

SECOND REGULAR SESSION

HOUSE BILL NO. 1461

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDERSON.

5046H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 452.375, 452.377, 589.660, 589.663, 589.664, 589.666, 589.669, 589.672, and 589.678, RSMo, and to enact in lieu thereof nine new sections relating to the address confidentiality program.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 452.375, 452.377, 589.660, 589.663, 589.664, 589.666, 589.669, 589.672, and 589.678, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 452.375, 452.377, 589.660, 589.663, 589.664, 589.666, 589.669, 589.672, and 589.678, to read as follows:

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

(1) “Custody” means joint legal custody, sole legal custody, joint physical custody or sole physical custody or any combination thereof;

(2) “Joint legal custody” means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;

(3) “Joint physical custody” means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;

(4) “Third-party custody” means a third party designated as a legal and physical custodian pursuant to subdivision (5) of subsection 5 of this section.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 2. The court shall determine custody in accordance with the best interests of the child.
15 When the parties have not reached an agreement on all issues related to custody, the court shall
16 consider all relevant factors and enter written findings of fact and conclusions of law, including,
17 but not limited to, the following:

18 (1) The wishes of the child's parents as to custody and the proposed parenting plan
19 submitted by both parties;

20 (2) The needs of the child for a frequent, continuing and meaningful relationship with
21 both parents and the ability and willingness of parents to actively perform their functions as
22 mother and father for the needs of the child;

23 (3) The interaction and interrelationship of the child with parents, siblings, and any other
24 person who may significantly affect the child's best interests;

25 (4) Which parent is more likely to allow the child frequent, continuing and meaningful
26 contact with the other parent;

27 (5) The child's adjustment to the child's home, school, and community;

28 (6) The mental and physical health of all individuals involved, including any history of
29 abuse of any individuals involved. If the court finds that a pattern of domestic violence as
30 defined in section 455.010 has occurred, and, if the court also finds that awarding custody to the
31 abusive parent is in the best interest of the child, then the court shall enter written findings of fact
32 and conclusions of law. Custody and visitation rights shall be ordered in a manner that best
33 protects the child and any other child or children for whom the parent has custodial or visitation
34 rights, and the parent or other family or household member who is the victim of domestic
35 violence from any further harm;

36 (7) The intention of either parent to relocate the principal residence of the child; and

37 (8) The wishes of a child as to the child's custodian. The fact that a parent sends his or
38 her child or children to a home school, as defined in section 167.031, shall not be the sole factor
39 that a court considers in determining custody of such child or children.

40 3. (1) In any court proceedings relating to custody of a child, the court shall not award
41 custody or unsupervised visitation of a child to a parent if such parent or any person residing with
42 such parent has been found guilty of, or pled guilty to, any of the following offenses when a child
43 was the victim:

44 (a) A felony violation of section 566.030, 566.032, 566.031, 566.060, 566.062, 566.064,
45 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111, 566.151, 566.203, 566.206,
46 566.209, 566.211, or 566.215;

47 (b) A violation of section 568.020;

48 (c) A violation of subdivision (2) of subsection 1 of section 568.060;

49 (d) A violation of section 568.065;

50 (e) A violation of section 573.200;

51 (f) A violation of section 573.205; or

52 (g) A violation of section 568.175.

53 (2) For all other violations of offenses in chapters 566 and 568 not specifically listed in
54 subdivision (1) of this subsection or for a violation of an offense committed in another state
55 when a child is the victim that would be a violation of chapter 566 or 568 if committed in
56 Missouri, the court may exercise its discretion in awarding custody or visitation of a child to a
57 parent if such parent or any person residing with such parent has been found guilty of, or pled
58 guilty to, any such offense.

