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4

A Bill

SENATE BILL 313

5 By: Senators Irvin, B. Davis, J. English
6 By: Representatives K. Moore, Vaught, Barker, Bentley, A. Brown, K. Brown, R. Burkes, Cavanaugh,
7 Crawford, Dalby, Duke, Henley, Lundstrum, J. Mayberry, McAlindon
8

For An Act To Be Entitled

9
10 AN ACT CONCERNING FORENSIC MENTAL HEALTH EVALUATIONS
11 AND TREATMENT; TO PROMOTE AND IMPROVE EFFICIENCIES
12 AND QUALITY IN THE DEPARTMENT OF HUMAN SERVICES; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15
16
17 CONCERNING FORENSIC MENTAL HEALTH
18 EVALUATIONS AND TREATMENT; AND TO
19 PROMOTE AND IMPROVE EFFICIENCIES AND
20 QUALITY IN THE DEPARTMENT OF HUMAN
21 SERVICES.
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 5-2-301(3), concerning the definition of
26 "designated receiving facility or program" regarding mental disease or
27 defect, is amended to read as follows:

28 (3) "Designated receiving facility or program" means an
29 inpatient or outpatient treatment facility or program that is designated
30 within each geographic area of the state by the Director of the Division of
31 Aging, Adult, and Behavioral Health Services of the Department of Human
32 Services to accept the responsibility for the care, custody, and treatment of
33 a person involuntarily ~~admitted~~ committed to the state mental health system
34 for mental health treatment;
35

36 SECTION 2. Arkansas Code § 5-2-301(5), concerning the definition of



1 "frivolous" regarding mental disease or defect, is amended to read as
2 follows:

3 (5) "Frivolous" means clearly lacking ~~any~~ a reasonable basis in
4 fact or law;

5
6 SECTION 3. Arkansas Code § 5-2-301, concerning the definitions used
7 regarding mental disease or defect, is amended to add an additional
8 subdivision to read as follows:

9 (14)(A) "Jail-based restoration services" means clinical and
10 educational services provided in a county jail to a defendant to assist in
11 the restoration of the defendant's fitness to proceed.

12 (B) "Jail-based restoration services" includes without
13 limitation mental health treatment, medical treatment, and substance abuse
14 treatment.

15
16 SECTION 4. Arkansas Code § 5-2-304 is amended to read as follows:
17 5-2-304. Notice requirement.

18 (a) When a defendant intends to raise lack of criminal responsibility
19 as ~~a~~ an affirmative defense in a prosecution or put in issue his or her
20 fitness to proceed, the defendant shall notify the prosecutor and the court
21 at the earliest practicable time.

22 (b)~~(1)~~ Failure to notify the prosecutor within a reasonable time
23 before the trial date entitles the prosecutor to a continuance that for
24 limitation purposes is deemed an excluded period granted on application of
25 the defendant.

26 ~~(2) Alternatively, in lieu of suspending any further proceedings~~
27 ~~under § 5-2-328, the court may order the immediate examination of the~~
28 ~~defendant at a designated receiving facility or program by an expert.~~

29 (c) When the court or a party in a criminal proceeding has reason to
30 believe that a defendant is not fit to proceed, the court or a party shall
31 raise the question of the defendant's fitness in the following manner:

32 (1) On its own motion, the court shall suspend the proceedings
33 and order an examination of the defendant pursuant to this subchapter; or

34 (2) By written motion of the prosecutor or defense council,
35 stating that the request is made in good faith and not for the purposes of
36 delay and containing the facts and observations in support of the request.

1 (d) When the defendant intends to raise the lack of criminal
2 responsibility as an affirmative defense, the defendant shall file a notice
3 of intent and the circuit court shall suspend all further proceedings.

4 (e) Upon filing of an order for an examination of criminal
5 responsibility or fitness to proceed with a circuit clerk:

6 (1) The moving party shall immediately submit a copy of the
7 order to the Department of Human Services;

8 (2) The prosecutor shall submit a copy of the defendant's case
9 file to the department;

10 (3) The attorney for the defendant shall submit to the
11 department either:

12 (A) A release of protected health information, signed by
13 the defendant, with a list of all known previous healthcare providers; or

14 (B) If the defendant cannot provide consent, a court order
15 for the production of records; and

16 (4) The attorney for the defendant shall make all reasonable
17 efforts to provide any medical, psychiatric, or treatment records that may be
18 relevant to the examination to the department.

