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SUBSTITUTE SENATE BILL 6100

State of Washington 62nd Legislature 2012 Regular Session

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

READ FIRST TIME 01/24/12.

- AN ACT Relating to clarifying and updating the administration of sexual assault grant programs by the department of commerce; amending RCW 43.280.010, 43.280.011, 43.280.020, 43.280.050, 43.280.060, 43.280.070, 43.280.080, 43.280.090, 70.125.020, 70.125.065, 5.60.060, and 42.56.370; reenacting and amending RCW 70.125.030; and repealing RCW 43.280.030, 43.280.081, 74.14B.060, 70.125.040, 70.125.050, 70.125.055, and 70.125.080.
- 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 9 **Sec. 1.** RCW 43.280.010 and 1996 c 123 s 2 are each amended to read 10 as follows:
- 11 The legislature recognizes the need to increase the services available to the victims of ((sex offenders)) sexual assault. 12 13 legislature also recognizes that these services are most effectively 14 planned and provided at the local level through the combined efforts of 15 concerned community and citizens groups, treatment providers, and local 16 government officials. The legislature further recognizes that adequate 17 ((treatment)) services for victims is not only a matter of justice for the victim, but also a method by which additional abuse can be 18 19 prevented.

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The legislature intends to enhance the community-based ((treatment)) services available to the victims of ((sex offenders)) sexual assault by:

- (1) Providing consolidated funding support for local ((treatment)) programs which provide services to victims of ((sex offenders)) sexual assault, as defined in RCW 70.125.030;
- (2) Providing technical assistance and support to help communities plan for and provide ((treatment)) victim services;
- 9 (3) Providing sexual assault services with a victim-focused 10 mission, and consistent standards, policies, and ((contracting)) 11 granting and reporting requirements; and
- 12 (4) Providing communities and local ((treatment)) victim service 13 providers with opportunities to share information about successful 14 prevention and treatment programs.
- **Sec. 2.** RCW 43.280.011 and 1996 c 123 s 1 are each amended to read 16 as follows:

The Washington state sexual assault services advisory committee issued a report to the department of ((community, trade, and economic development)) commerce and the department of social and health services in June of 1995. The committee made several recommendations to improve the delivery of services to victims of sexual ((abuse and)) assault: (1) Consolidate the administration and funding of sexual assault and abuse services in one agency instead of splitting those functions between the department of social and health services and the department of ((community, trade, and economic development)) commerce; (2) adopt a funding allocation plan to pool all funds for sexual assault services and to distribute them across the state to ensure the delivery of core and specialized services; (3) establish service, data collection, and management standards and outcome measurements for recipients of grants; and (4) create a data collection system to gather pertinent data concerning the delivery of sexual assault services to victims.

The legislature approves the recommendations of the advisory committee and consolidates the functions and funding for sexual assault services in the department of ((community, trade, and economic development)) commerce to implement the advisory committee's recommendations.

((The legislature does not intend to effect a reduction in service levels within available funding by transferring department of social and health services' powers and duties to the department of community, trade, and economic development. At a minimum, the department of community, trade, and economic development shall distribute the same percentage of the services it provides victims of sexual assault and abuse, pursuant to RCW 43.280.020, 70.125.080, and 74.14B.060, to children as were distributed to children through these programs in fiscal year 1996.))

- **Sec. 3.** RCW 43.280.020 and 1996 c 123 s 3 are each amended to read 11 as follows:
 - ((There is established in)) (1) The department of ((community, trade, and economic development a grant program to enhance the funding for treating the victims of sex offenders)) commerce is authorized to distribute funds that have been allocated to the grant program that it administers for serving victims of sexual assault.
- 17 <u>(2)</u> Activities that can be funded through this grant program are limited to those that:
- 19 (((1))) <u>(a)</u> Provide effective ((treatment)) <u>services</u> to victims of 20 ((sex offenders)) <u>sexual assault</u>;
- 21 (((2))) <u>(b)</u> Increase access to and availability of ((treatment))
 22 <u>services</u> for victims of ((sex offenders)) <u>sexual assault</u>, particularly
 23 if from underserved populations; and
 - $((\frac{3}{2}))$ (c) Create or build on efforts by existing community programs, coordinate those efforts, or develop cooperative efforts or other initiatives to make the most effective use of resources to provide treatment services to these victims.
 - (3) Funding ((shall be given)) for core, specialized, and underserved populations services, as defined in RCW 70.125.030, must be distributed through a funding formula to those applicants that emphasize providing stable, victim-((focused)) centered sexual ((abuse)) assault services and possess the qualifications to provide ((core)) those services((, as defined in RCW 70.125.030.
- Funds for specialized services, as defined in RCW 70.125.030, shall be disbursed through the request for proposal or request for qualifications process)).

