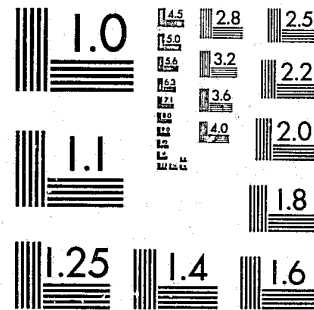


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*The Crime Commission of Greater Miami*

622 Biscayne Building, 19 W. Flagler Street, Miami, Florida 33130 • Tel. (305) 374-7464

DISPOSITION OF CRIMINAL CHARGES IN CASES INVOLVING

VIOLENT CRIME,

DEADLY WEAPONS, AND

MANDATORY SENTENCE.

A THREE - MONTH STUDY CONDUCTED BY

CRIME COMMISSION COURT AIDES

**NCJRS**

MAR 7 1983

**ACQUISITIONS**

NANCY COURY  
DIRECTOR COURT AIDE PROGRAM

BOBBI SILBER  
PROJECT COORDINATOR

NANCY TRAAD  
DIRECTOR WITNESS-VICTIM PROJECT

89251

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A STUDY OF VIOLENT CRIME, WEAPONS, AND MANDATORY SENTENCING

For some time, Crime Commission volunteers observing in the Criminal Courts of Dade County have expressed an interest in cases where defendants using guns in the perpetration of violent crimes were not charged at times with possession of a firearm or were not sentenced to the three-year mandatory sentence provided by law when charged.

In order to study those cases which involved the use of a deadly weapon in a violent crime, a review was made of the dispositions of the following cases for the months of November and December of 1977, and January of 1978. Gun possession cases were found among files which contained charges of Aggravated Assault, Aggravated Battery, Sexual Battery, Robbery by Force and Fear, and Weapon Possession while Committing an Offense. (All of these cases involving violent crimes are listed on the attached tracking sheets.)

First Degree Murder cases, the only other type of crime which provides for a mandatory sentence (25 years) were not reviewed. These cases will be the subject of a separate report.

Only when the defendant is charged with using a firearm in the commission of a felony would the three-year mandatory sentence apply.

Florida Statute 775.087 (2) states:

(2) Any person who is convicted of: (a) Any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes; or (b) Any battery upon a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties

and who had in his possession a "firearm," as defined in s.790.001(6), or "destructive device," as defined in s.790.001(4), shall be sentenced to a minimum term of imprisonment of 3 calendar years. Notwithstanding the provisions of s.948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain time under s.944.27 or s.944.29 prior to serving such minimum sentence.

Only cases disposed of by sentencing were reviewed. Dismissals, Acquittals, and Nolle Prosequi cases were not researched.

OVERVIEW

In reviewing the files, we found (1) that the weapon possession charge was being used in most instances, (2) that defendants in other cases were not charged with the possession offense, even though a gun had been used, and

(3) that there were times where defendants were charged with possession of a firearm, but the charges were later abandoned by the prosecution, usually in plea negotiations.

A total of 62 cases were reviewed:

1. 27 defendants were charged with possession of a firearm while committing a felony.
2. 5 defendants possessed a gun in a commission of a felony, but were not charged with the mandatory statute.
3. 13 defendants out of the above 27 had the weapon possession charge abandoned by the prosecution in a plea negotiation.

1 defendant was acquitted of the firearm possession charge by a jury.

13 defendants did in fact receive the three years or more mandatory sentence for the use of a firearm.

The 62 defendants were sentenced as follows, based on the charges which were presented to the Court, some of which had been abandoned or negotiated by the State:

13 defendants representing 21% of the total, were placed on probation and were not sentenced to serve any jail time.

22 defendants or 35% of the total, received sentences less than 3 years. These sentences ran from a minimum of Time Served in the County Jail while awaiting trial, etc., to a maximum of a 2½ year sentence to be served in the State Penitentiary.

27 of the defendants, or 44% of the total, were sentenced to serve three years or more in the Penitentiary, upon the conviction of one or more of the categorized violent crimes reviewed.