19
20 SECTION 5. Arkansas Code § 5-2-310 is amended to read as follows:

21 5-2-310. Lack of fitness to proceed – Procedures subsequent to finding.

22 (a)(1)(A) If the court determines that a defendant lacks fitness to
23 proceed, the proceeding against him or her shall be suspended and the court
24 may commit the defendant to the custody of the Department of Human Services
25 for ~~detention, care, and treatment until~~ restoration of fitness to proceed.

26 (B) If the court determines that a defendant lacks fitness
27 to proceed because of a mental disease or defect that precludes the
28 possibility of restoration, the court shall direct the defendant to available
29 services and supports as recommended by the department.

30 (C) ~~However, if~~ If the court is satisfied that the
31 defendant may be released without danger to himself or herself or to the
32 person or property of another, the court may order the defendant's release
33 and the release shall continue at the discretion of the court on conditions
34 the court determines necessary.

35 (D) If the court finds that the defendant lacks fitness to
36 proceed or that the defendant is fit to proceed but that the defendant's

1 fitness to proceed depends on the continuation of appropriate treatment for a
2 mental disease or defect, the court shall consider issues relating to
3 treatment necessary to restore or maintain the defendant's fitness to
4 proceed.

5 (E) If the court finds that the defendant may be treated
6 in the community, the court may make receipt of reasonable medical treatment
7 a condition of his or her release.

8 (F) If the defendant is incarcerated, the court may order
9 administration of medication to maintain the fitness of the defendant.

10 (G) Days spent in the physical custody of the department
11 under this subsection (a) are considered days spent in custody for
12 determining credit for time served.

13 (2) A copy of the report filed under § 5-2-327 shall be attached
14 to the order of commitment or order of conditional release.

15 (3)(A) At any time after the issue of a defendant's fitness to
16 proceed has been raised, the court may, on a motion of the state, dismiss all
17 charges pending against the defendant.

18 (B) If the court dismisses the charges pending against a
19 defendant, the proceedings shall discontinue, and the defendant shall be
20 discharged.

21 (b)(1) Within a reasonable period of time, ~~but in any case within ten~~
22 ~~(10)~~ not to exceed six (6) months of a commitment pursuant to subsection (a)
23 of this section, the department shall file with the committing court a
24 written report indicating whether the defendant is fit to proceed, or if not,
25 whether:

26 (A) The defendant's mental disease or defect is of a
27 nature precluding restoration of fitness to proceed or it does not appear
28 that the defendant will become fit to proceed within the reasonably
29 foreseeable future; and

30 (B) The defendant presents a danger to himself or herself
31 or to the person or property of another.

32 (2)(A) The court shall make a determination within ~~one (1) year~~
33 eight (8) months of a commitment pursuant to subsection (a) of this section.

34 (B) Pursuant to the report of the department or as a
35 result of a hearing on the report, if the court determines that the defendant
36 is fit to proceed, prosecution in ordinary course may commence.

1 (C) If the defendant lacks fitness to proceed but does not
2 present a danger to himself or herself or to the person or property of
3 another, the court may release the defendant on conditions the court
4 determines to be proper.

5 (D) If the defendant lacks fitness to proceed and presents
6 a danger to himself or herself or the person or property of another, the
7 court shall order the department to petition for an involuntary ~~admission~~
8 commitment.

9 (E) Upon filing of an order finding that the defendant
10 lacks fitness to proceed issued under subdivision (b)(2)(A) of this section
11 with a circuit clerk ~~or a probate clerk~~, the circuit clerk ~~or the probate~~
12 ~~clerk~~ shall submit a copy of the order to the Arkansas Crime Information
13 Center.

14 (c)(1) On the court's own motion or upon application of the
15 department, the prosecuting attorney, or the defendant, and after a hearing
16 if a hearing is requested, if the court determines that the defendant has
17 regained fitness to proceed, the criminal proceeding shall be resumed.

18 (2) If the defendant has been receiving and responding well to
19 treatment, including medication, the court may make appropriate orders for
20 the continued treatment or administration of medication, or both to maintain
21 the fitness of the defendant throughout the remainder of the proceedings.