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- 1 (4) The department of commerce shall ensure that grant recipients
- 2 assist victims to utilize private insurance and crime victims'
- 3 compensation benefits first before grant funds are used for therapy
- 4 <u>services</u>.

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- 5 **Sec. 4.** RCW 43.280.050 and 1996 c 123 s 4 are each amended to read 6 as follows:
- 7 (1) At a minimum, grant applications <u>for specialized and</u> 8 underserved services must include the following:
- 9 $((\frac{1}{1}))$ (a) The geographic area from which the victims to be served 10 are expected to come;
- 11 $((\frac{2}{2}))$ (b) A description of the extent and effect of the needs of these victims within the relevant geographic area;
- (((3))) <u>(c) A proposed budget and a</u>n explanation of how the funds will be used, their relationship to existing services available within the community, and the need that they will fulfill;
- 16 (((4))) <u>(d)</u> An explanation of what <u>community</u> organizations were 17 involved in the <u>community coordination that resulted in the</u> development 18 of the proposal; and
 - $((\frac{(5)}{)})$ (e) Documentation of the applicant's capacity to provide $((\frac{(core-and)}{)})$ specialized services and services for underserved populations, as defined in $((\frac{RCW-70.125.030}{,})$ provided by the applicant,)) this chapter, and a description of how the applicant intends to comply with service($(\frac{(7)}{)}$) standards and data collection($(\frac{(7)}{)}$) as established by the department($(\frac{(7)}{)}$) and
- 25 (6) An evaluation methodology)).
- 26 (2) At a minimum, grant applications for core services must include 27 the following:
- 28 <u>(a) The geographic area from which the victims to be served are</u> 29 expected to come;
- 30 <u>(b) Assurance of the applicant's compliance with service standards,</u>
 31 <u>data collection, and management standards established by the</u>
 32 department; and
- 33 <u>(c) Documentation of the applicant's capacity to provide core</u> 34 services, as defined in this chapter.
- 35 **Sec. 5.** RCW 43.280.060 and 1996 c 123 s 5 are each amended to read as follows:

(1) Subject to funds appropriated by the legislature, the department of ((community, trade, and economic development)) commerce shall make awards under the grant program established by RCW 43.280.020.

- (2) ((To aid the department of community, trade, and economic development in making its funding determinations, the department shall form a peer review committee comprised of individuals who are knowledgeable or experienced in the management or delivery of treatment services to victims of sex offenders. The peer review committee shall advise the department on the extent to which each eligible applicant meets the treatment and management standards, as developed by the department. The department shall consider this advice in making awards.
- (3))) Activities funded under this section may be considered for funding in future years, but shall be considered under the same terms and criteria as new activities. Funding under this chapter shall not constitute an obligation by the state of Washington to provide ongoing funding.
- **Sec. 6.** RCW 43.280.070 and 1995 c 399 s 115 are each amended to 20 read as follows:
 - The department of ((community, trade, and economic development)) commerce may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.
- **Sec. 7.** RCW 43.280.080 and 1995 c 241 s 1 are each amended to read 28 as follows:
 - The office of crime victims advocacy is established in the department of ((community, trade, and economic development)) commerce. The office shall assist communities in planning and implementing services for crime victims, advocate on behalf of crime victims in obtaining needed services and resources, and advise local and state governments on practices, policies, and priorities that impact crime victims. In addition, the office shall administer grant programs for ((sexual assault treatment and prevention services, as authorized in

