
SENATE BILL 6303

State of Washington 57th Legislature

2002 Regular Session

By Senators Franklin and Long

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1 AN ACT Relating to nonparental visitation rights; amending RCW
2 26.09.240 and 26.10.160; adding a new section to chapter 26.10 RCW; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature affirms that parents have a
6 paramount right to raise their minor children. The legislature
7 recognizes that this paramount right must be considered in conjunction
8 with the minor child's interest in maintaining beneficial significant
9 relationships with nonparents. Therefore, the legislature intends to
10 establish internally consistent and rigorous standards that must be met
11 for a nonparent to obtain visitation with a minor child.

12 **Sec. 2.** RCW 26.09.240 and 1996 c 177 s 1 are each amended to read
13 as follows:

14 (1) A person other than a parent (~~may petition the court for~~
15 ~~visitation with a child at any time or~~) may intervene in a pending
16 dissolution, legal separation, or modification of parenting plan
17 proceeding. (~~A person other than a parent may not petition for~~

1 ~~visitation under this section unless the child's parent or parents have~~
2 ~~commenced an action under this chapter.))~~

3 ~~(2) ((A petition for visitation with a child by a person other than~~
4 ~~a parent must be filed in the county in which the child resides.~~

5 ~~(3) A petition for visitation or))~~ A motion to intervene pursuant
6 to this section shall be dismissed unless the ~~((petitioner or))~~
7 intervenor can demonstrate by clear, cogent, and convincing evidence
8 that a beneficial significant relationship exists with the child with
9 whom visitation is sought. If the ~~((petition or))~~ motion is dismissed
10 for failure to establish the existence of a beneficial significant
11 relationship, the ~~((petitioner or))~~ intervenor shall be ordered to pay
12 reasonable attorney's fees and costs to the parent, parents, other
13 custodian, or representative of the child who responds to this
14 ~~((petition or))~~ motion.

15 ~~((4))~~ (3) The court may order visitation between the ~~((petitioner~~
16 ~~or))~~ intervenor and the child between whom a beneficial significant
17 relationship exists upon a finding supported by ~~((the))~~ clear, cogent,
18 and convincing evidence that the visitation is in the child's best
19 interests and that denial of visitation would result in a likelihood of
20 substantial harm to the child's physical, mental, or emotional well-
21 being.

22 ~~((5)(a) Visitation with a grandparent shall be presumed to be in~~
23 ~~the child's best interests when a significant relationship has been~~
24 ~~shown to exist. This presumption may be rebutted by a preponderance of~~
25 ~~evidence showing that visitation would endanger the child's physical,~~
26 ~~mental, or emotional health.~~

27 ~~(b))~~ (4) If the court finds that reasonable visitation by ~~((a~~
28 ~~grandparent))~~ an intervenor would be in the child's best interest
29 except for hostilities that exist between the ~~((grandparent))~~
30 intervenor and one or both of the parents or person with whom the child
31 lives, the court may set the matter for mediation under RCW 26.09.015.

32 ~~((6))~~ (5) The court may consider the following factors when
33 making a determination of the child's best interests:

34 (a) The strength of the relationship between the child and the
35 petitioner;

36 (b) The relationship between each of the child's parents or the
37 person with whom the child is residing and the petitioner;

38 (c) The nature and reason for either parent's objection to granting
39 the petitioner visitation;

1 (d) The effect that granting visitation will have on the
2 relationship between the child and the child's parents or the person
3 with whom the child is residing;

4 (e) The residential time-sharing arrangements between the parents;

5 (f) The good faith of the petitioner;

6 (g) Any criminal history or history of physical, emotional, or
7 sexual abuse or neglect by the petitioner; and

8 (h) Any other factor relevant to the child's best interest.

9 ~~((+7))~~ (6) The restrictions of RCW 26.09.191 that apply to parents
10 shall be applied to ~~((a petitioner or))~~ an intervenor who is not a
11 parent. The nature and extent of visitation, subject to these
12 restrictions, is in the discretion of the court.

13 ~~((+8))~~ (7) The court may order an investigation and report
14 concerning the proposed visitation or may appoint a guardian ad litem
15 as provided in RCW 26.09.220.