#### CASE REVIEW

Charges against a defendant are made by the Assistant State Attorney and decisions to abandon those charges during plea negotiations are also made by the prosecution. Although this discretion is in the hands of the Assistant State Attorney by abandoning the charge of gun possession while committing a felony, it circumvents the mandatory sentence. However, the Judge may or may not accept the plea negotiation.

A few of the 62 cases reviewed were selected for special treatment as they bring out inconsistencies of dispositions in violent cases where a weapon was used. These cases also show the variety of charges that a Judge must hear and show the extenuating circumstances in each case which makes a mandatory sentence almost impossible to implement.

These cases are indicated by an asterisk in the tracking sheet.

77-4050

Lawrence H. Watson

Weapon: Pistol

Judge Baker

Defense K. White

Not Charged  
Prosecutor: S. Ginsberg

The defendant was charged with Aggravated Assault.

Facts: The defendant came into the residence of his father-in-law demanding to know the whereabouts of his wife. The victim said that he did not know. The defendant took a .38 caliber short-barrel revolver and threatened the victim. He then went outside and fired one shot in the air. The defendant pled nolo contendere, was adjudicated guilty, and received 3 years probation.

77-29014

Michael Raines

Weapon: Pistol

Judge Durant

Defense J. Levine

Charged and Abandoned  
Prosecutor J. Grande

The defendant was charged with I. Armed robbery  
II. Unlawful possession of a firearm while engaged in a criminal offense

Facts: The defendant robbed a Farm Store of money not exceeding \$100.00 and used a pistol while committing this offense. The defendant pled guilty to Count I, the State abandoned Count II, and the defendant was sentenced to one year in D. C. Jail followed by 5 years probation. Special conditions were that the defendant had to complete an alcohol program and assist the assistant State Attorney by giving statements against a co-defendant.

77-25718

Joseph Tooma

Weapon: Knife

Judge Klein

Defense J. Denaro

3 year mandatory not required  
Prosecutor E. McHale

The defendant is charged with: I. Robbery  
II. Unlawful possession of a weapon while engaged in criminal offense

Facts: Victim was driving her car and stopped at a light. She heard a noise behind her car and got out to see what the noise was. The defendant was there indicating he was hurt and asked the victim to drive him to the hospital. En route to the hospital, the defendant placed a knife at the victim's throat and demanded money and jewelry. In the struggle, the defendant cut the victim's thumb and took jewelry and a bag with a value exceeding \$5,000. The defendant was positively identified in a photo line-up. The defendant used the victim's credit card at Jordan Marsh in Ft. Lauderdale, and witnesses positively identified the defendant.

In a negotiated plea, the defendant was found guilty of Count I which was changed to robbery with a weapon, and Count II was abandoned. He was adjudicated guilty and received 10 years in the State Penitentiary, of which 7½ years were suspended, less 131 days time served, and probation is to begin after expiration of the sentence.



77-25434                      Louis Lazo                      Weapon: Pistol  
Judge Nesbitt                      Defense R. Wayne                      Charged and abandoned  
Prosecutor R. Hertzberg  
T. Darby

The defendant was charged with I. Five counts of robbery  
II. Unlawful possession of a firearm  
while committing an offense

Facts: The defendant was playing cards, was losing, and left the card game. He came back with a gun and took \$250.00. The victim ran out and the defendant took a shot at him but missed. The argument was that the defendant was conned out of his money and took what he had lost.

The State abandoned four counts of Robbery and the weapon possession charge and reduced the remaining robbery charge to aggravated assault. The defendant pled guilty and was given two years probation and adjudication of guilt was withheld.

77-4299                      Joe Nathan Dennard                      Weapon: Gun  
Judge Fuller                      Defense M. Bloom                      Not charged  
Prosecutor J. Maxwell

The defendant was charged with I. Aggravated Battery with a deadly weapon

Facts: The defendant and the victim had an argument over who owed who money. The defendant demanded some money, and when the victim refused, the defendant pulled out a gun and shot the victim. The victim positively identified the defendant as they had known each other for quite a while.

After a jury trial, the defendant was found guilty of aggravated battery by use of a firearm. The defendant was sentenced to three years in the State Penitentiary with credit for time served of 2 days, to be followed by 3 years probation.

