

**RESOLUTION 02-01-2021**

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 835a, to read as follows:

1 § 835a

2 (a) The Legislature finds and declares all of the following:

3 (1) That the authority to use physical force, conferred on peace officers by this section, is  
4 a serious responsibility that shall be exercised judiciously and with respect for human rights and  
5 dignity and for the sanctity of every human life. The Legislature further finds and declares that  
6 every person has a right to be free from excessive use of force by officers acting under color of  
7 law.

8 (2) As set forth below, it is the intent of the Legislature that peace officers use deadly  
9 force only when necessary in defense of human life. In determining whether deadly force is  
10 necessary, officers shall evaluate each situation in light of the particular circumstances of each  
11 case, and shall use other available resources and techniques if reasonably safe and feasible to an  
12 objectively reasonable officer.

13 (3) That the decision by a peace officer to use force shall be evaluated carefully and  
14 thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of  
15 the use of force by peace officers, in order to ensure that officers use force consistent with law  
16 and agency policies.

17 (4) That the decision by a peace officer to use force shall be evaluated from the  
18 perspective of a reasonable officer in the same situation, based on the totality of the  
19 circumstances known to or perceived by the officer at the time, rather than with the benefit of  
20 hindsight, and that the totality of the circumstances shall account for occasions when officers  
21 may be forced to make quick judgments about using force.

22 (5) That individuals with physical, mental health, developmental, or intellectual  
23 disabilities are significantly more likely to experience greater levels of physical force during  
24 police interactions, as their disability may affect their ability to understand or comply with  
25 commands from peace officers. It is estimated that individuals with disabilities are involved in  
26 between one-third and one-half of all fatal encounters with law enforcement.

27 (6) That police shootings of unarmed Black people in the United States are three times  
28 higher than that of white people. That despite a more widespread use of body cameras and  
29 increased media attention of police brutality, violent encounters with the police continue to  
30 represent significant causes of injury and death in the United States, particularly for Black,  
31 Indigenous, and People of Color (BIPOC).

32 (b) Any peace officer who has reasonable cause to believe that the person to be arrested  
33 has committed a public offense may use objectively reasonable force to effect the arrest, to  
34 prevent escape, or to overcome resistance. However, a peace officer may not use deadly force to  
35 effect an arrest for a misdemeanor or infraction offense.

36 (c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force  
37 upon another person only when the officer reasonably believes, based on the totality of the  
38 circumstances, that such force is necessary for either of the following reasons:

39 (A) To defend against an imminent threat of death or serious bodily injury to the officer  
40 or to another person as specified in section (c)(1)(C).

41 (B) To apprehend a fleeing person for any felony that ~~threatened or~~ resulted in death or  
42 serious bodily injury, if the officer reasonably believes that the person will cause death or serious  
43 bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall,  
44 prior to the use of force, ~~make reasonable efforts to~~ identify themselves as a peace officer and  
45 warn that deadly force may be used, ~~unless the officer has objectively reasonable grounds to~~  
46 ~~believe the person is aware of those facts.~~

47 (C) Peace officers are prohibited from using deadly force or force likely to cause serious  
48 bodily injury or death, except when a civilian has immediate possession of a weapon directed as  
49 specified in (C)(2).

50 (1) A weapon is defined as a destructive device or explosive, a weapon of mass  
51 destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison,  
52 knives or swords within lunging distance of an officer, or a motor vehicle,

53 (2) and this weapon is directed at an officer, other officers, or a civilian at the time  
54 of the murder.

55 (3) In the case of a motor vehicle specified in (C)(1), appropriate and reasonable  
56 measures to stop the progression of the moving vehicle must be first employed.

57 (2) A peace officer shall not use deadly force against a person based on the danger that  
58 person poses to themselves, if an objectively reasonable officer would believe the person does  
59 not pose an imminent threat of death or serious bodily injury to the peace officer or to another  
60 person.

61 (d) A peace officer who makes or attempts to make an arrest need not retreat or desist  
62 from their efforts by reason of the resistance or threatened resistance of the person being  
63 arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the  
64 use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the  
65 arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision,  
66 “retreat” does not mean tactical repositioning or other deescalation tactics.

67 (e) For purposes of this section, the following definitions shall apply:

68 (1) “Deadly force” means any use of force that creates a substantial risk of causing death  
69 or serious bodily injury, including, but not limited to, the discharge of a firearm.

