

# CASELAW AND LEGISLATIVE UPDATES 2024: SMALL STEPS AND BIG RESULTS



**FAMILIES STRONGER TOGETHER JOINT ANNUAL CONFERENCE 2024**

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AUDIENCE  
PARTICIPATION!

# CASELAW UPDATES





IN RE DEPENDENCY OF  
A.H., \_\_ P.3D \_\_ (2024)



- ✓ Division One COA dismissed parent's NDR for failure to file separate "specific direction" document.
- ✓ Supreme Court:
  1. RCW 13.04.033(3) requires lawyer to have "specific direction" from client to seek review in cases under Title 13.
  2. A notice of appeal or notice of discretionary review satisfies requirement.
  3. Appellate court is not permitted to dismiss review if lawyer fails to file a separate sworn statement indicating client gave lawyer direction to seek review.

*MATTER OF DEPENDENCY OF B.B.B., \_\_\_ P.3D  
\_\_\_ (2024)*

- Trial court entered order denying parent's request for continued shelter care hearings when parent's visits were unsupervised and no issue had been noted for hearing.
- Supreme Court held plain language of RCW 13.34.065(7)(a)(i) requires hearings every 30 days as long as a child is in shelter care.
- Implied in statute's use of "order" is requirement that parties be afforded opportunity to be heard before order is issued.

"A shelter care order is an extraordinary measure and is intended to be an interim solution in place for a short time. Placing a child in shelter care separates that child from their family and does so after only a minimal evidentiary showing. Under these circumstances, requiring the superior court to routinely inquire into the need for ongoing shelter care is especially critical to reuniting the family as soon as safely possible, holding parties accountable, ensuring that the case proceeds either to dismissal or dependency, and ensuring the 'health, welfare, and safety of the child.'" (Internal citation omitted.)

## *MATTER OF DEPENDENCY OF Z.A., \_\_\_ P.3D \_\_\_ (2024)*

- ✓ Placing a child out of home under RCW 13.34.130(6)(a) (“no parent available”) must be proven under a preponderance of the evidence standard, not a clear, cogent, and convincing evidence standard.
- ✓ “Available” means more than physical presence at the dispositional hearing; if a parent is not capable of caring for a child, a parent is not available to care for a child.



*MATTER OF DEPENDENCY OF M.L.W., 535  
P.3D 491 (2023)*

✓ Oldest sibling could not intervene as matter of right, could not permissively intervene, and did not have constitutional right to intervene in termination proceedings of two younger siblings.

➤ **Currently pending decision from WA State Supreme Court.**

✓ Family therapy was neither court-ordered nor a necessary service.

➤ **Currently pending decision in WA State Supreme Court.**

✓ Statutory amendment to RCW 13.34.180(1)(f) requiring that courts consider whether guardianship is available, and DCYF's efforts to support guardianship, do not apply retroactively.

## ATKERSON V. DCYF, 542 P.3D 593 (2024)

- ✓ Court's exclusion of DCYF expert opinion of retired judge was error; exclusion was not even-handed, probative value was not substantially outweighed by unfair prejudice, and CJC does not apply to retired judges.
- ✓ DCYF's two-week investigation constituted "emergent placement investigation," even though child was left with mother.
- ✓ DCYF's liability was limited only to acts of gross negligence.
  - Currently on discretionary review to Washington State Supreme Court.



