
SUBSTITUTE SENATE BILL 6792

State of Washington 60th Legislature 2008 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove and Stevens)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to dependency matters; and amending RCW 13.34.215,
2 13.34.065, 13.34.136, and 26.44.063.

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

4 **Sec. 1.** RCW 13.34.215 and 2007 c 413 s 1 are each amended to read
5 as follows:

6 (1) A child may petition the juvenile court to reinstate the
7 previously terminated parental rights of his or her parent under the
8 following circumstances:

9 (a) The child was previously found to be a dependent child under
10 this chapter;

11 (b) The child's parent's rights were terminated in a proceeding
12 under this chapter;

13 (c) The child has not achieved his or her permanency plan within
14 three years of a final order of termination(~~(, or if the final order~~
15 ~~was appealed, within three years of exhaustion of any right to appeal~~
16 ~~the order terminating parental rights)); and~~

17 (d) (~~Absent good cause,~~) The child must be at least twelve years
18 old at the time the petition is filed. Upon the child's motion for

1 good cause shown, or on its own motion, the court may hear a petition
2 filed by a child younger than twelve years old.

3 (2) A child seeking to petition under this section shall be
4 provided counsel at no cost to the child.

5 (3) The petition must be signed by the child in the absence of a
6 showing of good cause as to why the child could not do so.

7 (4) If, after a threshold hearing to consider the parent's apparent
8 fitness and interest in reinstatement of parental rights, (~~it~~
9 ~~appears~~) the court finds by a preponderance of the evidence that the
10 best interests of the child may be served by reinstatement of parental
11 rights, the juvenile court shall order that a hearing on the merits of
12 the petition be held.

13 (5) The court shall give prior notice for any proceeding under this
14 section, or cause prior notice to be given, to the department, the
15 child's attorney, and the child. The court shall also order the
16 department to give prior notice of any hearing to the child's former
17 parent whose parental rights are the subject of the petition, any
18 parent whose rights have not been terminated, the child's current
19 foster parent, relative caregiver, guardian or custodian, and the
20 child's tribe, if applicable.

21 (6) The juvenile court shall conditionally grant the petition if it
22 finds by clear and convincing evidence that the child has not achieved
23 his or her permanency plan and is not likely to imminently achieve his
24 or her permanency plan and that reinstatement of parental rights is in
25 the child's best interest. In determining whether reinstatement is in
26 the child's best interest the court shall consider, but is not limited
27 to, the following:

28 (a) Whether the parent whose rights are to be reinstated is a fit
29 parent and has remedied his or her deficits as provided in the record
30 of the prior termination proceedings and prior termination order;

31 (b) The age and maturity of the child, and the ability of the child
32 to express his or her preference;

33 (c) Whether the reinstatement of parental rights will present a
34 risk to the child's health, welfare, or safety; and

35 (d) Other material changes in circumstances, if any, that may have
36 occurred which warrant the granting of the petition.

37 (7) In determining whether the child has or has not achieved his or
38 her permanency plan or whether the child is likely to achieve his or

1 her permanency plan, the department shall provide the court, and the
2 court shall review, information related to any efforts to achieve the
3 permanency plan including efforts to achieve adoption or a permanent
4 guardianship.

5 (8)(a) If the court conditionally grants the petition under
6 subsection (6) of this section, the case will be continued for six
7 months and a temporary order of reinstatement entered. During this
8 period, the child shall be placed in the custody of the parent. The
9 department shall develop a permanency plan for the child reflecting the
10 plan to be reunification and shall provide transition services to the
11 family as appropriate.

12 (b) If the child must be removed from the parent due to abuse or
13 neglect allegations prior to the expiration of the conditional six-
14 month period, the court shall dismiss the petition for reinstatement of
15 parental rights if the court finds the allegations have been proven by
16 a preponderance of the evidence.

17 (c) If the child has been successfully placed with the parent for
18 six months, the court order reinstating parental rights remains in
19 effect and the court shall dismiss the dependency.