22 (3) However, if the court is of the view that so much time has
23 elapsed since the alleged commission of the offense in question that it would
24 be unjust to resume the criminal proceeding, the court may dismiss the charge
25 regardless of whether the defendant has regained fitness to proceed.

26 (4)(A) On either the motion of the court or the state, a hearing
27 shall be held to determine whether the charges against a defendant who lacks
28 fitness to proceed due to mental disease or defect may be dismissed if the
29 defendant remains without fitness to proceed for five (5) continuous years
30 from the date of determination of lack of fitness.

31 (B) If the charges are dismissed, the dismissal shall be
32 without prejudice to the state.

33 (C) If the court moves for a hearing, the state shall have
34 notice of at least sixty (60) days before the hearing date unless the state
35 consents to another date.

36 (d)(1) Persons authorized by this section to administer treatment or

1 medication shall not be criminally liable for administering treatment or
2 medication pursuant to this subchapter if done in good faith.

3 (2) Persons authorized to administer treatment or medication
4 shall not be civilly liable for such activities when the persons acted in a
5 reasonable manner and according to generally accepted medical and other
6 professional practices.

7 (e)(1) A law enforcement officer or a corrections officer may employ
8 reasonable force in cases where an individual refuses administration of
9 court-ordered treatment or medication.

10 (2) A law enforcement officer or a corrections officer shall not
11 be criminally or civilly liable for the use of reasonable force under
12 subdivision (e)(1) of this section.

13
14 SECTION 6. Arkansas Code Title 5, Chapter 2, Subchapter 3, is amended
15 to add an additional section to read as follows:

16 5-2-318. Restoration in county jails.

17 (a) Jail-based restoration services shall be permitted through
18 telehealth.

19 (b) Jail-based restoration services that involve procedures other than
20 or in addition to telehealth services may be provided upon the consent of the
21 county sheriff or the keeper, superintendent, or administrator of the county
22 jail.

23
24 SECTION 7. Arkansas Code § 5-2-327 is amended to read as follows:

25 5-2-327. Examination of defendant – Fitness to proceed.

26 (a)(1)(A) Any party or the court may raise the issue of the
27 defendant's fitness to proceed by written motion.

28 (B) A written motion by the prosecuting attorney or
29 defense counsel shall:

30 (i) State that the motion for examination of the
31 defendant is made in good faith and not for the purpose of delay; and

32 (ii) Include facts and observations to support the
33 motion for examination of the defendant.

34 (2) The court shall order an examination under this section if
35 it finds there is a reasonable suspicion that a defendant is not fit to
36 proceed.

1 (3) The court may dismiss a motion for examination under this
 2 section if the court determines that the motion:

3 (A) Is frivolous; or

4 (B) Has stated no facts to support the request for
 5 examination.

6 ~~(3)(4)~~(A) Subject to §§ 5-2-304 and 5-2-311, the court shall
 7 immediately suspend further proceedings in a prosecution if it has ordered an
 8 examination under this section.

9 (B)(i) If a jury has been impaneled and the court suspends
 10 proceedings under subdivision ~~(a)(3)(A)~~ (a)(4)(A) of this section, the court
 11 may retain the jury or declare a mistrial and discharge the jury.

12 (ii) A discharge of the jury is not a bar to further
 13 prosecution.

14 ~~(4)(5)~~(A) If a court suspends further proceedings in the
 15 prosecution under subdivision ~~(a)(3)(A)~~ (a)(4)(A) of this section, the court
 16 shall enter an order+

17 ~~(A) Appointing one (1) or more experts who do not practice~~
 18 ~~in the Arkansas State Hospital to examine the defendant and report on the~~
 19 ~~defendant's mental condition; or~~

20 ~~(B)(i) Directing~~ directing the Director of the Division of
 21 Aging, Adult, and Behavioral Health Services of the Department of Human
 22 Services to provide an expert who will examine and report upon the
 23 defendant's mental condition.

24 ~~(ii)(B)~~ The director or his or her designee shall
 25 determine the location of the examination required under subdivision
 26 ~~(a)(4)(B)(i)~~ (a)(5)(A) of this section.

