</sup>

The bill permits a school principal or chief administrator to establish an absence intervention team or series of teams and requires a district superintendent, or the superintendent's designee, to establish an absence intervention team to be used by any district schools that do not establish their own absence intervention teams. Membership of each absence intervention team may vary based on the needs of each individual student, but must include: (1) a representative from the child's school district or school, (2) another representative from the child's school district or school who knows the child, and (3) the child's parent (or parent's designee), or the child's guardian, custodian, guardian ad litem, or temporary custodian. The team also may include a school psychologist, counselor, or social worker, or a representative of a public or nonprofit agency designed to assist students and families in reducing absences.<sup>16</sup>

The bill specifies that each intervention plan must vary based on the individual needs of the student, but requires each plan to state that the attendance officer must file

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<sup>13</sup> R.C. 3321.191(C)(1).

<sup>14</sup> R.C. 3321.19(D).

<sup>15</sup> R.C. 3321.191(C)(2)(a) and (b).

<sup>16</sup> R.C. 3321.191(C)(2)(c) and (d).



a complaint not later than 60 days after the date the plan was developed, if the child has refused to participate in, or failed to make satisfactory progress on, the intervention plan or an alternative to adjudication. Furthermore, the bill requires, within seven days after the development of the plan, the school district or school to make reasonable efforts to provide the student's parent, guardian, custodian, guardian ad litem, or temporary custodian with written notice of the plan.<sup>17</sup>

The bill requires the State Board of Education to develop a format for parental permission to ensure compliance with the federal Family Educational Rights and Privacy Act, related federal regulations, and state law on student privacy for use of each absence intervention team.<sup>18</sup>

The bill also expressly permits school districts and schools to consult or partner with public and nonprofit agencies to provide assistance as appropriate to students and their families in reducing absences, even outside the operation of an absence intervention team.<sup>19</sup>

#### **Parental engagement with absence intervention process**

The bill requires the superintendent of the school district or principal or chief administrator of the school to select the members of an absence intervention team within seven school days of the triggering absence and requires at least three meaningful, good faith attempts to secure participation of the student's parent, guardian, custodian, guardian ad litem, or temporary custodian within that time period.<sup>20</sup> The school district is required to inform the parent of the parent's right to appear by designee if the parent responds to the attempts to secure participation but is unable to participate for any reason.<sup>21</sup>

In the event that the parent, guardian, custodian, guardian ad litem, or temporary custodian fails to respond, the bill requires the school district to: (1) investigate whether the failure to respond triggers mandatory reporting to the public childrens services agency for the county in which the child resides, and (2) instruct the

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<sup>17</sup> R.C. 3321.191(C)(2)(a).

<sup>18</sup> R.C. 3321.191(C)(3). See R.C. 3319.321 and 20 United States Code 1232g.

<sup>19</sup> R.C. 3321.191(D).

<sup>20</sup> R.C. 3321.191(C)(2)(e).

<sup>21</sup> R.C. 3321.191(C)(2)(e).





absence intervention team to develop a plan for the child without the child's parent, guardian, custodian, guardian ad litem, or temporary custodian.<sup>22</sup>

### **School district reporting requirements**

The bill requires each school district and school to report to the Department of Education, as soon as practicable, and in a format and manner determined by the Department, any of the following occurrences:

(1) When a student has been absent for 38 or more hours in one school month, or 65 or more hours in a school year and the school district sends notice of that fact to the student's parent, guardian, or custodian;

(2) When a child of compulsory school age has been absent without legitimate excuse the requisite number of hours to classify that child as an habitual truant;

(3) When a child has been adjudicated an unruly child for being an habitual truant violates the court order regarding that adjudication; and

(4) When an absence intervention plan has been implemented for a child.