20 (9) After the child has been placed with the parent for six months,
21 the court shall hold a hearing. If the placement with the parent has
22 been successful, the court shall enter a final order of reinstatement
23 of parental rights, which shall restore all rights, powers, privileges,
24 immunities, duties, and obligations of the parent as to the child,
25 including those relating to custody, control, and support of the child.
26 The court shall dismiss the dependency and direct the clerk's office to
27 provide a certified copy of the final order of reinstatement of
28 parental rights to the parent at no cost.

29 (10) The granting of the petition under this section does not
30 vacate or otherwise affect the validity of the original termination
31 order.

32 ((+10+)) (11) Any parent whose rights are reinstated under this
33 section shall not be liable for any child support owed to the
34 department pursuant to RCW 13.34.160 or Title 26 RCW for the time
35 period from the date of termination of parental rights to the date
36 parental rights are reinstated.

37 ((+11+)) (12) A proceeding to reinstate parental rights is a
38 separate action from the termination of parental rights proceeding and

1 does not vacate the original termination of parental rights. An order
2 granted under this section reinstates the parental rights to the child.
3 This reinstatement is a recognition that the situation of the parent
4 and child have changed since the time of the termination of parental
5 rights and reunification is now appropriate.

6 ~~((+12+))~~ (13) This section is retroactive and applies to any child
7 who is under the jurisdiction of the juvenile court at the time of the
8 hearing regardless of the date parental rights were terminated.

9 (14) The state, the department, and its employees are not liable
10 for civil damages resulting from any act or omission in the provision
11 of services under this section, unless the act or omission constitutes
12 gross negligence. This section does not create any duty and shall not
13 be construed to create a duty where none exists. This section does not
14 create a cause of action against the state, the department, or its
15 employees concerning the original termination.

16 **Sec. 2.** RCW 13.34.065 and 2007 c 413 s 5 are each amended to read
17 as follows:

18 (1)(a) When a child is taken into custody, the court shall hold a
19 shelter care hearing within seventy-two hours, excluding Saturdays,
20 Sundays, and holidays. The primary purpose of the shelter care hearing
21 is to determine whether the child can be immediately and safely
22 returned home while the adjudication of the dependency is pending.

23 (b) Any parent, guardian, or legal custodian who for good cause is
24 unable to attend the shelter care hearing may request that a subsequent
25 shelter care hearing be scheduled. The request shall be made to the
26 clerk of the court where the petition is filed prior to the initial
27 shelter care hearing. Upon the request of the parent, the court shall
28 schedule the hearing within seventy-two hours of the request, excluding
29 Saturdays, Sundays, and holidays. The clerk shall notify all other
30 parties of the hearing by any reasonable means.

31 (2)(a) The department of social and health services shall submit a
32 recommendation to the court as to the further need for shelter care in
33 all cases in which it is the petitioner. In all other cases, the
34 recommendation shall be submitted by the juvenile court probation
35 counselor.

36 (b) All parties have the right to present testimony to the court
37 regarding the need or lack of need for shelter care.

1 (c) Hearsay evidence before the court regarding the need or lack of
2 need for shelter care must be supported by sworn testimony, affidavit,
3 or declaration of the person offering such evidence.

4 (3)(a) At the commencement of the hearing, the court shall notify
5 the parent, guardian, or custodian of the following:

6 (i) The parent, guardian, or custodian has the right to a shelter
7 care hearing;

8 (ii) The nature of the shelter care hearing, the rights of the
9 parents, and the proceedings that will follow; and

10 (iii) If the parent, guardian, or custodian is not represented by
11 counsel, the right to be represented. If the parent, guardian, or
12 custodian is indigent, the court shall appoint counsel as provided in
13 RCW 13.34.090; and

14 (b) If a parent, guardian, or legal custodian desires to waive the
15 shelter care hearing, the court shall determine, on the record and with
16 the parties present, whether such waiver is knowing and voluntary. A
17 parent may not waive his or her right to the shelter care hearing
18 unless he or she appears in court and the court determines that the
19 waiver is knowing and voluntary. Regardless of whether the court
20 accepts the parental waiver of the shelter care hearing, the court must
21 provide notice to the parents of their rights required under (a) of
22 this subsection and make the finding required under subsection (4) of
23 this section.