16 ~~((+9))~~ (8) Visitation granted pursuant to this section shall be
17 incorporated into the parenting plan for the child.

18 ~~((+10))~~ (9) The court may modify or terminate visitation rights
19 granted pursuant to this section in any subsequent modification action
20 upon a showing that the visitation is no longer in the best interest of
21 the child.

22 **Sec. 3.** RCW 26.10.160 and 1996 c 303 s 2 are each amended to read
23 as follows:

24 (1) A parent not granted custody of the child is entitled to
25 reasonable visitation rights except as provided in subsection (2) of
26 this section.

27 (2)(a) Visitation with the child shall be limited if it is found
28 that the parent seeking visitation has engaged in any of the following
29 conduct: (i) Willful abandonment that continues for an extended period
30 of time or substantial refusal to perform parenting functions; (ii)
31 physical, sexual, or a pattern of emotional abuse of a child; (iii) a
32 history of acts of domestic violence as defined in RCW 26.50.010(1) or
33 an assault or sexual assault which causes grievous bodily harm or the
34 fear of such harm; or (iv) the parent has been convicted as an adult of
35 a sex offense under:

36 (A) RCW 9A.44.076 if, because of the difference in age between the
37 offender and the victim, no rebuttable presumption exists under (d) of
38 this subsection;

1 (B) RCW 9A.44.079 if, because of the difference in age between the
2 offender and the victim, no rebuttable presumption exists under (d) of
3 this subsection;

4 (C) RCW 9A.44.086 if, because of the difference in age between the
5 offender and the victim, no rebuttable presumption exists under (d) of
6 this subsection;

7 (D) RCW 9A.44.089;

8 (E) RCW 9A.44.093;

9 (F) RCW 9A.44.096;

10 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
11 between the offender and the victim, no rebuttable presumption exists
12 under (d) of this subsection;

13 (H) Chapter 9.68A RCW;

14 (I) Any predecessor or antecedent statute for the offenses listed
15 in (a)(iv)(A) through (H) of this subsection;

16 (J) Any statute from any other jurisdiction that describes an
17 offense analogous to the offenses listed in (a)(iv)(A) through (H) of
18 this subsection.

19 This subsection (2)(a) shall not apply when (c) or (d) of this
20 subsection applies.

21 (b) The parent's visitation with the child shall be limited if it
22 is found that the parent resides with a person who has engaged in any
23 of the following conduct: (i) Physical, sexual, or a pattern of
24 emotional abuse of a child; (ii) a history of acts of domestic violence
25 as defined in RCW 26.50.010(1) or an assault or sexual assault that
26 causes grievous bodily harm or the fear of such harm; or (iii) the
27 person has been convicted as an adult or as a juvenile has been
28 adjudicated of a sex offense under:

29 (A) RCW 9A.44.076 if, because of the difference in age between the
30 offender and the victim, no rebuttable presumption exists under (e) of
31 this subsection;

32 (B) RCW 9A.44.079 if, because of the difference in age between the
33 offender and the victim, no rebuttable presumption exists under (e) of
34 this subsection;

35 (C) RCW 9A.44.086 if, because of the difference in age between the
36 offender and the victim, no rebuttable presumption exists under (e) of
37 this subsection;

38 (D) RCW 9A.44.089;

39 (E) RCW 9A.44.093;

1 (F) RCW 9A.44.096;

2 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age
3 between the offender and the victim, no rebuttable presumption exists
4 under (e) of this subsection;

5 (H) Chapter 9.68A RCW;

6 (I) Any predecessor or antecedent statute for the offenses listed
7 in (b)(iii)(A) through (H) of this subsection;

8 (J) Any statute from any other jurisdiction that describes an
9 offense analogous to the offenses listed in (b)(iii)(A) through (H) of
10 this subsection.

11 This subsection (2)(b) shall not apply when (c) or (e) of this
12 subsection applies.

13 (c) If a parent has been found to be a sexual predator under
14 chapter 71.09 RCW or under an analogous statute of any other
15 jurisdiction, the court shall restrain the parent from contact with a
16 child that would otherwise be allowed under this chapter. If a parent
17 resides with an adult or a juvenile who has been found to be a sexual
18 predator under chapter 71.09 RCW or under an analogous statute of any
19 other jurisdiction, the court shall restrain the parent from contact
20 with the parent's child except contact that occurs outside that
21 person's presence.