This reporting requirement is effective beginning with the 2017-2018 school year.<sup>23</sup>

### **Filing of complaint in juvenile court**

Under current law, once a child's absences surpass the threshold for an habitual truant, the district or school must take an appropriate action under its absence policy, or it must file a complaint in the county juvenile court alleging that the child is unruly. The bill, on the other hand, specifies that the attendance officer must file a complaint in juvenile court against a student on the 61st day after the implementation of an absence intervention plan, provided that all of the following apply:

(1) The student was absent without legitimate excuse from the public school the child is supposed to attend for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year;

(2) The school district or school has made meaningful attempts to reengage the student through the absence intervention plan and any offered alternatives to adjudication;

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<sup>22</sup> R.C. 3321.191(C)(2)(e).

<sup>23</sup> R.C. 3321.191(E).



(3) The student has refused to participate in or failed to make satisfactory progress on the plan, as determined by the absence intervention team, or any offered alternative to adjudication.

The bill also requires, upon the failure of the parent, guardian, or other person having care of the child to cause the child's attendance at school, and where the child is considered an habitual truant, the board of education to, file a complaint jointly against the child and the parent, guardian, or other person having care of the child, in accordance with these same timelines and conditions.

The bill also requires the attendance officer to file a complaint against a student who, at any time during the implementation phase of the absence intervention plan, is absent without legitimate excuse 30 or more consecutive hours or 42 or more hours in one school month, unless the absence intervention team has determined that the student has made substantial progress on the absence intervention plan.<sup>24</sup>

#### **Extension and tolling of plan to account for summer months**

The school district, in its discretion, may extend the implementation of the plan and delay the filing of a complaint for an additional 30 days from the first day of the instruction of the next school year in the event that the 61st day after the implementation of the absence intervention plan falls on a day during the summer months.<sup>25</sup> Furthermore, in the event that a student becomes habitually truant within 21 school days prior to the last day of instruction of a school year, the bill permits the school district or school to either (1) assign one school official to work with the child's parent, guardian, custodian, guardian ad litem, or temporary custodian to develop an absence intervention plan during the summer, or (2) toll the time periods to accommodate the summer months and reconvene the absence intervention process upon the first day of instruction of the next school year. If the school district or school chooses to develop a plan during the summer, the plan must be implemented not later than seven days prior to the first day of instruction of the next school year.<sup>26</sup>

#### **Alternatives to adjudication**

Under the bill, when a complaint is filed alleging that a child is an unruly child for being an habitual truant the court must consider an alternative to adjudication, including actions that constitute a method to divert the child from the juvenile court

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<sup>24</sup> R.C. 3321.16(B)(1) and 3321.19(D).

<sup>25</sup> R.C. 3321.16(B)(3).

<sup>26</sup> R.C. 3321.191(C)(2)(f).



system, using the Rules of Juvenile Procedure, or by any other means if such an alternative is available to the court, provided the child has not already participated or failed to complete one of the available alternatives. The bill provides that the court must consider the complaint only as a matter of last resort.<sup>27</sup>

### **Notice of adjudication**

Under the bill, not later than ten days after a child is adjudicated an unruly child for being an habitual truant or adjudicated a delinquent child for violating a court order regarding the child's adjudication as an unruly child for being an habitual truant, the court must provide notice of that fact to the school district in which the child is entitled to attend school and to the school in which the child was enrolled at the time of the filing of the complaint.<sup>28</sup>

### **Annual report by juvenile court**

Under continuing law, the juvenile court must prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition of the cases, and any other data pertaining to the work of the court that the juvenile judge directs. The bill provides that the report also must specify the number of children placed in court ordered diversion, the number who successfully completed diversion programs, and the number who failed to complete the programs and were adjudicated unruly. In addition to filing a copy of the report with the board of county commissioners, the bill requires one to be filed with the Supreme Court.<sup>29</sup>

### **State Board of Education model policy**

The bill requires the State Board of Education, not later than 90 days after the bill's effective date, to develop a model policy for violent, disruptive, or inappropriate behavior, including excessive absences, that stresses preventative strategies and alternatives to suspension or expulsion. The model policy must be provided to each school district, community school, STEM school, and college-preparatory boarding school to aid in compliance with the requirements of the intervention program established by the bill. Not later than 180 days after the bill's effective date, the Department of Education must develop materials to assist school districts in providing

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<sup>27</sup> R.C. 2151.27(G). See also division (F) of that section.