77-31499                      James Tanner                      Weapon: Knife  
Judge Nesbitt                      Defense S. Blake                      3 year mandatory not required  
Prosecutor Maniatty

The defendant was charged with I. Attempted robbery  
II. Unlawful possession of a weapon  
while engaged in a criminal offense

Facts: The defendant robbed a drug store with the intent to take drugs. The defendant pled guilty to an attempt to commit a felony and was given 5 years probation to run concurrently with probation previously received in three other cases. A special condition of this probation was the defendant is to serve one year on each count, concurrent. Total jail time - 1 year. A drug rehabilitation program was also recommended.

77-25101                      A. Geoffrey A. Lyons                      Weapon: 2 guns  
B. Stedman Blake  
C. Clive Allen  
D. Stanford Whittaker  
Judge Stettin                      Defense (A & C) S. L. Gaer                      Prosecutor T. Headley  
B. Markus  
D. Adorno

All four co-defendants were charged with:  
I. Attempted First Degree Murder  
II. Robbery  
III. Kidnapping  
IV. Unlawful Possession of a firearm  
while committing an offense

Facts: The co-defendants robbed \$1,500 from the victim, (who allegedly is a drug dealer), as well as a .375 Magnum, and then they took him to another location. Defendant "B" told defendant "D" to shoot the victim, which he did. The victim spent some time in the hospital recovering from his wounds. The prosecution identified significant inconsistencies in the victim's account of the events preceding the shooting, and had serious doubts as to the victim's credibility.

Count I was reduced to Aggravated Battery. Counts II, III, and IV were abandoned. All defendants pled guilty to Aggravated Battery and were sentenced to credit for time served, which was 185 days, and all four defendants are to be deported to Jamaica.

#### CONCLUSION

In this report, we have tried to show the variety of cases a Judge must hear and the seriousness of cases involving deadly weapons. Because of this, it is extremely difficult for a mandatory sentence to be implemented, even when a firearm is used in the commission of a felony. As we have reflected, 75% of these cases involving firearms do not go before the Judge as such, because the charge is abandoned, negotiated, or not charged at all.

At the present time, the Legislature is considering CS-HB150, a bill proposed by Representative Barry Richard (D., Miami) which would provide a basic sentence in each felony category. We do not feel that Legislative mandate in sentencing is the answer to the proper handling of any criminal case.

Disparity of sentences for relatively the same offenses has long been a source for aggravation throughout the Criminal Justice System as it affects the police, the prosecutors, the sentence-imposing judges, corrections, and the defendants themselves who receive severely disparate punishment. Every reasonable effort should be made to bring sentences for the same type of offense in line with one another. However, for the sake of justice to each individual citizen, each individual case must be sentenced on its own merit.

The National Advisory Council on Criminal Justice Standards and Goals, after many years of studying the problem, recommended that sentencing councils should be established, in which Judges in multi-judge courts would meet to discuss cases awaiting sentences in order to assist the trial judge in arriving at an appropriate sentence. We concur, and would suggest that guidelines be set within the Circuit to involve all aspects of the Criminal Justice System working together in order to reach more equitable sentencing without mandate from the Legislature.

JUDGE BAKER

<u>CASE #</u>	<u>DEFT. NAME</u>	<u>CHARGES</u>	<u>WEAPON</u>	<u>PLEA</u>	<u>SENTENCE</u>
77-2929	Fulton, Keith	Robbery Weapon Poss.	Gun	Negotiated Plea	5 years State Pent. 5 years concurrent
*77-4050	Watson, Lawrence H.	Aggravated Assault	Gun Not Charged	Nolo Contendere	*3 years Probation
77-31100	Vidal, Rodolfo C.	Aggravated Assault	Knife	Negotiated Plea	*3 years Probation Adjudication/W
77-29002	Potts, Larry E.	Sexual Battery by Deadly Force	Knife	Negotiated Plea	*5 years State Pent.
77-3901	Johnson, Anthony	Aggravated Battery		Negotiated Plea	*1 year Probation
77-25547	Betancourt, Carlos	Robbery 2 Counts Sexual Battery 2 Counts Weapon Poss.	Gun	Negotiated Plea	8 years State Pent.
77-25837	Betancourt, Carlos	Robbery Weapon Poss.	Gun	Negotiated Plea	8 years State Pent. concurrent with above case. Concurrent 3 years for weapon poss.
77-27988	Cormican, Lawrence	Robbery 2 Counts Weapon Poss Larceny Over (Abandoned) Leaving Scene of Accident (Dismissed)	Gun	Negotiated Plea	8 years State Pent 5 years Concurrent
77-28137	Cormican, Lawrence	Robbery Weapon Poss.	Gun	Negotiated Plea	5 years State Pent. concurrent with above case.
77-25546	Moore, Telisa A.	Robbery	Knife	Negotiated Plea	*2 years Probation