22 (d) There is a rebuttable presumption that a parent who has been
23 convicted as an adult of a sex offense listed in (d)(i) through (ix) of
24 this subsection poses a present danger to a child. Unless the parent
25 rebuts this presumption, the court shall restrain the parent from
26 contact with a child that would otherwise be allowed under this
27 chapter:

28 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
29 was at least five years older than the other person;

30 (ii) RCW 9A.44.073;

31 (iii) RCW 9A.44.076, provided that the person convicted was at
32 least eight years older than the victim;

33 (iv) RCW 9A.44.079, provided that the person convicted was at least
34 eight years older than the victim;

35 (v) RCW 9A.44.083;

36 (vi) RCW 9A.44.086, provided that the person convicted was at least
37 eight years older than the victim;

38 (vii) RCW 9A.44.100;

1 (viii) Any predecessor or antecedent statute for the offenses
2 listed in (d)(i) through (vii) of this subsection;

3 (ix) Any statute from any other jurisdiction that describes an
4 offense analogous to the offenses listed in (d)(i) through (vii) of
5 this subsection.

6 (e) There is a rebuttable presumption that a parent who resides
7 with a person who, as an adult, has been convicted, or as a juvenile
8 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)
9 of this subsection places a child at risk of abuse or harm when that
10 parent exercises visitation in the presence of the convicted or
11 adjudicated person. Unless the parent rebuts the presumption, the
12 court shall restrain the parent from contact with the parent's child
13 except for contact that occurs outside of the convicted or adjudicated
14 person's presence:

15 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted
16 was at least five years older than the other person;

17 (ii) RCW 9A.44.073;

18 (iii) RCW 9A.44.076, provided that the person convicted was at
19 least eight years older than the victim;

20 (iv) RCW 9A.44.079, provided that the person convicted was at least
21 eight years older than the victim;

22 (v) RCW 9A.44.083;

23 (vi) RCW 9A.44.086, provided that the person convicted was at least
24 eight years older than the victim;

25 (vii) RCW 9A.44.100;

26 (viii) Any predecessor or antecedent statute for the offenses
27 listed in (e)(i) through (vii) of this subsection;

28 (ix) Any statute from any other jurisdiction that describes an
29 offense analogous to the offenses listed in (e)(i) through (vii) of
30 this subsection.

31 (f) The presumption established in (d) of this subsection may be
32 rebutted only after a written finding that:

33 (i) If the child was not the victim of the sex offense committed by
34 the parent requesting visitation, (A) contact between the child and the
35 offending parent is appropriate and poses minimal risk to the child,
36 and (B) the offending parent has successfully engaged in treatment for
37 sex offenders or is engaged in and making progress in such treatment,
38 if any was ordered by a court, and the treatment provider believes such
39 contact is appropriate and poses minimal risk to the child; or

1 (ii) If the child was the victim of the sex offense committed by
2 the parent requesting visitation, (A) contact between the child and the
3 offending parent is appropriate and poses minimal risk to the child,
4 (B) if the child is in or has been in therapy for victims of sexual
5 abuse, the child's counselor believes such contact between the child
6 and the offending parent is in the child's best interest, and (C) the
7 offending parent has successfully engaged in treatment for sex
8 offenders or is engaged in and making progress in such treatment, if
9 any was ordered by a court, and the treatment provider believes such
10 contact is appropriate and poses minimal risk to the child.