59 4. The general assembly finds and declares that it is the public policy of this state that
60 frequent, continuing and meaningful contact with both parents after the parents have separated
61 or dissolved their marriage is in the best interest of the child, except for cases where the court
62 specifically finds that such contact is not in the best interest of the child, and that it is the public
63 policy of this state to encourage parents to participate in decisions affecting the health, education
64 and welfare of their children, and to resolve disputes involving their children amicably through
65 alternative dispute resolution. In order to effectuate these policies, the court shall determine the
66 custody arrangement which will best assure both parents participate in such decisions and have
67 frequent, continuing and meaningful contact with their children so long as it is in the best
68 interests of the child.

69 5. Prior to awarding the appropriate custody arrangement in the best interest of the child,
70 the court shall consider each of the following as follows:

71 (1) Joint physical and joint legal custody to both parents, which shall not be denied
72 solely for the reason that one parent opposes a joint physical and joint legal custody award. The
73 residence of one of the parents shall be designated as the address of the child for mailing and
74 educational purposes;

75 (2) Joint physical custody with one party granted sole legal custody. The residence of
76 one of the parents shall be designated as the address of the child for mailing and educational
77 purposes;

78 (3) Joint legal custody with one party granted sole physical custody;

79 (4) Sole custody to either parent; or

80 (5) Third-party custody or visitation:

81 (a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian,
82 or the welfare of the child requires, and it is in the best interests of the child, then custody,
83 temporary custody or visitation may be awarded to any other person or persons deemed by the
84 court to be suitable and able to provide an adequate and stable environment for the child. Before
85 the court awards custody, temporary custody or visitation to a third person under this
86 subdivision, the court shall make that person a party to the action;

87 (b) Under the provisions of this subsection, any person may petition the court to
88 intervene as a party in interest at any time as provided by supreme court rule.

89 6. If the parties have not agreed to a custodial arrangement, or the court determines such
90 arrangement is not in the best interest of the child, the court shall include a written finding in the
91 judgment or order based on the public policy in subsection 4 of this section and each of the
92 factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific
93 relevant factors that made a particular arrangement in the best interest of the child. If a proposed
94 custodial arrangement is rejected by the court, the court shall include a written finding in the
95 judgment or order detailing the specific relevant factors resulting in the rejection of such
96 arrangement.

97 7. Upon a finding by the court that either parent has refused to exchange information
98 with the other parent, which shall include but not be limited to information concerning the
99 health, education and welfare of the child, the court shall order the parent to comply immediately
100 and to pay the prevailing party a sum equal to the prevailing party's cost associated with
101 obtaining the requested information, which shall include but not be limited to reasonable
102 attorney's fees and court costs.

103 8. As between the parents of a child, no preference may be given to either parent in the
104 awarding of custody because of that parent's age, sex, or financial status, nor because of the age
105 or sex of the child. The court shall not presume that a parent, solely because of his or her sex,
106 is more qualified than the other parent to act as a joint or sole legal or physical custodian for the
107 child.

108 9. Any judgment providing for custody shall include a specific written parenting plan
109 setting forth the terms of such parenting plan arrangements specified in subsection 8 of section
110 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310
111 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan
112 approved and ordered by the court shall be in the court's discretion and shall be in the best
113 interest of the child.

114 10. After August 28, 2016, every court order establishing or modifying custody or
115 visitation shall include the following language: "In the event of noncompliance with this order,
116 the aggrieved party may file a verified motion for contempt. If custody, visitation, or third-party
117 custody is denied or interfered with by a parent or third party without good cause, the aggrieved
118 person may file a family access motion with the court stating the specific facts that constitute a
119 violation of the custody provisions of the judgment of dissolution, legal separation, or judgment
120 of paternity. The circuit clerk will provide the aggrieved party with an explanation of the
121 procedures for filing a family access motion and a simple form for use in filing the family access
122 motion. A family access motion does not require the assistance of legal counsel to prepare and
123 file."

124 11. No court shall adopt any local rule, form, or practice requiring a standardized or
125 default parenting plan for interim, temporary, or permanent orders or judgments.
126 Notwithstanding any other provision to the contrary, a court may enter an interim order in a
127 proceeding under this chapter, provided that the interim order shall not contain any provisions
128 about child custody or a parenting schedule or plan without first providing the parties with notice
129 and a hearing, unless the parties otherwise agree.