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- 1 this chapter)) services to victims of crime and prevention activities
- 2 as authorized by state or federal legislation, budget, or executive
- 3 <u>order. The department shall seek, receive, and make use of any funds</u>
- 4 which may be available from federal or other sources to augment state
- 5 funds appropriated for the purpose of this section, and shall make
- 6 <u>every effort to qualify for federal funding</u>.
- 7 **Sec. 8.** RCW 43.280.090 and 1995 c 269 s 2102 are each amended to 8 read as follows:
- 9 The director of the department of ((community, trade, and economic
- 10 <u>development</u>)) <u>commerce</u> may establish ad hoc advisory committees, as
- 11 necessary, to obtain advice and guidance regarding the office of crime
- 12 victims advocacy program.

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- 13 **Sec. 9.** RCW 70.125.020 and 1979 ex.s. c 219 s 2 are each amended to read as follows:
- 15 $((\frac{1}{1}))$ The legislature hereby finds and declares that:
- 16 (((a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;
- 18 (b) There is a lack of essential information and data concerning
 19 sexual assault;
- 20 (c) There is a lack of adequate training for law enforcement 21 officers concerning sexual assault, the victim, the offender, and the 22 investigation;
 - (d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;
 - (e) There is a lack of public information concerning sexual assault prevention and personal self-protection;
- (f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;
- 32 (g) The criminal justice system and health care system should 33 maintain close contact and cooperation with each other and with 34 community rape crisis centers to expedite the disposition of sexual 35 assault cases; and

1 (h)) (1) Sexual assault is a serious crime in society, affecting 2 a large number of children, women, and men each year;

- (2) Efforts over many years to distribute information and collect data have demonstrated the incidence of sexual assault that continues to impact communities, families, and individuals;
- (3) Over the past three decades, law enforcement, prosecutors, medical professionals, educators, mental health providers, public health professionals, and victim advocates have benefited from a commitment to training and learning regarding appropriate responses to and services for victims of sexual assault;
- (4) This same effort has resulted in increased public awareness of sexual assault and its impact on communities, families, and individuals;
 - (5) Law enforcement, prosecutors, medical professionals, educators, mental health providers, public health professionals, and victim advocates should continue to work closely and collaboratively to improve responses to and services for victims of sexual assault;
 - (6) The physical, emotional, financial, and psychological needs of victims and their families are particularly well-served by timely and effective services provided in local communities; and
 - (7) Persons who are victims of sexual assault ((will)) benefit directly from ((increased)) continued public awareness and education, ((increased)) prosecutions of offenders, ((and)) a criminal justice system which treats them in a humane manner, and access to victim-centered, culturally relevant services.
 - (((2) Therefore, a statewide sexual assault education, training, and consultation program should be developed. Such a statewide program should seek to improve treatment of victims through information—gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault.))
- 34 Sec. 10. RCW 70.125.030 and 2009 c 565 s 50 are each reenacted and amended to read as follows:
- 36 ((As used in this chapter and unless the context indicates

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- otherwise:)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
 - (1) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.
 - (2) "Core services" means ((treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, system coordination, and prevention for potential victims of sexual assault)) those services that are victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.
 - (3) "Department" means the department of commerce.
- 15 (4) "Law enforcement agencies" means police and sheriff's 16 departments <u>and tribal law enforcement departments or agencies</u> of this 17 state.
 - (5) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.
 - (6) (("Rape crisis center" means a community based social service agency which provides services to victims of sexual assault.))
 "Services for underserved populations" means culturally relevant victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.
 - (7) "Sexual assault" means one or more of the following:
- 28 (a) Rape or rape of a child;
 - (b) Assault with intent to commit rape or rape of a child;
- 30 (c) Incest or indecent liberties;
- 31 (d) Child molestation;

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- 32 (e) Sexual misconduct with a minor;
 - (f) Custodial sexual misconduct;
- 34 (g) Crimes with a sexual motivation; ((or))
- 35 (h) Sexual exploitation or commercial sex abuse of a minor;
- 36 (i) Promoting prostitution; or
- 37 (j) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means ((treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination)) those services intended to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