11 (g) The presumption established in (e) of this subsection may be
12 rebutted only after a written finding that:

13 (i) If the child was not the victim of the sex offense committed by
14 the person who is residing with the parent requesting visitation, (A)
15 contact between the child and the parent residing with the convicted or
16 adjudicated person is appropriate and that parent is able to protect
17 the child in the presence of the convicted or adjudicated person, and
18 (B) the convicted or adjudicated person has successfully engaged in
19 treatment for sex offenders or is engaged in and making progress in
20 such treatment, if any was ordered by a court, and the treatment
21 provider believes such contact is appropriate and poses minimal risk to
22 the child; or

23 (ii) If the child was the victim of the sex offense committed by
24 the person who is residing with the parent requesting visitation, (A)
25 contact between the child and the parent in the presence of the
26 convicted or adjudicated person is appropriate and poses minimal risk
27 to the child, (B) if the child is in or has been in therapy for victims
28 of sexual abuse, the child's counselor believes such contact between
29 the child and the parent residing with the convicted or adjudicated
30 person in the presence of the convicted or adjudicated person is in the
31 child's best interest, and (C) the convicted or adjudicated person has
32 successfully engaged in treatment for sex offenders or is engaged in
33 and making progress in such treatment, if any was ordered by a court,
34 and the treatment provider believes contact between the parent and
35 child in the presence of the convicted or adjudicated person is
36 appropriate and poses minimal risk to the child.

37 (h) If the court finds that the parent has met the burden of
38 rebutting the presumption under (f) of this subsection, the court may
39 allow a parent who has been convicted as an adult of a sex offense

1 listed in (d)(i) through (ix) of this subsection to have visitation
2 with the child supervised by a neutral and independent adult and
3 pursuant to an adequate plan for supervision of such visitation. The
4 court shall not approve of a supervisor for contact between the child
5 and the parent unless the court finds, based on the evidence, that the
6 supervisor is willing and capable of protecting the child from harm.
7 The court shall revoke court approval of the supervisor upon finding,
8 based on the evidence, that the supervisor has failed to protect the
9 child or is no longer willing or capable of protecting the child.

10 (i) If the court finds that the parent has met the burden of
11 rebutting the presumption under (g) of this subsection, the court may
12 allow a parent residing with a person who has been adjudicated as a
13 juvenile of a sex offense listed in (e)(i) through (ix) of this
14 subsection to have visitation with the child in the presence of the
15 person adjudicated as a juvenile, supervised by a neutral and
16 independent adult and pursuant to an adequate plan for supervision of
17 such visitation. The court shall not approve of a supervisor for
18 contact between the child and the parent unless the court finds, based
19 on the evidence, that the supervisor is willing and capable of
20 protecting the child from harm. The court shall revoke court approval
21 of the supervisor upon finding, based on the evidence, that the
22 supervisor has failed to protect the child or is no longer willing or
23 capable of protecting the child.

24 (j) If the court finds that the parent has met the burden of
25 rebutting the presumption under (g) of this subsection, the court may
26 allow a parent residing with a person who, as an adult, has been
27 convicted of a sex offense listed in (e)(i) through (ix) of this
28 subsection to have visitation with the child in the presence of the
29 convicted person supervised by a neutral and independent adult and
30 pursuant to an adequate plan for supervision of such visitation. The
31 court shall not approve of a supervisor for contact between the child
32 and the parent unless the court finds, based on the evidence, that the
33 supervisor is willing and capable of protecting the child from harm.
34 The court shall revoke court approval of the supervisor upon finding,
35 based on the evidence, that the supervisor has failed to protect the
36 child or is no longer willing or capable of protecting the child.

37 (k) A court shall not order unsupervised contact between the
38 offending parent and a child of the offending parent who was sexually
39 abused by that parent. A court may order unsupervised contact between

1 the offending parent and a child who was not sexually abused by the
2 parent after the presumption under (d) of this subsection has been
3 rebutted and supervised visitation has occurred for at least two years
4 with no further arrests or convictions of sex offenses involving
5 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW
6 and (i) the sex offense of the offending parent was not committed
7 against a child of the offending parent, and (ii) the court finds that
8 unsupervised contact between the child and the offending parent is
9 appropriate and poses minimal risk to the child, after consideration of
10 the testimony of a state-certified therapist, mental health counselor,
11 or social worker with expertise in treating child sexual abuse victims
12 who has supervised at least one period of visitation between the parent
13 and the child, and after consideration of evidence of the offending
14 parent's compliance with community supervision requirements, if any.
15 If the offending parent was not ordered by a court to participate in
16 treatment for sex offenders, then the parent shall obtain a
17 psychosexual evaluation conducted by a state-certified sex offender
18 treatment provider indicating that the offender has the lowest
19 likelihood of risk to reoffend before the court grants unsupervised
20 contact between the parent and a child.