70 (2) A threat of death or serious bodily injury is “imminent” when, based on the totality of  
71 the circumstances, a reasonable officer in the same situation would believe that a person has the  
72 present ability, opportunity, and apparent intent to immediately cause death or serious bodily  
73 injury to the peace officer or another person. An imminent harm is not merely a fear of future  
74 harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one  
75 that, from appearances, must be instantly confronted and addressed.

76 (3) “Totality of the circumstances” means all facts known to the peace officer at the time,  
77 including the conduct of the officer and the subject leading up to the use of deadly force.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** National Lawyers Guild – San Francisco

## **STATEMENT OF REASONS**

The Problem (including Existing Law): Current law allows peace officers to use force in certain situations. However, police shootings of unarmed Black people in the United States are three times higher than that of white people. That despite a more widespread use of body cameras and increased media attention of police brutality, violent encounters with the police continue to represent significant causes of injury and death in the United States, particularly for Black, Indigenous, and People of Color (BIPOC). Part of the reason for this is that peace officers are not limited to using deadly force to apprehend dangerous or violent felons. Peace officers may also use deadly force to effect an arrest of a person committing a misdemeanor or an infraction. As the world has seen with the deaths of Sandra Bland, George Floyd, and Philando Castile, (to name but a few) deadly force against the BIPOC community is more common even where the person was stopped for a misdemeanor.

The Solution: This resolution would amend Penal Code section 835a to limit the situations where a peace officer could use deadly force. It would provide that peace officers cannot use deadly force to effect an arrest of a person suspected of committing misdemeanor or infraction. The resolution would also strengthen the situations in which peace officers must give warnings before using deadly force.

#### **IMPACT STATEMENT**

This resolution may require additional statutory changes. This resolution may impact Penal Code section 189.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Penal Code section 835a was amended in 2019 by AB 392. The amendment changed California's legal standard governing when force can be used, and how it is to subsequently be evaluated, by modifying the state standard so that it is consistent with the federal standard of "objective reasonableness," as articulated in numerous United States Supreme Court and federal circuit courts of appeal.

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**RESPONSIBLE FLOOR DELEGATE:** Natashia D. Saunders

**RESOLUTION 02-02-2021**

**TEXT OF RESOLUTION**

**RESOLVED**, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 596, to read as follows:

1 § 596  
2 Every person who, without the consent of the owner, willfully administers poison to any  
3 animal, the property of another, or exposes any poisonous substance, with the intent that the  
4 same shall be taken or swallowed by any such animal, is guilty of a misdemeanor.  
5 However, the provisions of this section shall not apply in the case of a person who  
6 exposes poisonous substances upon premises or property owned or controlled by him for the  
7 purpose of controlling or destroying predatory animals or livestock-killing dogs and if, prior  
8 to ~~or~~ and during the placing out of such poisonous substances, he shall have ~~posted upon the~~  
9 ~~property~~ provided notice as follows. Conspicuous signs shall be posted upon the  
10 property ~~conspicuous signs~~ located at intervals of distance not greater than one-third of a mile  
11 apart, and in any case not less than three such signs having words with letters at least one inch  
12 high reading "Warning–Poisoned bait placed out on these premises," which signs shall be kept in  
13 place until the poisonous substances have been removed. In addition to posting the above-  
14 described warning signs, notice to tenants on properties with borders adjoining the property  
15 where poisonous substances will be used shall be given 30 days notice, prior to the usage of the  
16 poisonous substances, via a letter to the tenant on each such property, sent by Certified United  
17 States Mail, stating the starting date upon which the poisonous substances will be used.  
18 Whenever such signs have been conspicuously located upon the property or premises owned or  
19 controlled by him as hereinabove provided, and all required notices to tenants on adjacent  
20 properties have been mailed as provided above, such person shall not be charged with any civil  
21 liability to another party in the event that any domestic animal belonging to such party becomes  
22 injured or killed by trespassing or partaking of the poisonous substance or substances so placed.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

**STATEMENT OF REASONS**

The Problem (including Existing Law): Penal Code section 596 in its current form is intended to protect the animal property of others by providing notice of the use of poisonous substances on private property where the animals might roam. As currently written, the notice requirements of the statute are limited in a manner that defeats its purpose. Currently, notice can be given during the placement of poisonous substances, which leaves open the possibility of property animals wandering onto poisoned lands prior to notice having been posted. Further, the current notice requirements fall short of providing effective notice to the tenants on adjoining properties of the dangers to come. A tenant on an adjoining property in an agricultural or farm area may be housed miles from the place where the poisons will be used, lessening the likelihood of seeing posted signs.