24 (4) At the shelter care hearing the court shall examine the need
25 for shelter care and inquire into the status of the case. The
26 paramount consideration for the court shall be the health, welfare, and
27 safety of the child. At a minimum, the court shall inquire into the
28 following:

29 (a) Whether the notice required under RCW 13.34.062 was given to
30 all known parents, guardians, or legal custodians of the child. The
31 court shall make an express finding as to whether the notice required
32 under RCW 13.34.062 was given to the parent, guardian, or legal
33 custodian. If actual notice was not given to the parent, guardian, or
34 legal custodian and the whereabouts of such person is known or can be
35 ascertained, the court shall order the supervising agency or the
36 department of social and health services to make reasonable efforts to
37 advise the parent, guardian, or legal custodian of the status of the

1 case, including the date and time of any subsequent hearings, and their
2 rights under RCW 13.34.090;

3 (b) Whether the child can be safely returned home while the
4 adjudication of the dependency is pending;

5 (c) What efforts have been made to place the child with a relative;

6 (d) What services were provided to the family to prevent or
7 eliminate the need for removal of the child from the child's home;

8 (e) Is the placement proposed by the agency the least disruptive
9 and most family-like setting that meets the needs of the child;

10 (f) Whether it is in the best interest of the child to remain
11 enrolled in the school, developmental program, or child care the child
12 was in prior to placement and what efforts have been made to maintain
13 the child in the school, program, or child care if it would be in the
14 best interest of the child to remain in the same school, program, or
15 child care;

16 (g) Appointment of a guardian ad litem or attorney;

17 (h) Whether the child is or may be an Indian child as defined in 25
18 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare
19 act apply, and whether there is compliance with the Indian child
20 welfare act, including notice to the child's tribe;

21 (i) Whether, as provided in RCW 26.44.063, restraining orders, or
22 orders expelling an allegedly abusive (~~parent~~) household member from
23 the home of a nonabusive parent, guardian, or legal custodian, will
24 allow the child to safely remain in the home;

25 (j) Whether any orders for examinations, evaluations, or immediate
26 services are needed. (~~However,~~) The court may not order a parent to
27 undergo examinations, evaluation, or services at the shelter care
28 hearing unless the parent agrees to the examination, evaluation, or
29 service;

30 (k) The terms and conditions for parental, sibling, and family
31 visitation.

32 (5)(a) The court shall release a child alleged to be dependent to
33 the care, custody, and control of the child's parent, guardian, or
34 legal custodian unless the court finds there is reasonable cause to
35 believe that:

36 (i) After consideration of the specific services that have been
37 provided, reasonable efforts have been made to prevent or eliminate the

1 need for removal of the child from the child's home and to make it
2 possible for the child to return home; and

3 (ii)(A) The child has no parent, guardian, or legal custodian to
4 provide supervision and care for such child; or

5 (B) The release of such child would present a serious threat of
6 substantial harm to such child, notwithstanding an order entered
7 pursuant to RCW 26.44.063; or

8 (C) The parent, guardian, or custodian to whom the child could be
9 released has been charged with violating RCW 9A.40.060 or 9A.40.070.

10 (b) If the court does not release the child to his or her parent,
11 guardian, or legal custodian, and the child was initially placed with
12 a relative pursuant to RCW 13.34.060(1), the court shall order
13 continued placement with a relative, unless there is reasonable cause
14 to believe the health, safety, or welfare of the child would be
15 jeopardized or that the efforts to reunite the parent and child will be
16 hindered. The relative must be willing and available to:

17 (i) Care for the child and be able to meet any special needs of the
18 child;

19 (ii) Facilitate the child's visitation with siblings, if such
20 visitation is part of the supervising agency's plan or is ordered by
21 the court; and

22 (iii) Cooperate with the department in providing necessary
23 background checks and home studies.

24 (c) If the child was not initially placed with a relative, and the
25 court does not release the child to his or her parent, guardian, or
26 legal custodian, the supervising agency shall make reasonable efforts
27 to locate a relative pursuant to RCW 13.34.060(1).

28 (d) If a relative is not available, the court shall order continued
29 shelter care or order placement with another suitable person, and the
30 court shall set forth its reasons for the order. If the court orders
31 placement of the child with a person not related to the child and not
32 licensed to provide foster care, the placement is subject to all terms
33 and conditions of this section that apply to relative placements.