130 12. Unless a parent has been denied custody rights pursuant to this section or visitation
131 rights under section 452.400, both parents shall have access to records and information
132 pertaining to a minor child including, but not limited to, medical, dental, and school records. If
133 the parent without custody has been granted restricted or supervised visitation because the court
134 has found that the parent with custody or any child has been the victim of domestic violence, as
135 defined in section 455.010, by the parent without custody, the court may order that the reports
136 and records made available pursuant to this subsection not include the address of the parent with
137 custody or the child. **A court shall order that the reports and records made available under**
138 **this subsection not include the address of the parent with custody if the parent with**
139 **custody is a participant in the address confidentiality program under section 589.663.**
140 Unless a parent has been denied custody rights pursuant to this section or visitation rights under
141 section 452.400, any judgment of dissolution or other applicable court order shall specifically
142 allow both parents access to such records and reports.

143 13. Except as otherwise precluded by state or federal law, if any individual, professional,
144 public or private institution or organization denies access or fails to provide or disclose any and
145 all records and information, including, but not limited to, past and present dental, medical and
146 school records pertaining to a minor child, to either parent upon the written request of such
147 parent, the court shall, upon its finding that the individual, professional, public or private
148 institution or organization denied such request without good cause, order that party to comply
149 immediately with such request and to pay to the prevailing party all costs incurred, including, but
150 not limited to, attorney's fees and court costs associated with obtaining the requested
151 information.

152 14. An award of joint custody does not preclude an award of child support pursuant to
153 section 452.340 and applicable supreme court rules. The court shall consider the factors
154 contained in section 452.340 and applicable supreme court rules in determining an amount
155 reasonable or necessary for the support of the child.

156 15. If the court finds that domestic violence or abuse as defined in section 455.010 has
157 occurred, the court shall make specific findings of fact to show that the custody or visitation
158 arrangement ordered by the court best protects the child and the parent or other family or
159 household member who is the victim of domestic violence, as defined in section 455.010, and
160 any other children for whom such parent has custodial or visitation rights from any further harm.

452.377. 1. For purposes of this section and section 452.375, "relocate" or "relocation" means a change in the principal residence of a child for a period of ninety days or more, but does not include a temporary absence from the principal residence.

2. Notice of a proposed relocation of the residence of the child, or any party entitled to custody or visitation of the child, shall be given in writing by certified mail, return receipt requested, to any party with custody or visitation rights. Absent exigent circumstances as determined by a court with jurisdiction, written notice shall be provided at least sixty days in advance of the proposed relocation. The notice of the proposed relocation shall include the following information:

(1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;

(2) The home telephone number of the new residence, if known;

(3) The date of the intended move or proposed relocation;

(4) A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and

(5) A proposal for a revised schedule of custody or visitation with the child, if applicable.

3. If a party seeking to relocate a child is a participant in the address confidentiality program under section 589.663, such party shall not be required to provide the information in subdivision (1) of subsection 2 of this section, but may be required to submit such information under seal to the court for in camera review. Prior to disclosure of this information, a court shall comply with the provisions of section 589.664.

4. A party required to give notice of a proposed relocation pursuant to subsection 2 of this section has a continuing duty to provide a change in or addition to the information required by this section as soon as such information becomes known.

~~[4.]~~ 5. In exceptional circumstances where the court makes a finding that the health or safety of any adult or child would be unreasonably placed at risk by the disclosure of the required identifying information concerning a proposed relocation of the child, the court may order that:

(1) The specific residence address and telephone number of the child, parent or person, and other identifying information shall not be disclosed in the pleadings, notice, other documents filed in the proceeding or the final order except for an in camera disclosure;

(2) The notice requirements provided by this section shall be waived to the extent necessary to protect the health or safety of a child or any adult; or

(3) Any other remedial action the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

~~[5.]~~ 6. The court shall consider a failure to provide notice of a proposed relocation of a child as:

38 (1) A factor in determining whether custody and visitation should be modified;
39 (2) A basis for ordering the return of the child if the relocation occurs without notice;
40 and

41 (3) Sufficient cause to order the party seeking to relocate the child to pay reasonable
42 expenses and attorneys fees incurred by the party objecting to the relocation.