27 (b) An examination ordered under this section shall be for a period
 28 not exceeding sixty (60) days unless the director or his or her designee
 29 determines a longer period of examination is necessary for the purpose of the
 30 examination.

31 (c) The department shall provide for or arrange the fitness to proceed
 32 examination of the defendant at a jail, prison, community setting, or
 33 psychiatric hospital.

34 (d)(1) A uniform order to be used by a court ordering an examination
 35 of a defendant's fitness to proceed under this section shall be developed by
 36 the Administrative Office of the Courts in conjunction with the following

1 organizations:

2 (A) The Arkansas Prosecuting Attorneys Association;

3 (B) The Department of Human Services; and

4 (C) The Arkansas Public Defender Commission.

5 (2) The uniform order developed under this subsection shall
6 contain the following information:

7 (A) The defendant's name, age, gender, and race;

8 (B) The criminal charges pending against the defendant;

9 (C) The defendant's attorney's name and address;

10 (D) The defendant's custody status;

11 (E) The case number for which the examination was ordered;

12 (F) A unique identifying number on the incident reporting
13 form as required by the Arkansas Crime Information Center; ~~and~~

14 (G) The name of the requesting attorney, if applicable;

15 and

16 (H) An authorization to release and receive protected
17 health information.

18 (3) An examination under this section shall not be conducted
19 without using the uniform order required under this subsection.

20 (4) The uniform order shall require the prosecuting attorney to
21 provide to the examiner any information relevant to the examination,
22 including without limitation:

23 (A) The name and address of any attorney involved in the
24 matter; and

25 (B) Information about the alleged offense.

26 (5) The court ~~may~~ shall require the attorney for the defendant
27 to make all reasonable efforts to provide to the examiner any available
28 information relevant to the examination, including without limitation:

29 (A) Psychiatric records;

30 (B) Medical records; or

31 (C) Records pertaining to treatment of the defendant for
32 substance or alcohol abuse.

33 ~~(d)~~(e)(1) An examination report ordered under this section shall be
34 filed with the clerk of the court ordering the examination and is a public
35 record.

36 (2) The court clerk shall provide copies of the examination

1 report to the defendant's attorney and the prosecuting attorney.

2 ~~(e)~~(f)(1) An examination report prepared by an examiner ordered under
3 this section shall:

4 (A) Contain an opinion as to whether or not the defendant
5 is fit to proceed and the basis for the opinion;

6 (B) Contain an opinion as to whether the defendant has a
7 mental disease or defect;

8 (C) Contain a substantiated diagnosis in the terminology
9 of the American Psychiatric Association's most current edition of the
10 Diagnostic and Statistical Manual of Mental Disorders;

11 (D) Document that the examiner explained to the defendant:

12 (i) The purpose of the examination;

13 (ii) The persons to whom the examination report is
14 provided; and

15 (iii) The limits on rules of confidentiality
16 applying to the relationship between the examiner and the defendant; ~~and~~

17 (E) Describe, in specific terms:

18 (i) The procedures, techniques, and tests used in
19 the examination;

20 (ii) The purpose of each procedure, technique, or
21 test; and

22 (iii) The conclusions reached; and

23 (F) An opinion as to whether the defendant:

24 (i) Presents a substantial danger to himself or
25 herself, others, or property; and

26 (ii) Presents a substantial risk to public safety
27 without a prescribed regimen of medical, psychiatric, or psychological care
28 or treatment.

29 (2) An examiner's opinion on the defendant's fitness to proceed
30 or lack of fitness to proceed may not be based solely on the defendant's
31 refusal to communicate during the examination.

32 (3)(A) During an examination to determine a defendant's fitness
33 to proceed and in any examination report based on that examination, an
34 examiner shall consider:

35 (i) The capacity of the defendant during criminal
36 proceedings to:

1 (a) Rationally understand the charges against
2 him or her and the potential consequences of the pending criminal
3 proceedings;

4 (b) Disclose to the defendant's attorney
5 pertinent facts, events, and states of mind;

6 (c) Engage in a reasoned choice of legal
7 strategies and options;

8 (d) Understand the adversarial nature of
9 criminal proceedings;

10 (e) Exhibit appropriate courtroom behavior;
11 and

12 (f) Testify;

13 (ii) As supported by current indications and the
14 defendant's personal history, whether the defendant is a person with:

15 (a) A mental disease or defect; or

16 (b) An intellectual disability; and

17 (iii) The degree of impairment resulting from the
18 mental disease or defect or intellectual disability, if existent, and the
19 specific impact on the defendant's capacity to engage with the defendant's
20 attorney in an effective manner.