JUDGE BASKIN

77-25840A	Melley, Timothy	Robbery 2 Counts (1 Count Abandoned) Weapon Poss. (Abandoned)	Gun Abandoned	Plea to Court	*3 years State Pent.
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\* Mandatory sentence not permitted by law.

JUDGE BASKIN (Continued)

<u>CASE #</u>	<u>DEFT. NAME</u>	<u>CHARGES</u>	<u>WEAPON</u>	<u>PLEA</u>	<u>SENTENCE</u>
77-25840B	Jones, Frank Nunzio	Robbery 2 Counts (1 Count Abandoned) Weapon Poss. (Abandoned)	Gun	Plead Guilty	*4 years State Pent.
77-32665	Hardy, Willie	Robbery	Abandoned Physical Force	Negotiated Plea	*5 years State Pent.
77-29144	Rivera, Arthur	Aggravated Assault 3 Counts	Knife	Plea to Court	*5 years Probation. Special condition - sent to Dodge Memorial Hospital
77-26336	Major, Omar D.	Weapon Firing into Building Aggravated Assault Weapon Poss. (Abandoned)	Gun Abandoned	Negotiated Plea	*5 years State Pent. 5 years State Pent. Concurrent

JUDGE DUBITSKY

77-1360	Keen, Johnny	Aggravated Assault Weapon Poss. (Acquitted by Jury)	Gun	Guilty by Jury	*3 years State Pent. 2 years Probation
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JUDGE DURANT

*77-29014	Raines, Michael D.	Robbery Weapon Poss. (Abandoned)	Gun	Negotiated Plea	*1 year D. C. Jail 5 years Probation
77-34242	Bowers, Michael H.	Robbery	none	Negotiated Plea	*1 year D. C. Jail Concurrent with 76-7403
77-2582	Washington, Dexter	Robbery	none	Negotiated Plea	*2 years Probation Adjudication/W

JUDGE FERGUSON

77-2445	Kelly, Franklin	Robbery Weapon Poss.	Gun	Guilty by Jury	25 years State Pent. 5 years State Pent. concurrent
77-2816	Kelly, Franklin	Robbery 2 Counts	Knife	Negotiated Plea	*15 years State Pent. Concurrent with 77-2445, 77-2723A and 77-2786

\* Mandatory sentence not permitted by law.

JUDGE FERGUSON (Continued)

<u>CASE #</u>	<u>DEFT. NAME</u>	<u>CHARGES</u>	<u>WEAPON</u>	<u>PLEA</u>	<u>SENTENCE</u>
77-2941	Kelly, Franklin	Robbery Weapon Poss.	Gun	Negotiated Plea	15 years State Pent. 5 years concurrent Not eligible for parole till serving 3 years less 242 days in D.C.Jail

JUDGE FULLER

*77-4299	Dennard, Joe Nathan	Aggravated Battery	Gun Not Charged	Guilty by Jury	*3 years State Pent 3 years Probation
77-31309	Preston, Roy	Robbery 2 Counts	Physical Force	Negotiated Plea	*2 years Probation Special condition 364 days D.C.Jail. Adjudication/W