43 ~~[6-]~~ 7. If the parties agree to a revised schedule of custody and visitation for the child,
44 which includes a parenting plan, they may submit the terms of such agreement to the court with
45 a written affidavit signed by all parties with custody or visitation assenting to the terms of the
46 agreement, and the court may order the revised parenting plan and applicable visitation schedule
47 without a hearing.

48 ~~[7-]~~ 8. The residence of the child may be relocated sixty days after providing notice, as
49 required by this section, unless a parent files a motion seeking an order to prevent the relocation
50 within thirty days after receipt of such notice. Such motion shall be accompanied by an affidavit
51 setting forth the specific factual basis supporting a prohibition of the relocation. The person
52 seeking relocation shall file a response to the motion within fourteen days, unless extended by
53 the court for good cause, and include a counter-affidavit setting forth the facts in support of the
54 relocation as well as a proposed revised parenting plan for the child.

55 ~~[8-]~~ 9. If relocation of the child is proposed, a third party entitled by court order to legal
56 custody of or visitation with a child and who is not a parent may file a cause of action to obtain
57 a revised schedule of legal custody or visitation, but shall not prevent a relocation.

58 ~~[9-]~~ 10. The party seeking to relocate shall have the burden of proving that the proposed
59 relocation is made in good faith and is in the best interest of the child.

60 ~~[10-]~~ 11. If relocation is permitted:

61 (1) The court shall order contact with the nonrelocating party including custody or
62 visitation and telephone access sufficient to assure that the child has frequent, continuing and
63 meaningful contact with the nonrelocating party unless the child's best interest warrants
64 otherwise; and

65 (2) The court shall specify how the transportation costs will be allocated between the
66 parties and adjust the child support, as appropriate, considering the costs of transportation.

67 ~~[11-]~~ 12. After August 28, 1998, every court order establishing or modifying custody or
68 visitation shall include the following language:

69 "Absent exigent circumstances as determined by a court with jurisdiction, you, as a party
70 to this action, are ordered to notify, in writing by certified mail, return receipt requested, and at
71 least sixty days prior to the proposed relocation, each party to this action of any proposed
72 relocation of the principal residence of the child, including the following information:

73 (1) The intended new residence, including the specific address and mailing address, if
74 known, and if not known, the city;

- 75 (2) The home telephone number of the new residence, if known;
 76 (3) The date of the intended move or proposed relocation;
 77 (4) A brief statement of the specific reasons for the proposed relocation of the child; and
 78 (5) A proposal for a revised schedule of custody or visitation with the child.

79 Your obligation to provide this information to each party continues as long as you or any
 80 other party by virtue of this order is entitled to custody of a child covered by this order. Your
 81 failure to obey the order of this court regarding the proposed relocation may result in further
 82 litigation to enforce such order, including contempt of court. In addition, your failure to notify
 83 a party of a relocation of the child may be considered in a proceeding to modify custody or
 84 visitation with the child. Reasonable costs and attorney fees may be assessed against you if you
 85 fail to give the required notice."

86 ~~[12-]~~ **13. A participant in the address confidentiality program under section 589.663**
 87 **shall not be required to provide a requesting party with the specific physical or mailing**
 88 **address of the child's proposed relocation destination, but in the event of an objection by**
 89 **a requesting party, a participant may be required to submit such information under seal**
 90 **to the court for in camera review. Prior to disclosure of this information, a court shall**
 91 **comply with the provisions of section 589.664.**

92 **14.** Violation of the provisions of this section or a court order under this section may be
 93 deemed a change of circumstance under section 452.410, allowing the court to modify the prior
 94 custody decree. In addition, the court may utilize any and all powers relating to contempt
 95 conferred on it by law or rule of the Missouri supreme court.