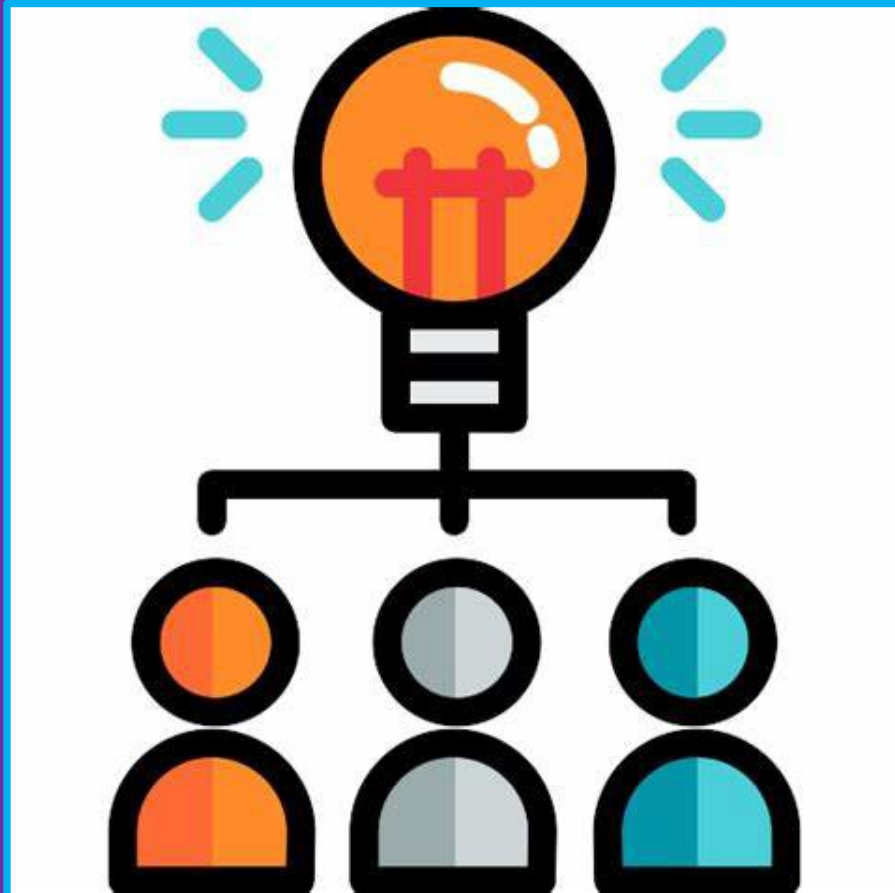


## MATTER OF DEPENDENCY OF C.E.C.L., 545 P.3D 329 (2024)

- ✓ Father's rights were terminated.
- ✓ Court appointed counsel for legally free child pursuant to RCW 13.34.212.
- ✓ Termination was reversed on appeal.
- ✓ Court ordered counsel for child to continue and ordered OCLA to pay for representation over OCLA's objection.
- ✓ OCLA moved to intervene and requested reconsideration; reconsideration was denied.
- ✓ OCLA petitioned for discretionary review.

- ✓ **Court on appeal:** Conditions required for funding representation:
  1. "...six months *after granting petition to terminate parental rights...* and when there is *no remaining parent with parental rights.*"
  2. "Subject to *availability of amounts appropriated for this specific purpose*, the state shall pay the costs of legal services provided by an attorney appointed *pursuant to... this subsection.*"
- ✓ RCW 13.34.212(1) is plain on its face and does not require OCLA to pay for continued legal representation when a child has a parent with rights intact (father).

# MATTER OF DEPENDENCY OF A.T., 541 P.3D 1079 (2024)



- ✓ When Indian Child Welfare Act (ICWA) is implicated, duty to provide active efforts persists, even when parent resists.
- ✓ Department must engage in “self-evaluation, reflection, and a willingness to change strategy...”
- ✓ Department cannot continue with efforts that have previously failed, but instead must be willing to “brainstorm new strategies, tailored to the specific needs of a particular case.”
- ✓ Department has the obligation to begin providing active efforts as soon as possible.
- ✓ Possibility, or probability, that Department may not be able to prevent breakup of Indian family through active efforts does not excuse Department from continuing to try.
- ✓ Remedy for failure to provide active efforts: return child home unless doing so would subject child to substantial and immediate danger. In this case, evidence sufficient to uphold out-of-home placement order.

# *MATTER OF DEPENDENCY OF G.C.B., 535*

## **P.3D 45 I (2023)**



- ✓ Parent's waiver of right to counsel was knowing and intelligent.
  1. Trial court informed parent of risks, and parent understood risks.
  2. Parent repeatedly re-affirmed decision to represent himself.
  3. Parent was present at prior termination trial, which resulted in reversal.
- ✓ Statutory amendments did not require Department to disprove availability of guardianship in order to meet burden under RCW 13.34.180(1)(f).

*MATTER OF DEPENDENCY OF  
N.B.G., 2024 WL 348528 (2024)*



- ✓ Suitable adult placement, who preferred adoption over guardianship, was not “available” to be guardian.
- ✓ Department had made sufficient efforts to support guardianship by discussing guardianship and termination with suitable adult placement.
- ✓ Department need not disprove that a potential guardian was, “in any possible way or degree,” confused about guardianship in order to satisfy its burden to simply support the possibility of guardianship.