34 (e) Any placement with a relative, or other person approved by the
35 court pursuant to this section, shall be contingent upon cooperation
36 with the agency case plan and compliance with court orders related to
37 the care and supervision of the child including, but not limited to,
38 court orders regarding parent-child contacts, sibling contacts, and any

1 other conditions imposed by the court. Noncompliance with the case
2 plan or court order is grounds for removal of the child from the home
3 of the relative or other person, subject to review by the court.

4 (f) Uncertainty by a parent, guardian, legal custodian, relative,
5 or other suitable person that the alleged abuser has in fact abused the
6 child shall not, alone, be the basis upon which a child is removed from
7 the care of a parent, guardian, or legal custodian under (a) of this
8 subsection, nor shall it be a basis, alone, to preclude placement with
9 a relative under (b) of this subsection or with another suitable person
10 under (d) of this subsection.

11 (6)(a) A shelter care order issued pursuant to this section shall
12 include the requirement for a case conference as provided in RCW
13 13.34.067. However, if the parent is not present at the shelter care
14 hearing, or does not agree to the case conference, the court shall not
15 include the requirement for the case conference in the shelter care
16 order.

17 (b) If the court orders a case conference, the shelter care order
18 shall include notice to all parties and establish the date, time, and
19 location of the case conference which shall be no later than thirty
20 days before the fact-finding hearing.

21 (c) The court may order another conference, case staffing, or
22 hearing as an alternative to the case conference required under RCW
23 13.34.067 so long as the conference, case staffing, or hearing ordered
24 by the court meets all requirements under RCW 13.34.067, including the
25 requirement of a written agreement specifying the services to be
26 provided to the parent.

27 (7)(a) A shelter care order issued pursuant to this section may be
28 amended at any time with notice and hearing thereon. The shelter care
29 decision of placement shall be modified only upon a showing of change
30 in circumstances. No child may be placed in shelter care for longer
31 than thirty days without an order, signed by the judge, authorizing
32 continued shelter care.

33 (b)(i) An order releasing the child on any conditions specified in
34 this section may at any time be amended, with notice and hearing
35 thereon, so as to return the child to shelter care for failure of the
36 parties to conform to the conditions originally imposed.

37 (ii) The court shall consider whether nonconformance with any

1 conditions resulted from circumstances beyond the control of the
2 parent, guardian, or legal custodian and give weight to that fact
3 before ordering return of the child to shelter care.

4 (8)(a) If a child is returned home from shelter care a second time
5 in the case, or if the supervisor of the caseworker deems it necessary,
6 the multidisciplinary team may be reconvened.

7 (b) If a child is returned home from shelter care a second time in
8 the case a law enforcement officer must be present and file a report to
9 the department.

10 **Sec. 3.** RCW 13.34.136 and 2007 c 413 s 7 are each amended to read
11 as follows:

12 (1) Whenever a child is ordered removed from the home, a permanency
13 plan shall be developed no later than sixty days from the time the
14 supervising agency assumes responsibility for providing services,
15 including placing the child, or at the time of a hearing under RCW
16 13.34.130, whichever occurs first. The permanency planning process
17 continues until a permanency planning goal is achieved or dependency is
18 dismissed. The planning process shall include reasonable efforts to
19 return the child to the parent's home.

20 (2) The agency supervising the dependency shall submit a written
21 permanency plan to all parties and the court not less than fourteen
22 days prior to the scheduled hearing. Responsive reports of parties not
23 in agreement with the supervising agency's proposed permanency plan
24 must be provided to the supervising agency, all other parties, and the
25 court at least seven days prior to the hearing.

26 The permanency plan shall include:

27 (a) A permanency plan of care that shall identify one of the
28 following outcomes as a primary goal and may identify additional
29 outcomes as alternative goals: Return of the child to the home of the
30 child's parent, guardian, or legal custodian; adoption; guardianship;
31 permanent legal custody; long-term relative or foster care, until the
32 child is age eighteen, with a written agreement between the parties and
33 the care provider; successful completion of a responsible living skills
34 program; or independent living, if appropriate and if the child is age
35 sixteen or older. The department shall not discharge a child to an
36 independent living situation before the child is eighteen years of age
37 unless the child becomes emancipated pursuant to chapter 13.64 RCW;

1 (b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(+4)~~)
2 (5), that a termination petition be filed, a specific plan as to where
3 the child will be placed, what steps will be taken to return the child
4 home, what steps the agency will take to promote existing appropriate
5 sibling relationships and/or facilitate placement together or contact
6 in accordance with the best interests of each child, and what actions
7 the agency will take to maintain parent-child ties. All aspects of the
8 plan shall include the goal of achieving permanence for the child.