The Solution: By requiring prior notice of the intended use of poisonous substances, the problem of animals wandering onto lands as the poisons are being used is reduced. Further, the gravity of the open use of poisonous substances to kill unwanted animals, which endangers property animals from adjacent fields, justifies the minor additional burden of requiring letters to be sent to the tenants residing upon those adjoining fields.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known

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## RESOLUTION 02-03-2021

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 141, to read as follows:

1 § 141

2 (a) Except as provided in subdivisions (b) and (c), a person who knowingly, willfully,  
3 intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves  
4 any physical matter, digital image, or video recording, with specific intent that the action will  
5 result in a person being charged with a crime or with the specific intent that the physical matter  
6 will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a  
7 misdemeanor.

8 (b) A peace officer who knowingly, willfully, intentionally, and wrongfully alters,  
9 modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or  
10 video recording, or causes a peace officer's body camera to have unclear images and/or sound, or  
11 not to function with the specific intent that the action or inaction will result in a person being  
12 charged with a crime or with the specific intent that the physical matter, digital image, or video  
13 recording will be concealed or destroyed, or fraudulently represented as the original evidence  
14 upon a trial, proceeding, or inquiry, is guilty of a felony punishable by two, three, or five years in  
15 the state prison.

16 (c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or  
17 withholds any physical matter, digital image, video recording, or relevant exculpatory material or  
18 information, knowing that it is relevant and material to the outcome of the case, with the specific  
19 intent that the physical matter, digital image, video recording, or relevant exculpatory material or  
20 information will be concealed or destroyed, or fraudulently represented as the original evidence  
21 upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to  
22 subdivision (h) of Section 1170 for 16 months, or two or three years.

23 (d) This section does not preclude prosecution under both this section and any other law.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** National Lawyers Guild – San Francisco

### STATEMENT OF REASONS

The Problem (including Existing Law): Current law provides that it is a felony for a peace officer to tamper with evidence by altering, planting, or concealing evidence, including digital or video evidence. However, the law does not address peace officer body cameras.

The Solution: This resolution would clarify that it is also evidence tampering if a peace officer knowingly causes his or her body camera to have unclear images or sound, or if a peace officer causes his or her body camera not to work. This resolution will strengthen and protect the integrity of criminal prosecutions.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None

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**RESPONSIBLE FLOOR DELEGATE:** Natashia D. Saunders

**RESOLUTION 02-04-2021**

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 189 and 196, to read as follows:

1 § 189

2 (a) All murder that is perpetrated by means of a destructive device or explosive, a weapon  
3 of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor,  
4 poison, lying in wait, torture, or, by any other kind of willful, deliberate, and premeditated  
5 killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape,  
6 carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under  
7 Section 206, 286, 287, 288, or 289, or former Section 288a, or murder that is perpetrated by  
8 means of discharging a firearm from a motor vehicle, intentionally at another person outside of  
9 the vehicle with the intent to inflict death, or murder that is perpetrated by a peace officer not in  
10 compliance with Section 835a during an arrest or encounter with a person, is murder of the first  
11 degree.

12 (b) All other kinds of murders are of the second degree.

13 (c) As used in this section, the following definitions apply:

14 (1) "Destructive device" has the same meaning as in Section 16460.

15 (2) "Explosive" has the same meaning as in Section 12000 of the Health and Safety  
16 Code.

17 (3) "Weapon of mass destruction" means any item defined in Section 11417.

18 (d) To prove the killing was "deliberate and premeditated," it is not necessary to prove  
19 the defendant maturely and meaningfully reflected upon the gravity of the defendant's act.

20 (e) To prove the killing by a peace officer was "deliberate and premeditated," during an  
21 arrest or encounter with a person, it is not necessary to prove the defendant maturely and  
22 meaningfully reflected upon the gravity of the defendant's act, or that the arrest was lawful or  
23 unlawful.

24 (fe) A participant in the perpetration or attempted perpetration of a felony listed in  
25 subdivision (a) or during an encounter with or arrest by a peace officer in which a death occurs is  
26 liable for murder only if one of the following is proven:

27 (1) The person was the actual killer.

28 (2) The person was not the actual killer, but, with the intent to kill, aided, abetted,  
29 counseled, commanded, induced, solicited, requested, or assisted the actual killer in the  
30 commission of murder in the first degree.