## *R.T.L. v. K.M.*, 535 P.3D. 882 (2023)

- Maternal grandmother filed petition for *de facto* parentage, joined by the child's mother.
- Maternal grandmother's motion to intervene and for leave to proceed in family court denied.
- A relative who obtains placement of a child in a dependency case does not satisfy RCW 26.26A.440(4)(c) (*de facto* parentage statute), which requires the petitioner to establish they "undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation."
- Relative caregiver rights are court-given, court-restricted, and court-withdrawn.
- Relative caregiver's rights are subject to alteration; in a successful dependency, the relative caregiver loses placement when child reunifies.



**MATTER OF DEPENDENCY  
OF R.L.L., 540 P.3D 135  
(2023)**

- ✓ Judges may take judicial notice of undisputable facts and may apply common sense based on experience, but cannot consider information outside the record.
- ✓ Court cannot take judicial notice of records of other independent and separate judicial proceedings, even though they are between the same parties.
- ✓ Evidence of parent's lack of compliance with services in a prior dependency, admitted into evidence through social worker's testimony, was properly considered by the court.



## MATTER OF DEPENDENCY OF C.M.L., 537 P.3D 1044 (2023)



- ✓ Order of dependency entered by default against parent.
- ✓ Parent had not appeared in dependency, so parent was not entitled to five days' notice of default.

- ✓ Denial of motion to vacate pursuant to CR 60(b)(1):
  1. No evidence of *prima facie* defense against termination (disability, including dyslexia).
  2. No evidence of mistake, inadvertence, surprise, excusable neglect.
  3. Equities supported denial of motion, including shared interest of State and child in establishing stable and permanent home for child.

*IN RE GUARDIANSHIP OF L.C.,  
538 P.3D 309 (2023)*

- ✓ On appeal, standard of review of trial court's decision on whom to appoint as child's guardian is abuse of discretion.
- ✓ In a minor guardianship case, if court finds guardian should be appointed, it is required to appoint parent-nominated person, and court may deviate only if it finds appointment is contrary to child's best interest.





## *MATTER OF WELFARE OF O.C., 533 P.3D 159 (2023)*

- ✓ RCW 13.50.100(3) allows juvenile court to release records to other participants in juvenile justice system when conducting an investigation “involving the juvenile in question.”
- ✓ Investigation of child’s disappearance sufficiently involved child’s siblings to warrant releasing siblings’ juvenile court records to sheriff’s office; release of records was “specifically and solely” to help find missing child.
- ✓ Court erred in ordering children’s juvenile court records unsealed; court did not comply with GR 15(e)(4), which governs public access to sealed juvenile court records.