9 (i) The agency plan shall specify what services the parents will be
10 offered to enable them to resume custody, what requirements the parents
11 must meet to resume custody, and a time limit for each service plan and
12 parental requirement.

13 (ii) Visitation is the right of the family, including the child and
14 the parent, in cases in which visitation is in the best interest of the
15 child. Early, consistent, and frequent visitation is crucial for
16 maintaining parent-child relationships and making it possible for
17 parents and children to safely reunify. The agency shall encourage the
18 maximum parent and child and sibling contact possible, when it is in
19 the best interest of the child, including regular visitation and
20 participation by the parents in the care of the child while the child
21 is in placement. Visitation shall not be limited as a sanction for a
22 parent's failure to comply with court orders or services where the
23 health, safety, or welfare of the child is not at risk as a result of
24 the visitation. Visitation may be limited or denied only if the court
25 determines that such limitation or denial is necessary to protect the
26 child's health, safety, or welfare. The court and the agency should
27 rely upon community resources, relatives, foster parents, and other
28 appropriate persons to provide transportation and supervision for
29 visitation to the extent that such resources are available, and
30 appropriate, and the child's safety would not be compromised.

31 (iii) A child shall be placed as close to the child's home as
32 possible, preferably in the child's own neighborhood, unless the court
33 finds that placement at a greater distance is necessary to promote the
34 child's or parents' well-being.

35 (iv) The plan shall state whether both in-state and, where
36 appropriate, out-of-state placement options have been considered by the
37 department.

1 (v) Unless it is not in the best interests of the child, whenever
2 practical, the plan should ensure the child remains enrolled in the
3 school the child was attending at the time the child entered foster
4 care.

5 (vi) The agency charged with supervising a child in placement shall
6 provide all reasonable services that are available within the agency,
7 or within the community, or those services which the department has
8 existing contracts to purchase. It shall report to the court if it is
9 unable to provide such services; and

10 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+4)~~) (5),
11 that a termination petition be filed, a specific plan as to where the
12 child will be placed, what steps will be taken to achieve permanency
13 for the child, services to be offered or provided to the child, and, if
14 visitation would be in the best interests of the child, a
15 recommendation to the court regarding visitation between parent and
16 child pending a fact-finding hearing on the termination petition. The
17 agency shall not be required to develop a plan of services for the
18 parents or provide services to the parents if the court orders a
19 termination petition be filed. However, reasonable efforts to ensure
20 visitation and contact between siblings shall be made unless there is
21 reasonable cause to believe the best interests of the child or siblings
22 would be jeopardized.

23 (3) Permanency planning goals should be achieved at the earliest
24 possible date, preferably before the child has been in out-of-home care
25 for fifteen months. In cases where parental rights have been
26 terminated, the child is legally free for adoption, and adoption has
27 been identified as the primary permanency planning goal, it shall be a
28 goal to complete the adoption within six months following entry of the
29 termination order.

30 (4) If the court determines that the continuation of reasonable
31 efforts to prevent or eliminate the need to remove the child from his
32 or her home or to safely return the child home should not be part of
33 the permanency plan of care for the child, reasonable efforts shall be
34 made to place the child in a timely manner and to complete whatever
35 steps are necessary to finalize the permanent placement of the child.

36 (5) The identified outcomes and goals of the permanency plan may
37 change over time based upon the circumstances of the particular case.

1 (6) The court shall consider the child's relationships with the
2 child's siblings in accordance with RCW 13.34.130(3).

3 (7) For purposes related to permanency planning:

4 (a) "Guardianship" means a dependency guardianship or a legal
5 guardianship pursuant to chapter 11.88 RCW or equivalent laws of
6 another state or a federally recognized Indian tribe.

7 (b) "Permanent custody order" means a custody order entered
8 pursuant to chapter 26.10 RCW.