21 (B) The information or lack of information contained in
22 the examiner's report is not intended to limit the introduction of evidence
23 regarding the defendant's fitness to proceed.

24 (4) If the examiner concludes that the defendant lacks fitness
25 to proceed, the report shall contain:

26 (A) An opinion of the condition causing the lack of
27 fitness to proceed;

28 (B) An opinion of the treatment necessary for the
29 defendant to obtain fitness to proceed; and

30 (C) An opinion on the likelihood of the defendant
31 attaining fitness to proceed under treatment.

32 ~~(f)~~(g) This subchapter does not preclude the defendant from having an
33 examination conducted by an expert of the defendant's own choosing to
34 determine the defendant's fitness to proceed, and the court shall provide the
35 defendant's expert with a reasonable opportunity to examine the defendant
36 upon a timely request.

1 ~~(g)~~(h) When the defendant has previously been found fit to proceed,
2 the court may order a second or subsequent examination to determine a
3 defendant's fitness to proceed only if the court:

4 (1) Finds reasonable cause to believe that new or previously
5 undiscovered evidence calls into question the factual, legal, or scientific
6 basis of the opinion upon which the previous finding of fitness relied;

7 (2) Finds reasonable cause to believe that the defendant's
8 mental condition has changed; or

9 (3) Sets forth in the order a factual or legal basis upon which
10 to order another examination.

11 ~~(h)~~(i) Upon completion of examination under this section, the court
12 may enter an order providing for further examination of the defendant and may
13 order the defendant into the custody of the director for further examination
14 and observation if the court determines that ~~commitment and~~ further
15 examination ~~are~~ is warranted.

16
17 SECTION 8. Arkansas Code § 5-2-328(a), concerning the procedure when a
18 defendant intends to raise lack of criminal responsibility as an affirmative
19 defense, is amended to add an additional subdivision to read as follows:

20 (4) An examination under this section shall be conducted only
21 after the circuit court has found the defendant fit to proceed.

22
23 SECTION 9. Arkansas Code § 5-2-328(b)(2), concerning the uniform order
24 for examination of a defendant's lack of criminal responsibility, is amended
25 to read as follows:

26 (2) The uniform order developed under this subsection shall
27 contain, without limitation, the following information:

28 (A) The defendant's name, age, gender, and race;

29 (B) The criminal charges pending against the defendant;

30 (C) The defendant's attorney's name and address;

31 (D) The defendant's custody status;

32 (E) The case number for which the examination was ordered;

33 (F) A unique identifying number on the incident reporting
34 form as required by the Arkansas Crime Information Center; ~~and~~

35 (G) The name of the requesting attorney, if applicable;

36 and

1 (H) An authorization to release and receive protected
2 health information.

3
4 SECTION 10. Arkansas Code § 5-2-328(b)(4), concerning an order for
5 examination of a defendant's lack of criminal responsibility, is amended to
6 read as follows:

7 (4) The circuit court ~~may~~ shall require the attorney for the
8 defendant to provide to the examiner a signed release of information and any
9 available information relevant to the examination, including without
10 limitation:

11 (A) Psychiatric records;

12 (B) Medical records; or

13 (C) Records pertaining to treatment of the defendant for
14 substance or alcohol abuse.

15
16 SECTION 11. Arkansas Code § 5-2-328(c), concerning the report of an
17 examination of a defendant's lack of criminal responsibility, is amended to
18 read as follows:

19 (c) An examination report prepared by an examiner ordered under this
20 section shall contain:

21 (1) A description of the nature of the examination;

22 (2) An opinion as to whether as the result of a mental disease
23 or defect the defendant at the time of the alleged offense lacked the
24 capacity to appreciate the criminality of his or her conduct or to conform
25 his or her conduct to the requirements of the law, an explanation of the
26 examiner's opinion, and the basis of that opinion;