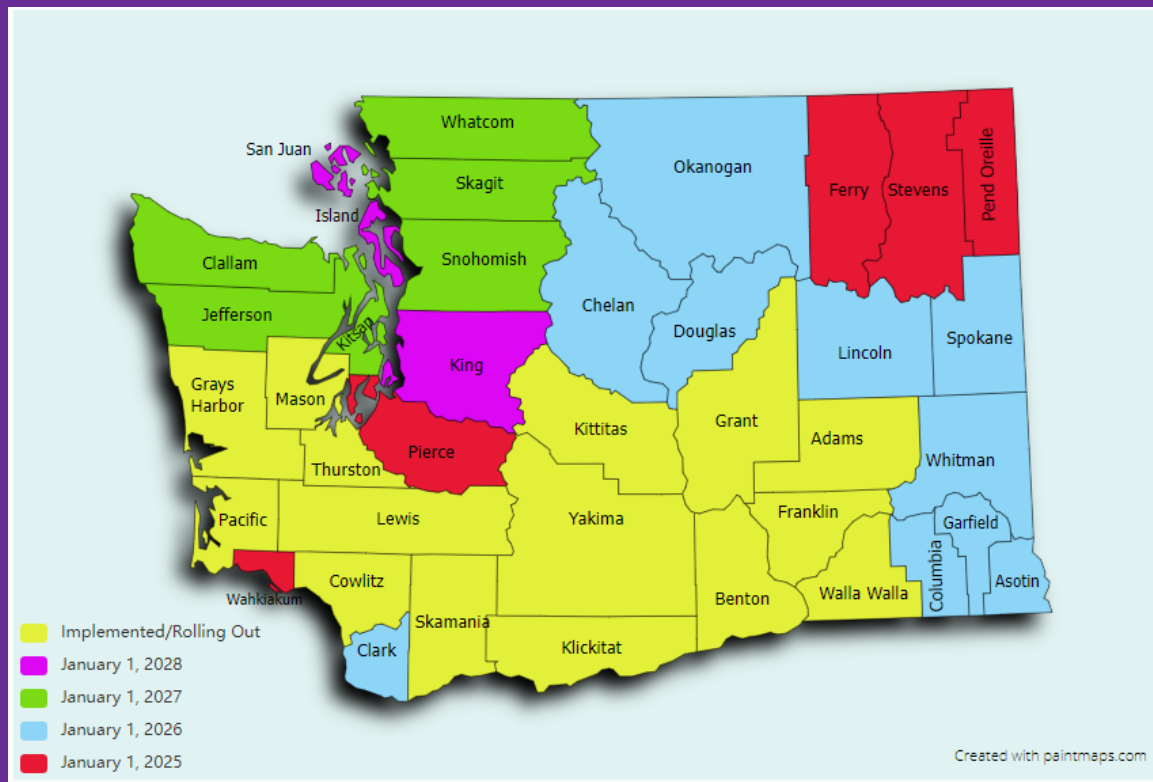
# LEGISLATIVE UPDATES



SSHB 1205 → RCW 13.34.080:  
RESPONSIBILITY FOR PROVIDING  
SERVICE BY PUBLICATION

- ✓ Where notice by publication is required, petitioner, rather than clerk of court, is responsible for publishing notice.
- ✓ Petitioner must pay for the cost of publication.
  - ✓ Office of Civil Legal Aid (OCLA) to pay or reimburse minors.
  - ✓ Office of Public Defense (OPD) to pay or reimburse indigent parents or guardians.
- ✓ Requirement that publication be in legal newspaper “printed in the county qualified to publish summons” is eliminated.
- ✓ **EFFECTIVE JANUARY 1, 2026**

# SB 5805 → RCW 13.34.212: DEVELOPING SCHEDULE FOR COURT APPOINTMENT OF ATTORNEYS FOR CHILDREN AND YOUTH



- ✓ The legislation extends full implementation of HB 1219 (2021) from 2027 to 2028.
- ✓ **Jan. 1, 2025:** Pierce, Stevens, Ferry, Pend Oreille and Wahkiakum
- ✓ **Jan. 1, 2026:** Spokane, Lincoln, Whitman, Columbia, Garfield, Asotin, Okanogan, Chelan, Douglas, Clark
- ✓ **Jan. 1, 2027:** Kitsap, Jefferson, Clallam, Snohomish, Skagit, Whatcom
- ✓ **Jan. 1, 2028:** King, Island, San Juan

**EFFECTIVE JUNE 6, 2024**

## SB 5825 → RCW 11.130: CONCERNING GUARDIANSHIP AND CONSERVATORSHIP

- ✓ Automatic dismissal of guardianship petition if petitioner fails to identify proposed guardian within 30 days of filing.
- ✓ Fees and for bad faith filings.
- ✓ Minor may petition on own behalf.
- ✓ Person interested in welfare of minor who will obtain the age of majority within 45 days of filing may petition for appointment.
- ✓ Parents, if living and involved in the minor's life, must be named in a petition.
- ✓ Requires appointment of counsel within 5 days where:
  - The minor objects to the petition or;
  - Requests for appointment of counsel.
- ✓ Shortens notice after appointment of the guardian to 14 days instead of 30.
- ✓ EFFECTIVE JUNE 6, 2024

## ESHB 1652 → RCW 26.23.035, RCW 74.08: CHILD SUPPORT PASS THROUGH

- ✓ DSHS to pass through to TANF family all current child support collected on behalf of family each month.
- ✓ DSHS must disregard and not count as income child support when determining eligibility, and amount of assistance, for needy families or WorkFirst.
- ✓ **EFFECTIVE JANUARY 1, 2026**



## SSHB 1929 → RCW 74.09: SUPPORTING YOUNG ADULTS FOLLOWING INPATIENT BEHAVIORAL HEALTH TREATMENT

- Creates post inpatient housing program for young adults exiting inpatient behavioral health treatment.
  - Youth must be 18-24;
  - Exiting inpatient behavioral health treatment or have exited within last month;
  - Engaged in a recovery plan, and not have secured long-term housing.
- Legislation provides for funding voluntary community-based residential program or programs and at least two residential programs with 6 to 10 beds, one on each side of Cascade Mountain range. The program supports recovery in a developmentally and culturally responsive environment.
- **EFFECTIVE JUNE 6, 2024**