- (9) "Victim" means any person who suffers physical ((and/or mental anguish)), emotional, financial, and psychological impact as a proximate result of a sexual assault.
- **Sec. 11.** RCW 70.125.065 and 1981 c 145 s 9 are each amended to 11 read as follows:

Records maintained by ((rape crisis centers)) a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

- (1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the ((rape crisis center's)) community sexual assault program or underserved populations provider records;
- (2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the ((rape crisis center's)) community sexual assault program or underserved populations provider records;
- (3) The court reviews the ((rape crisis center's)) community sexual assault program or underserved populations provider records in camera to determine whether the ((rape crisis center's)) community sexual assault program or underserved populations provider records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and
- 32 (4) The court enters an order stating whether the records or any 33 part of the records are discoverable and setting forth the basis for 34 the court's findings.
- **Sec. 12.** RCW 5.60.060 and 2009 c 424 s 1 are each amended to read as follows:

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- (1) A spouse or domestic partner shall not be examined for or 1 2 against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or 3 during the domestic partnership or afterward, be without the consent of 4 5 the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception 6 7 shall not apply to a civil action or proceeding by one against the 8 other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against 9 10 a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against 11 12 the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom 13 14 said spouse or domestic partner is the parent or quardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: 15 16 PROVIDED, That the spouse or the domestic partner of a person sought to 17 be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not 18 be compelled to testify and shall be so informed by the court prior to 19 being called as a witness.
 - (2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.
 - (b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.
 - (3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.
 - (4) Subject to the limitations under RCW 70.96A.140 or 71.05.360(8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his

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or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

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- (a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and
- (b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.
- (5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.
- (6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.
- (b) For purposes of this section, "peer support group counselor"
 means a:
 - (i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or
 - (ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or

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firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity.

- (7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.
- (a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a ((rape crisis center)) community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.
- (b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.
- (8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.
- (a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

- (b) A domestic violence advocate may disclose a confidential 1 2 communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical 3 4 injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or 5 cause to be reported an incident under RCW 26.44.030(1) or to disclose 6 relevant records relating to a child as required by RCW 26.44.030(12). 7 8 Any domestic violence advocate participating in good faith in the 9 disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the 10 11 In any proceeding, civil or criminal, arising out of a 12 disclosure under this subsection, the good faith of the domestic 13 violence advocate who disclosed the confidential communication shall be 14 presumed.
 - (9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

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- (a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;
- (b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;
 - (c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;
- 28 (d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 29 (8) and (9); or
 - (e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.
- 36 **Sec. 13.** RCW 42.56.370 and 2005 c 274 s 417 are each amended to read as follows:

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- Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a ((rape crisis center)) community sexual assault program or services for underserved populations as defined in RCW 70.125.030 are exempt from disclosure under this chapter.
- 6 <u>NEW SECTION.</u> **Sec. 14.** The following acts or parts of acts are 7 each repealed:
 - (1) RCW 43.280.030 (Applications) and 1990 c 3 s 1204;
- 9 (2) RCW 43.280.081 (Office of crime victims advocacy--Reports on 10 penalty assessments collection and use of funds for assistance to 11 victims and witnesses of crime) and 1996 c 122 s 3;
- 12 (3) RCW 74.14B.060 (Sexually abused children--Treatment services)
 13 and 1996 c 123 s 8 & 1990 c 3 s 1402;
- 14 (4) RCW 70.125.040 (Coordinating office--Biennial statewide plan) 15 and 1985 c 34 s 1 & 1979 ex.s. c 219 s 4;
- 16 (5) RCW 70.125.050 (Statewide program services) and 1979 ex.s. c 17 219 s 5;
- 18 (6) RCW 70.125.055 (Financial assistance to rape crisis centers) 19 and 1985 c 34 s 2; and
- 20 (7) RCW 70.125.080 (Community sexual assault programs--Victim 21 advocates) and 1996 c 123 s 7 & 1991 c 267 s 3.

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