27 (3) When directed by the circuit court, an opinion as to whether
28 at the time of the alleged offense the defendant lacked the capacity to form
29 a culpable mental state that is required to establish an element of the
30 alleged offense, an explanation of the examiner's opinion, and the basis of
31 that opinion; ~~and~~

32 (4) An opinion as to whether the defendant presents a
33 substantial danger to himself, herself, or others or presents a substantial
34 risk to public safety or to property without a prescribed regimen of medical,
35 psychiatric, or psychological care or treatment; and

36 (5) If an examination cannot be conducted because of the

1 unwillingness of the defendant to participate in the examination, an opinion
2 as to whether the unwillingness of the defendant is the result of mental
3 disease or defect.

4
5 SECTION 12. Arkansas Code § 5-2-331 is amended to read as follows:

6 5-2-331. Cost of mental health services, examination, and treatment of
7 defendant.

8 (a) A person or entity that provides treatment or other mental health
9 services under this subchapter may impose a charge for the cost of the
10 treatment or other mental health services rendered.

11 (b) A charge for the cost of treatment or other mental health services
12 under this section may not exceed the actual cost of the treatment or other
13 mental health services provided.

14 (c)(1) If the Department of Human Services cannot accept a defendant
15 that has been ordered by a court to the custody of the department, the
16 department shall fully reimburse the county for the cost of the medication
17 necessary to maintain the defendant's fitness to proceed.

18 (2) Responsibility for reimbursement under subdivision (c)(1) of
19 this section shall begin on the date that the defendant is ordered to the
20 custody of the department.

21 (d)(1) No more than thirty (30) days after the end of each quarter,
22 the county sheriff or his or her designee shall prepare a quarterly invoice
23 to be sent to the department for reimbursement that lists:

24 (A) Each defendant ordered to the custody of the
25 department that has been detained in the county jail during the previous
26 month;

27 (B) The number of days each defendant ordered to the
28 custody of the department was in the county jail in awaiting-bed-space
29 status; and

30 (C) An itemized list of medications prescribed to each
31 defendant ordered to the custody of the department and the cost of the
32 medications.

33 (2) The county sheriff or his or her designee shall provide
34 supporting documentation to certify the costs to be reimbursed by the
35 department.

36 (3) Quarters shall end September 30, December 31, March 31, and

1 June 30 of each year.

2 (4) The certified invoices shall then be returned to the county
3 sheriff or his or her designee with the department keeping a duplicate copy.

4 (5) Payment shall be made within ten (10) business days upon
5 return of the certified invoices returned to each county.

6 (e)(1) The county sheriff shall maintain a quarterly invoice for three
7 (3) calendar years.

8 (2) The quarterly invoice maintained by the county sheriff is
9 subject to review by Arkansas Legislative Audit.

10 (3) A quarterly invoice under subsection (d) of this section
11 shall be sent electronically.

12 (4) The department shall not issue any reimbursements under this
13 subsection until the department receives a certified quarterly invoice with
14 supporting documentation requesting reimbursement.

15 (f)(1) The Division of Aging, Adult, and Behavioral Health Services of
16 the Department of Human Services shall promulgate rules establishing
17 reasonable charges for the cost of treatment or other mental health services
18 under this section.

19 (2) Rules establishing reasonable charges for the cost of
20 treatment or other mental health services under this section shall provide
21 for waiving or postponing the collection of the charges based on:

22 (A) Clinical considerations;

23 (B) The defendant's inability to pay; or

24 (C) A court determination that the defendant is wholly or
25 partly indigent and qualifies for the appointment of an attorney under § 16-
26 87-213.

27
28 SECTION 13. Arkansas Code § 5-4-102(c), concerning presentence
29 investigations is amended to read as follows:

30 (c)(1) Before imposing sentence, the court may order the defendant to
31 submit to psychiatric examination and evaluation ~~for a period not to exceed~~
32 ~~thirty (30) days.~~

33 (2) ~~The defendant may be remanded for psychiatric examination~~
34 ~~and evaluation to the Arkansas State Hospital, or the court may appoint a~~
35 ~~qualified psychiatrist to make the psychiatric examination and evaluation~~
36 court may direct the Department of Human Services to provide a qualified

1 psychiatrist or qualified psychologist to make the examination and
2 evaluation.

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