21 (1) A court may order unsupervised contact between the parent and
22 a child which may occur in the presence of a juvenile adjudicated of a
23 sex offense listed in (e)(i) through (ix) of this subsection who
24 resides with the parent after the presumption under (e) of this
25 subsection has been rebutted and supervised visitation has occurred for
26 at least two years during which time the adjudicated juvenile has had
27 no further arrests, adjudications, or convictions of sex offenses
28 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter
29 9.68A RCW, and (i) the court finds that unsupervised contact between
30 the child and the parent that may occur in the presence of the
31 adjudicated juvenile is appropriate and poses minimal risk to the
32 child, after consideration of the testimony of a state-certified
33 therapist, mental health counselor, or social worker with expertise in
34 treatment of child sexual abuse victims who has supervised at least one
35 period of visitation between the parent and the child in the presence
36 of the adjudicated juvenile, and after consideration of evidence of the
37 adjudicated juvenile's compliance with community supervision or parole
38 requirements, if any. If the adjudicated juvenile was not ordered by
39 a court to participate in treatment for sex offenders, then the

1 adjudicated juvenile shall obtain a psychosexual evaluation conducted
2 by a state-certified sex offender treatment provider indicating that
3 the adjudicated juvenile has the lowest likelihood of risk to reoffend
4 before the court grants unsupervised contact between the parent and a
5 child which may occur in the presence of the adjudicated juvenile who
6 is residing with the parent.

7 (m)(i) The limitations imposed by the court under (a) or (b) of
8 this subsection shall be reasonably calculated to protect the child
9 from the physical, sexual, or emotional abuse or harm that could result
10 if the child has contact with the parent requesting visitation. If the
11 court expressly finds based on the evidence that limitations on
12 visitation with the child will not adequately protect the child from
13 the harm or abuse that could result if the child has contact with the
14 parent requesting visitation, the court shall restrain the person
15 seeking visitation from all contact with the child.

16 (ii) The court shall not enter an order under (a) of this
17 subsection allowing a parent to have contact with a child if the parent
18 has been found by clear and convincing evidence in a civil action or by
19 a preponderance of the evidence in a dependency action to have sexually
20 abused the child, except upon recommendation by an evaluator or
21 therapist for the child that the child is ready for contact with the
22 parent and will not be harmed by the contact. The court shall not
23 enter an order allowing a parent to have contact with the child in the
24 offender's presence if the parent resides with a person who has been
25 found by clear and convincing evidence in a civil action or by a
26 preponderance of the evidence in a dependency action to have sexually
27 abused a child, unless the court finds that the parent accepts that the
28 person engaged in the harmful conduct and the parent is willing to and
29 capable of protecting the child from harm from the person.

30 (iii) If the court limits visitation under (a) or (b) of this
31 subsection to require supervised contact between the child and the
32 parent, the court shall not approve of a supervisor for contact between
33 a child and a parent who has engaged in physical, sexual, or a pattern
34 of emotional abuse of the child unless the court finds based upon the
35 evidence that the supervisor accepts that the harmful conduct occurred
36 and is willing to and capable of protecting the child from harm. The
37 court shall revoke court approval of the supervisor upon finding, based
38 on the evidence, that the supervisor has failed to protect the child or
39 is no longer willing to or capable of protecting the child.

1 (n) If the court expressly finds based on the evidence that
2 contact between the parent and the child will not cause physical,
3 sexual, or emotional abuse or harm to the child and that the
4 probability that the parent's or other person's harmful or abusive
5 conduct will recur is so remote that it would not be in the child's
6 best interests to apply the limitations of (a), (b), and (m)(i) and
7 (iii) of this subsection, or if the court expressly finds that the
8 parent's conduct did not have an impact on the child, then the court
9 need not apply the limitations of (a), (b), and (m)(i) and (iii) of
10 this subsection. The weight given to the existence of a protection
11 order issued under chapter 26.50 RCW as to domestic violence is within
12 the discretion of the court. This subsection shall not apply when (c),
13 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this
14 subsection apply.