9 (c) "Permanent legal custody" means legal custody pursuant to
10 chapter 26.10 RCW or equivalent laws of another state or a federally
11 recognized Indian tribe.

12 **Sec. 4.** RCW 26.44.063 and 2000 c 119 s 12 are each amended to read
13 as follows:

14 (1) It is the intent of the legislature to minimize trauma to a
15 child involved in an allegation of sexual or physical abuse. The
16 legislature declares that removing the child from the home or the care
17 of a parent, guardian, or legal custodian often has the effect of
18 further traumatizing the child. It is, therefore, the legislature's
19 intent that the alleged (~~offender~~) abuser, rather than the child,
20 shall be removed or restrained from the (~~home~~) child's residence and
21 that this should be done at the earliest possible point of intervention
22 in accordance with RCW 10.31.100, (~~13.34.130~~) chapter 13.34 RCW, this
23 section, and RCW 26.44.130.

24 (2) In any judicial proceeding in which it is alleged that a child
25 has been subjected to sexual or physical abuse, if the court finds
26 reasonable grounds to believe that an incident of sexual or physical
27 abuse has occurred, the court may, on its own motion, or the motion of
28 the guardian ad litem or other parties, issue a temporary restraining
29 order or preliminary injunction restraining or enjoining the person
30 accused of committing the abuse from:

31 (a) Molesting or disturbing the peace of the alleged victim;

32 (b) Entering the family home of the alleged victim except as
33 specifically authorized by the court;

34 (c) Having any contact with the alleged victim, except as
35 specifically authorized by the court;

36 (d) Knowingly coming within, or knowingly remaining within, a
37 specified distance of a specified location.

1 (3) If the caretaker is willing, and does comply with the
2 restraining order entered pursuant to this section, uncertainty that
3 the alleged abuser has in fact abused the alleged victim shall not,
4 alone, be a basis to remove the alleged victim from the caretaker, nor
5 shall it be considered neglect.

6 (4) In issuing a temporary restraining order or preliminary
7 injunction, the court may impose any additional restrictions that the
8 court in its discretion determines are necessary to protect the child
9 from further abuse or emotional trauma pending final resolution of the
10 abuse allegations.

11 (~~(4)~~) (5) The court shall issue a temporary restraining order
12 prohibiting a person from entering the family home if the court finds
13 that the order would eliminate the need for an out-of-home placement to
14 protect the child's right to nurturance, health, and safety and is
15 sufficient to protect the child from further sexual or physical abuse
16 or coercion.

17 (~~(5)~~) (6) The court may issue a temporary restraining order
18 without requiring notice to the party to be restrained or other parties
19 only if it finds on the basis of the moving affidavit or other evidence
20 that irreparable injury could result if an order is not issued until
21 the time for responding has elapsed.

22 (~~(6)~~) (7) A temporary restraining order or preliminary
23 injunction:

24 (a) Does not prejudice the rights of a party or any child which are
25 to be adjudicated at subsequent hearings in the proceeding; and

26 (b) May be revoked or modified.

27 (~~(7)~~) (8) The person having physical custody of the child shall
28 have an affirmative duty to assist in the enforcement of the
29 restraining order including but not limited to a duty to notify the
30 court as soon as practicable of any violation of the order, a duty to
31 request the assistance of law enforcement officers to enforce the
32 order, and a duty to notify the department of social and health
33 services of any violation of the order as soon as practicable if the
34 department is a party to the action. Failure by the custodial party to
35 discharge these affirmative duties shall be subject to contempt
36 proceedings.

37 (~~(8)~~) (9) Willful violation of a court order entered under this
38 section is a misdemeanor. A written order shall contain the court's

1 directive and shall bear the legend: "Violation of this order with
2 actual notice of its terms is a criminal offense under chapter 26.44
3 RCW, is also subject to contempt proceedings, and will subject a
4 violator to arrest."

5 ~~((9))~~ (10) If a restraining order issued under this section is
6 modified or terminated, the clerk of the court shall notify the law
7 enforcement agency specified in the order on or before the next
8 judicial day. Upon receipt of notice that an order has been
9 terminated, the law enforcement agency shall remove the order from any
10 computer-based criminal intelligence system.

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