31 (3) The person was a major participant in the underlying felony and acted with reckless  
32 indifference to human life, as described in subdivision (d) of Section 190.2.

33 (fg) Subdivision (ef) does not apply to a defendant when the victim is a peace officer who  
34 was killed while in the course of the peace officer's duties, where the defendant knew or  
35 reasonably should have known that the victim was a peace officer engaged in the performance of  
36 the peace officer's duties.

37  
38 § 196

39 Homicide is justifiable when committed by peace officers and those acting by their command in  
40 their aid and assistance, under either of the following circumstances:

41 (a) In obedience to any judgment of a competent court that has ordered a sentence of  
42 death.

43 (b) When the homicide results from a peace officer’s use of force that is in compliance  
44 with Section 835a.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** National Lawyers Guild – San Francisco

### **STATEMENT OF REASONS**

The Problem (including Existing Law): The current felony murder rule, Penal Code section 189, does not provide criminal penalties for peace officers who kill someone in the course of a stop or arrest. However, peace officers have unique training and skills in combat, critical thinking, discipline, self-control under stress, and other techniques which, within the scope of their work, are applied regularly and systematically for the purpose of community defense and law enforcement and militarization. For these reasons, peace officers—akin to highly trained boxers or martial artists— are deadly weapons and are inherently dangerous when acting in the usual course of business.

The Solution: This proposed amendment to the Felony Murder Rule (Pen. Code, § 189), would provide criminal penalties for peace officers who kill someone in the course of a stop or arrest; in other words, it affects police officers who carry out the death penalty on untried civilians. Under this amendment, peace officers will be subject to the criminal consequences of intentionally or unintentionally killing someone in the course of a stop or arrest, and will have no criminal immunity. The goal of this amendment is to help save the lives of untried civilians and those whose alleged crimes would not result in the death penalty (even if they were later found guilty), as well as to protect the lives of officers. In time, this law will help to stabilize the relationship between law enforcement agencies and the community by building and enhancing trust between them, and perhaps, under the direction of defense specialists, will help officers engage and enhance their non-lethal training, de-escalation, and combat techniques so as to avoid being charged with murder. The resolution also amends Penal Code section 196 to clarify that justifiable homicide by peace officers based on a court order is limited to situations where the court orders a death sentence.

### **IMPACT STATEMENT**

This resolution may require additional statutory changes. This resolution will affect Penal Code section 835a.

### **CURRENT OR PRIOR RELATED LEGISLATION**

Penal Code section 196 was amended in 2019 by AB 392. The amendment changed California's legal standard governing when force can be used, and how it is to subsequently be evaluated, by modifying the state standard so that it is consistent with the federal standard of “objective

reasonableness,” as articulated in numerous United States Supreme Court and federal circuit courts of appeal.

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**RESOLUTION 02-05-2021**

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1464, to read as follows:

1 § 1464

2 (a) (1) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the  
3 Government Code, and except as otherwise provided in this section, there shall be levied a state  
4 penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10),  
5 upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal  
6 offenses, including all offenses, except

7 (i) Vehicle Code infractions.

8 (ii) parking offenses as defined in subdivision (i) of Section 1463, involving a violation  
9 of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

10 (2) Any bail schedule adopted pursuant to Section 1269b or bail schedule adopted by the  
11 Judicial Council pursuant to Section 40310 of the Vehicle Code may include the necessary  
12 amount to pay the penalties established by this section and Chapter 12 (commencing with  
13 Section 76000) of Title 8 of the Government Code, and the surcharge authorized by Section  
14 1465.7, for all matters where a personal appearance is not mandatory and the bail is posted  
15 primarily to guarantee payment of the fine.

16 (3) The penalty imposed by this section does not apply to the following:

17 (A) Any restitution fine.

18 (B) Any penalty authorized by Chapter 12 (commencing with Section 76000) of Title 8  
19 of the Government Code.

20 (C) Any parking offense subject to Article 3 (commencing with Section 40200) of  
21 Chapter 1 of Division 17 of the Vehicle Code.

22 (D) The state surcharge authorized by Section 1465.7.

23 (b) Where multiple offenses are involved, the state penalty shall be based upon the total  
24 fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be  
25 reduced in proportion to the suspension.

26 (c) When any deposited bail is made for an offense to which this section applies, and for  
27 which a court appearance is not mandatory, the person making the deposit shall also deposit a  
28 sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail  
29 is returned, the state penalty paid thereon pursuant to this section shall also be returned.