96 ~~[13-]~~ **15.** Any party who objects in good faith to the relocation of a child's principal
 97 residence shall not be ordered to pay the costs and attorney's fees of the party seeking to relocate.
 589.660. As used in sections 589.660 to 589.681, the following terms mean:

- 2 (1) "Address", a residential street address, school address, or work address of a person,
 3 as specified on the person's application to be a program participant;
 4 (2) "Application assistant", an employee **or volunteer** of a ~~[state or local]~~ **government**
 5 agency, or of a nonprofit program that provides counseling, referral, shelter, or other specialized
 6 service to victims of domestic violence, rape, sexual assault, human trafficking, ~~[or]~~ **stalking, or**
 7 **other crimes** who has been designated by the respective agency or program, and who has been
 8 trained and registered by the secretary of state to assist individuals in the completion of program
 9 participation applications;
 10 (3) "Designated address", the address assigned to a program participant by the secretary;
 11 (4) "Mailing address", an address that is recognized for delivery by the United States
 12 Postal Service;
 13 (5) "Program", the address confidentiality program established in section 589.663;

14 (6) “Program participant”, a person certified by the secretary of state as eligible to
 15 participate in the address confidentiality program;

16 (7) “Secretary”, the secretary of state.

589.663. There is created in the office of the secretary of state a program to be known
 2 as the “Address Confidentiality Program” to protect victims of domestic violence, rape, sexual
 3 assault, human trafficking, ~~[or]~~ stalking, **or other crimes who fear for their safety, as well as**
 4 **the safety of individuals residing in the same household as the victim**, by authorizing the use
 5 of designated addresses for such victims and ~~[their minor children]~~ **individuals residing with**
 6 **them**. The program shall be administered by the secretary under the following application and
 7 certification procedures:

8 (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian
 9 acting on behalf of an incapacitated person may apply to the secretary to have a designated
 10 address assigned by the secretary to serve as the person’s address or the address of the minor or
 11 incapacitated person[;] .

12 (2) The secretary may approve an application ~~[only]~~ if it is filed with the office of the
 13 secretary in the manner established by rule and on a form prescribed by the secretary. A
 14 completed application shall contain:

15 (a) The ~~[application preparation date]~~ **date the application was prepared**, the
 16 applicant’s signature, and the signature and registration number of the application assistant who
 17 assisted the applicant in applying to be a program participant;

18 (b) A designation of the secretary as agent for purposes of service of process and for
 19 receipt of first-class mail, legal documents, and certified mail;

20 (c) A ~~[sworn]~~ statement ~~[by]~~ **that** the applicant ~~[that the applicant]~~ has good reason to
 21 believe that he or she:

22 a. Is a victim ~~[of domestic violence, rape, sexual assault, human trafficking, or stalking]~~
 23 **or resides in the same household as a victim**; and

24 b. Fears ~~[further violent acts from his or her assailant]~~ **future harm**;

25 (d) ~~[The]~~ **A** mailing address where the applicant may be contacted by the secretary or a
 26 designee and the telephone number or numbers where the applicant may be called by the
 27 secretary or the secretary’s designee; and

28 (e) One or more addresses that the applicant requests not be disclosed for the reason that
 29 disclosure will jeopardize the applicant’s safety or increase the risk of violence to the applicant
 30 or members of the applicant’s household[;] .

31 (3) Upon receipt of a ~~[properly]~~ completed application, the secretary may certify the
 32 applicant as a program participant. A program participant is certified for four years following
 33 the date of initial certification unless the certification is withdrawn **by the applicant** or cancelled

34 **by the secretary** before that date. The secretary shall send notification of ~~[lapses]~~ **an expiring**
35 certification and a ~~[reapplication]~~ **renewal** form to a program participant at least four weeks prior
36 to the expiration of the program participant's certification~~].~~ **The renewal need only be signed**
37 **by the applicant and need not be made before an application assistant.**

38 (4) The secretary shall forward first class mail, legal documents, and certified mail to the
39 appropriate program participants.