<sup>28</sup> R.C. 2151.354(C)(2)(d) and 2152.19(E)(2).

<sup>29</sup> R.C. 2151.18.



teacher and staff training on the implementation of the strategies included in the model policy.<sup>30</sup>

### **Consequences for failure to send a child to school**

The bill specifically prohibits any person, including a parent, guardian, or other custodian of a child from acting in a way that contributes to an adjudication of the child as a delinquent child based on the child's violation of a court order adjudicating the child an unruly child for being an habitual truant. Current law already prohibits a person from acting in a way tending to cause a child to become an unruly or delinquent child. Both of these violations are first degree misdemeanors.<sup>31</sup>

The bill also clarifies that the parent, guardian, or custodian of an adjudicated truant child must provide a surety bond in the sum of not more than \$500 as required by the juvenile court.<sup>32</sup> Currently, there appears to be a conflict between two divisions of the same section of law.

### **Prosecutorial burden of proof; affirmative defense**

The bill clarifies that when prosecuting a truancy complaint the prosecutor must prove beyond a reasonable doubt that a child is of compulsory school age and was absent without legitimate excuse for 30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year.<sup>33</sup> The bill permits the defendant of a habitual truancy complaint to assert as an affirmative defense the fact that the student did participate in or made satisfactory progress on the absence intervention plan or other alternatives to adjudication.<sup>34</sup>

### **Background: compulsory school age and attendance requirements**

Ohio law requires all children between the ages of 6 and 18 years old residing in the state to attend a public or private school that meets the minimum education standards prescribed by the State Board of Education. In addition, any child under six years old who has enrolled in kindergarten must attend school unless formally

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<sup>30</sup> Section 3. Currently, there are no college-preparatory boarding schools, as authorized in R.C. Chapter 3328., operating in the state.

<sup>31</sup> R.C. 2919.24.

<sup>32</sup> R.C. 3321.38(D).

<sup>33</sup> R.C. 2151.27(H).

<sup>34</sup> R.C. 2151.27(H).

withdrawn from school.<sup>35</sup> Except in cases where a child has been properly excused from attendance, including excused absence for instruction at home, the child's parent, guardian, or custodian must see that the child attends school. School districts, community schools, and STEM schools must maintain attendance records and must take actions to enforce the compulsory attendance laws.<sup>36</sup>

Each school district, community school, and STEM school must employ an attendance officer or obtain the services of an attendance officer of an educational service center.<sup>37</sup> The attendance officer may investigate any case of nonattendance at school and may take such action as the superintendent of schools (or chief administrative officer of a community school or STEM school) directs or as the attendance officer deems proper in the absence of specific instruction.<sup>38</sup> The attendance officer is required to initiate proceedings against any officer, parent, guardian, custodian, or other person violating laws relating to compulsory education.<sup>39</sup>

Failure of a parent, guardian, or custodian to send a child of compulsory school age to school may result in a fine of not more than \$500 or an order to perform community service of not more than 70 hours. The law also states that if a juvenile court adjudicates the child an unruly or delinquent child for truancy, the parent, guardian, or custodian may also be charged with contributing to the nonsupport of a dependent child or contributing to the unruliness or delinquency of a child.<sup>40</sup> The court also may require the parent to participate in mediation and community service programs.<sup>41</sup> Finally, the court may require a person convicted of failure to send a child to school to provide a surety bond in an amount of not more than \$500, conditioned that the person will cause the child to attend as required by law.<sup>42</sup>

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<sup>35</sup> R.C. 3321.01, 3321.04, and 3321.07, none in the bill.

<sup>36</sup> See R.C. 3314.03(A)(11)(d) and 3326.11.

<sup>37</sup> R.C. 3321.14, not in the bill.

<sup>38</sup> R.C. 3321.16.

<sup>39</sup> R.C. 3321.18, not in the bill.

<sup>40</sup> R.C. 3321.38(A) and 3321.99, latter section not in the bill.

<sup>41</sup> R.C. 2151.354(C)(2).

<sup>42</sup> R.C. 3321.38(A).

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## HISTORY

### ACTION

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Introduced

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