JUDGE KLEIN

*77-25718	Tomma, Joseph	Robbery Weapon Poss. (Abandoned)	Knife	Negotiated Plea	*10 years State Pent. After 2½ years, sentence, 7½ years on Probation
77-29347	Demon, Craig	Robbery	none	Negotiated Plea	*18 months State Pent.
77-29277	Bell, Roosevelt	Robbery	none	Negotiated Plea	*30 months State Pent. concurrent with 77-4018
77-27062	Wilcox, Johnnie	Robbery	none	Plea to Court	*3 years State Pent. Credit Time Served 172 days
77-31782	Becker, Breet G.	Aggravated Assault	Lead Pipe	Negotiated Plea	*18 months Probation Adjudication/W

JUDGE MORPHONIOS

77-28383	Jones, Luther	Robbery by force/fear	Knife	Negotiated Plea	*7 years State Pent. concurrent with parole violation. Credit time served 135 days
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\* Mandatory sentence not permitted by law.



JUDGE MORPHONTOS (Continued)

CASE #	DEFT. NAME	CHARGES	WEAPON	PLEA	SENTENCE
77-30262	Lloyd, Michael P.	Robbery by force/fear Weapon poss.	Gun	Negotiated Plea	10 years State Pent. 10 years Concurrent Credit Time Served 109 days
77-32289	Vasquez, Dario	Aggravated Assault	none	Negotiated Plea	*1 year Probation
77-29226	Brownlee, Billy H.	Property Received Stolen Weapon Poss. by felon	Gun	Negotiated Plea	*3 years State Pent. 3 years Concurrent

JUDGE NESBITT

77-28453	Bannister, Keith J.	Aggravated Battery Weapon Poss. (Abandoned)	Pistol	Negotiated Plea	*2 years Probation. Special condition 1 year in D. C. Jail
*77-25434	Lazo, Louis	Robbery by force/fear 5 Counts 4 Counts Abandoned. 1 Count reduced to Aggravated Assault Weapon poss. (Abandoned)	Gun	Negotiated Plea	*Adjudication/W 2 years Probation
77-1337	Zeigler, Lance K.	Aggravated Assault Probation Violation	Car	Negotiated Plea	*18 months Probation Adjudication/W
77-27006	Crawford, Mary Lou	Aggravated Assault	Gun Not charged	Negotiated Plea	*2 years Probation Adjudication/W
*77-31499	Tanner, James E.	Attempted Robbery Weapon Poss. (Abandoned)	Knife	Plead Guilty	*5 years Probation Special Condition 1 year D. C. Jail
77-31550A	Capece, Dwaine E.	Robbery by force/fear	Knife	Negotiated Plea	*4 years Probation Special Condition 1 year in D. C. Jail
77-31550B	Brady, Richard A.	Robbery by force/fear	Knife	Negotiated Plea	*4 years Probation Special Condition 1 year in D. C. Jail

\* Mandatory sentence not permitted by law.

JUDGE RIVKIND

<u>CASE #</u>	<u>DEFT. NAME</u>	<u>CHARGES</u>	<u>WEAPON</u>	<u>PLEA</u>	<u>SENTENCE</u>
77-26321A	Towbridge, Clifford	Robbery by force/fear Weapon Poss. (Abandoned) Sex Battery by Physical Force Kidnapping (Abandoned)	Pistol	Negotiated Plea	*15 years State Pent. After 5 years, to be placed on probation for 2 years
77-32765	Corbett, Raymond	Robbery by force/fear (Bank robbery)	none	Negotiated Plea	*1 year D. C. Jail 2 years Probation

JUDGE SCHWARTZ

77-28400	Thomas, Juanita	Unlawful poss. of deadly weapon Robbery	Gun	Negotiated Plea	*10 years State Pent. 10 years concurrent Credit time served 119 days
77-25965	Gomez, Oscar Roman	Kidnapping (2 charges) Aggravated Assault Involuntary Sex Battery	Pistol Not Charged	Negotiated Plea	*4 years State Pent. 4 years concurrent on Count 3 Credit time served 144 days
77-29860A	Stephens, Ricky Lee	Robbery by force/fear	Knife	Negotiated Plea	*13 months State Pent. followed by 9 years probation
77-29860B	Arrendondo, Eqlis	Robbery by force/fear Robbery by force/fear	Knife	Negotiated Plea	*9 months D. C. Jail 9 months concurrent 9 years probation
77-29860C	Konopa, Russell G.	Robbery by force/fear Robbery by force/fear	Knife	Negotiated Plea	*6 months D. C. Jail 6 months concurrent 9 years probation
77-30721	Castro, Victor	Robbery by force/fear	Pistol Not Charged	Negotiated Plea	*3 years State Pent. Credit Time served 100 days, followed by 3 years probation concurrent with 77-30538
77-31323	Gibson, Julian A.	Robbery by force/fear Weapon poss. Weapon poss. by felon	Pistol	Guilty by Jury	99 years consecutive 15 years State Pent. Acquitted by Jury
77-25838A	Dodsen, Eddie	Robbery by force/fear * Mandatory sentence not permitted by law.	none	Guilty by Jury	*5 years State Pent less 154 days in D. C. Jail, then 5 years probation