15 (3)(a) Any person may petition the court for visitation rights ((at
16 any time including, but not limited to, custody proceedings)) if there
17 has been a substantial change in circumstances relating to either
18 parent or the minor child that justifies consideration of the
19 petitioner's visitation rights. ((The court may order visitation
20 rights for any person when visitation may serve the best interest of
21 the child whether or not there has been any change of circumstances.))
22 A petition for visitation pursuant to this section shall be dismissed
23 unless the petitioner can demonstrate by clear, cogent, and convincing
24 evidence that a beneficial significant relationship exists with the
25 child with whom visitation is sought. If the petition is dismissed for
26 failure to establish the existence of a beneficial significant
27 relationship, the petitioner shall be ordered to pay reasonable
28 attorneys' fees and costs to the parent, parents, other custodian, or
29 representative of the child who responds to the petition.

30 If the petitioner establishes that a beneficial significant
31 relationship exists, the court may order visitation between the
32 petitioner and the child upon a finding supported by clear, cogent, and
33 convincing evidence that visitation is in the child's best interests
34 and that denial of visitation would result in a likelihood of
35 substantial harm to the child's physical, mental, or emotional well-
36 being.

37 (b) The court may consider the following factors when making a
38 determination of the child's best interests:

1 (i) The strength of the relationship between the child and the
2 petitioner;

3 (ii) The relationship between each of the child's parents or the
4 person with whom the child is residing and the petitioner;

5 (iii) The nature and reason for either parent's objection to
6 granting the petitioner visitation;

7 (iv) The effect that granting visitation will have on the
8 relationship between the child and the child's parents or the person
9 with whom the child is residing;

10 (v) The residential time-sharing arrangements between parents;

11 (vi) The good faith of the petitioner;

12 (vii) Any criminal history or history of physical, emotional, or
13 sexual abuse or neglect by the petitioner; and

14 (viii) Any other factor relevant to the child's best interest.

15 (c) The restrictions of this section that apply to parents shall be
16 applied to a petitioner who is not a parent. The nature and extent of
17 visitation, subject to these restrictions, is in the discretion of the
18 court.

19 (d) The court from time to time may, after a beneficial significant
20 relationship has been shown and considering the financial resources of
21 both parties, order a party to pay a reasonable amount to the other
22 party for the cost of maintaining or defending a petition.

23 (4) Visitation granted pursuant to this section shall be
24 incorporated into the parenting plan for the child.

25 (5) The court may modify an order granting or denying visitation
26 rights whenever modification would serve the best interests of the
27 child. Modification of a parent's visitation rights shall be subject
28 to the requirements of subsection (2) of this section.

29 ~~((+5+))~~ (6) For the purposes of this section, a parent's child
30 means that parent's natural child, adopted child, or stepchild.

31 NEW SECTION. Sec. 4. A new section is added to chapter 26.10 RCW
32 to read as follows:

33 (1) In any proceeding under this chapter, the matter may be set for
34 mediation of the contested issues before or concurrent with the setting
35 of the matter for hearing. The purpose of the mediation proceeding is
36 to reduce acrimony that may exist between the parties and to develop an
37 agreement assuring the child's close and continuing contact with
38 persons who can show a beneficial significant relationship with the

1 child. The mediator will use his or her best efforts to effect a
2 settlement of the dispute.

3 (2) Each superior court may make a mediator available. The
4 mediator may be a member of the professional staff of a family court or
5 mental health services agency, or may be any other person or agency
6 designated by the court. In order to provide mediation services, the
7 court is not required to institute a family court proceeding.

8 (3) Mediation proceedings will be held in private and are
9 confidential. The mediator may not testify as to any aspect of the
10 mediation proceedings.

11 (4) The mediator will assess the needs and interests of the child
12 or children involved in the controversy and may interview the child or
13 children if the mediator deems such interview appropriate or necessary.

14 (5) Any agreement reached by the parties as a result of mediation
15 must be reported to the court and to counsel for the parties by the
16 mediator on the day set for mediation or any time thereafter designated
17 by the court.

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