40 **(5) This section shall be liberally construed as to not hold omissions by the**
41 **secretary against participants or applicants.**

589.664. 1. If an individual is **deemed** a participant in the address confidentiality
2 program ~~[under section 589.663]~~ **by the secretary of state**, no person or entity shall be
3 compelled to disclose the participant's actual address during the discovery phase of or during a
4 proceeding before a court or other tribunal unless the court or tribunal first finds, on the record,
5 that:

6 (1) There is a reasonable belief that the address is needed to obtain information or
7 evidence without which the investigation, prosecution, or litigation cannot proceed; and

8 (2) There is no other practicable way of obtaining the information or evidence.

9 2. The court shall first provide the program participant and the secretary ~~[of state]~~ notice
10 that address disclosure is sought.

11 3. The program participant shall have an opportunity to present evidence regarding the
12 potential harm to the safety of the program participant if the address is disclosed. In determining
13 whether to compel disclosure, the court shall consider whether the potential harm to the safety
14 of the participant is outweighed by the interest in disclosure.

15 4. Notwithstanding any other provision of law to the contrary, no court shall order an
16 individual who has had his or her application to the program accepted by the secretary to disclose
17 his or her actual address or the location of his or her residence without giving the secretary
18 proper notice. The secretary shall have the right to intervene in any civil proceeding in which
19 a court is considering ordering a participant to disclose his or her actual address.

20 5. Disclosure of a participant's actual address under this section shall be limited under
21 the terms of the order to ensure that the disclosure and dissemination of the actual address will
22 be no greater than necessary for the purposes of the investigation, prosecution, or litigation.

23 6. Nothing in this section shall be construed to prevent the court or any other tribunal
24 from issuing a protective order to prevent the disclosure of information other than the
25 participant's actual address that could reasonably lead to the discovery of the program
26 participant's location.

589.666. Certification of a program participant may be cancelled by the secretary if one
2 or more of the following conditions apply:

3 (1) If the program participant obtains a name change, unless the program participant
 4 provides the secretary with documentation of a legal name change within ten business days of
 5 the name change;

6 (2) If there is a change in the mailing address ~~[from]~~ **for** the person listed on the
 7 application, unless the program participant provides the secretary with notice of the change in
 8 such manner as the secretary provides by rule; ~~[or]~~

9 (3) **The participant relocates outside of the state of Missouri; or**

10 (4) The applicant or program participant violates subdivision (2) of section 589.663.

589.669. Upon demonstration ~~[of a program participant's certification in the program,
 2 state and local]~~ **that an applicant has been accepted into the program by the secretary,
 3 government agencies and the courts shall accept the designated address as a program
 4 participant's address when creating a new public record unless the secretary has determined that:**

5 (1) ~~[The]~~ **An** agency has a bona fide statutory or administrative requirement for the use
 6 of the program participant's address or mailing address~~[-such that it is]~~ **and is** unable to fulfill
 7 its statutory duties and obligations without the address; and

8 (2) The program participant's address or mailing address shall be used only for those
 9 statutory and administrative purposes **and shall not be made publicly available.**

589.672. If the secretary deems it appropriate, the secretary may make a program
 2 participant's address or mailing address available for inspection or copying, under the following
 3 circumstances:

4 (1) If ~~[requested of the secretary by]~~ a law enforcement agency **requests it** in the manner
 5 provided for by rule; or

6 (2) ~~[Upon request to the secretary by]~~ **If** a director of a ~~[state]~~ **government** agency or the
 7 director's designee **requests it** in the manner provided for by rule and upon a showing of a bona
 8 fide statutory or administrative requirement for the use of the program participant's address or
 9 mailing address, such that the director or the director's designee is unable to fulfill statutory
 10 duties and obligations without the address or mailing address.

589.678. A program participant's application ~~[and]~~ **, all** supporting materials, **and all**
 2 **communications with the secretary of state's address confidentiality program** are not ~~[a]~~
 3 public ~~[record and shall be kept confidential by the secretary]~~ **records and are exempt from**
 4 **chapter 610.**

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