JUDGE SCHWARTZ (Continued)

CASE #	DEFT. NAME	CHARGES	WEAPON	PLEA	SENTENCE
77-25838B	James, Michael E.	Weapon Poss.	Gun	Negotiated Plea	3 years mandatory, then 2 years probation

JUDGE STETTIN

77-27198	Martinez, Pedro	Aggravated Battery	Lead pipe	Plea to Court	*2 years probation Adjudication/W Restitution to Victims
77-29540	Houston, Phillip	Robbery by force/fear Aggravated Battery	Knife	Guilty by Jury	*3 years State Pent 3 years concurrent followed by 3 years probation
77-32761	Weaver, Leroy	Robbery by force/fear	2 Knives	Plea to Court	*1 year D. C. Jail and 3 years probation
77-5091A	Thomas, Milton	Robbery by force/fear 4 Counts (3Counts Abandoned) Weapon Poss. Conspiracy commit felony (Abandoned)	Pistol & Rifle	Negotiated Plea	3 years State Pent. less 181 days 3 years concurrent 2 years probation
77-5091B	Zackery, Reginal	Robbery by force/fear 4 Counts (3 Counts Abandoned) Weapon Poss. Conspiracy commit felony (Abandoned)	Pistol & Rifle	Negotiated Plea	3 years State Pent. less 181 days 3 years concurrent 2 years probation
77-5091C	Mahoney, Charles	Robbery by force/fear 4 Counts (4 Counts Abandoned) Weapon Poss. (Abandoned) Conspiracy commit felony	Pistol & Rifle	Negotiated Plea	*Adjudication/W 5 years probation Special condition Restitution of 1/3
77-5091D	Bryant, Kenneth	Robbery by force/fear 4 Counts (4 Counts Abandoned) Weapon Poss. (Abandoned) Conspiracy commit felony	Pistol & Rifle	Negotiated Plea	*1 year D. C. Jail 4 years probation Special condition Restitution of 1/3

\* Mandatory sentence not permitted by law.

JUDGE STETTIN (Continued)

<u>CASE #</u>	<u>DEFT. NAME</u>	<u>CHARGES</u>	<u>WEAPON</u>	<u>PLEA</u>	<u>SENTENCE</u>
*77-25101A	Lyons, Geoffrey	Attempt 1st degree murder (Reduced to Agg. Battery) Robbery (Abandoned) Kidnapping (Abandoned) Weapon Poss. (Abandoned)	2 guns	Negotiated Plea	*Credit Time Served 185 days
77-25101B	Blake, Stedman	Attempt 1st degree murder (Reduced to Agg. Battery) Robbery (Abandoned) Kidnapping (Abandoned) Weapon Poss. (Abandoned)	2 guns	Negotiated Plea	*Credit Time Served 185 days
77-25101C	Clive, Allen	Attempt 1st degree murder (Reduced to Agg. Battery) Robbery (Abandoned) Kidnapping (Abandoned) Weapon Poss. (Abandoned)	2 guns	Negotiated Plea	*Credit Time Served 185 days
77-25101D	Whittaker, Stanford	Attempt 1st degree murder (Reduced to Agg. Battery) Robbery (Abandoned) Kidnapping (Abandoned) Weapon Poss. (Abandoned)	2 guns	Negotiated Plea	*Credit Time Served 185 days

\* Mandatory sentence not permitted by law.

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