30 (d) In any case where a person convicted of any offense, to which this section applies, is  
31 in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the  
32 payment of which would work a hardship on the person convicted or his or her immediate  
33 family.

34 (e) After a determination by the court of the amount due, the clerk of the court shall  
35 collect the penalty and transmit it to the county treasury. The portion thereof attributable to  
36 Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code shall be  
37 deposited in the appropriate county fund and 70 percent of the balance shall then be transmitted  
38 to the State Treasury, to be deposited in the State Penalty Fund, which is hereby created, and 30

39 percent to remain on deposit in the county general fund. The transmission to the State Treasury  
40 shall be carried out in the same manner as fines collected for the state by a county.

41 (f) Notwithstanding any other law, the Director of Finance shall provide a schedule to the  
42 Controller for all transfers of funds made available by the Budget Act from the State Penalty  
43 Fund in the current fiscal year.

44 (g) Upon the order of the Department of Finance, sufficient funds may be transferred by  
45 the Controller from the General Fund for cashflow needs of the State Penalty Fund. A cashflow  
46 loan made pursuant to this provision shall be short term and does not constitute a General Fund  
47 expenditure. A cashflow loan and the repayment of a cashflow loan does not affect the General  
48 Fund reserve.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Mateo County Bar Association

### **STATEMENT OF REASONS**

The Problem (including Existing Law): Vehicle Code infractions currently include supplemental fees for several state and local programs. There is an exception to the supplemental fees for “parking offenses.” For example, Penal Code § 1464 doubles the base fine to fund these programs:

Restitution,  
Peace Officer’s Training,  
Driver Training Penalty Assessment,  
Corrections Training, and  
Local Public Prosecutors and Public Defenders Training

And Government Code §§ 70372 and 76000 add fees for:  
Courthouse Construction,  
Criminal Justice Facilities Construction,  
Automated Fingerprint Identification,  
Emergency Medical Service, and  
DNA Identification

Due to these ten supplemental fees, a Vehicle Code violation with a \$100 base fine results in a \$490 total fine. See “Not Just a Ferguson Problem,” 10, <http://www.lccr.com/not-just-fergusonproblem-how-traffic-courts-drive-inequality-in-california/>. If a person cannot afford to pay the inflated fees, then a \$300 late fee will apply. After non-payment, the court will order the DMV to suspend the person’s driver’s license. Vehicle Code § 13365.

The Solution: The supplemental fees to Vehicle Code infractions have a disparate impact on low-income people. If the supplemental fees for Vehicle Code infractions are removed, the penalty for each infraction will be what the “schedule” sets out. Unreasonable extra fees – that have nothing to do with the severity of the infraction offenses – are simply not “fair” for anyone. If the special programs really are important, then the Legislature and the Governor should fund

them through the budget process. In 2019, the California Judicial Council received a \$500,000 “Price of Justice” grant from the Bureau of Justice Assistance. The Council is using the grant funding to test an online “Ability-to-Pay Calculator” program in five counties. For more information, visit <https://www.courtinnovation.org/articles/california-ability-pay-calculator>. While the Judicial Council’s test programs may be a step in the right direction – California needs substantial and progressive social justice reforms. This resolution also supports the the U.S. Department of Justice’s assertions that the supplemental fees and resulting driver’s license suspensions cause harm because they force individuals into escalating debt and unnecessary incarceration, which leads to job loss and becoming trapped in a cycle of poverty. See <https://www.justice.gov/opa/pr/justice-department-announcesresources-assist-state-and-local-reform-fine-and-fee-practices>.

### **IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule. 36T

### **CURRENT OR PRIOR RELATED LEGISLATION**

Various “amnesty” programs: 1) SB 185 (Hertzberg, 2017): People with traffic tickets for Vehicle Code infractions will have the right to request an “indigency” determination. If the court finds the person to be indigent, then the court will reduce the fine and fees by 80%. In addition, if the person does not pay the fees within a 4-year period, then the debt will be vacated, in the interest of justice. 2) SB 85 (Committee on Budget and Fiscal Review, 2015): established the 2015-2017 Traffic Ticket Amnesty Program in Vehicle Code § 42008.8. 3) SB 881 (Hertzberg, 2016): clarified procedures for the courts to administer the 2015-2017 Amnesty Program. This resolution is very similar to Resolution 10-08-2017.

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