ESSB 5908 → RCW 13.34.267, RCW 74.13:  
RELATING TO PROVISION OF EXTENDED FOSTER  
CARE SERVICES TO YOUTH AGES 18 TO 21

- ✓ DCYF to notify youth ages 15 and older of EFC program.
- ✓ Dependent youth may sign into EFC at 17.5 and withdraw at any time.
- ✓ DCYF may not create additional eligibility requirements.
- ✓ DCYF to develop incentive program to participate in qualifying activities.
  - ✓ Stakeholder participation.
- ✓ DCYF must develop age-appropriate social work supports that includes codesign process with those with lived experience in foster care system.

## ESSB 5908 → RCW 13.34.267, RCW 74.13: RELATING TO PROVISION OF EXTENDED FOSTER CARE SERVICES TO YOUTH AGES 18 TO 21- CONTINUED

Youth enrolled in EFC may elect to receive:

- ✓ A licensed foster care placement or
- ✓ Independent living subsidy
  - Effective the date youth signs voluntary placement agreement, agrees to dependency, or informs social worker they are living independently, whichever occurs first
  - If youth is not residing in approved supervised independent living setting, DCYF is to work with youth to help identify an appropriate living arrangement. During this time, DCYF must continue to pay monthly supervised independent living subsidy



**EFFECTIVE JUNE 6, 2024**

## 2SSB 6006: SUPPORTING VICTIMS OF HUMAN TRAFFICKING AND SEXUAL ABUSE

- ✓ Amends definition of dependent child to include: child who is victim of sex trafficking when parent is involved in trafficking, facilitating trafficking, or should have known. (RCW 13.34.030)
- ✓ Amends definition of abuse and neglect to include sex trafficking. (RCW 26.44.020)
- ✓ DCYF and juvenile justice agency must screen child for commercial sexual abuse if there is allegation of commercial sexual abuse. (RCW 26.44).
- ✓ DCYF must identify services for victim of sex trafficking and may offer services even where child is not dependent. (RCW 74.13.031)
- ✓ DCYF may file petition for SAPO on behalf of minor. (RCW 7.105.110)
- ✓ Law enforcement may file for ex parte temporary sexual assault protection order on behalf of minor. (RCW 7.105.110)
- ✓ Removes minor's consent as grounds to deny SAPO when petition alleges commercial sexual abuse or sex trafficking (RCW 7.105.225)
- ✓ **EFFECTIVE JULY 1, 2025**

## E2SSB 6068 → RCW 13.34.820: RELATING TO REPORTING ON DEPENDENCY OUTCOMES

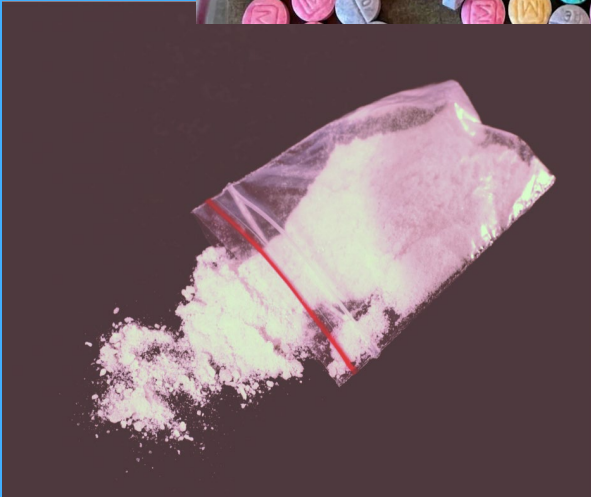
AOC must, in consultation with others, identify measures of relational permanency and child well-being and report to the Legislature the following information:

- ✓ a plan for reporting on child well-being and relational permanency;
- ✓ a plan for tracking and reporting on whether order or portion of order was agreed or contested, and if contested, by which party or parties;
- ✓ how many children in dependency have incarcerated parents;
- ✓ how to make such information publicly available;
- ✓ what can be reported using existing data;
- ✓ what additional information should be collected; and
- ✓ what data-sharing agreements are necessary to ensure an accurate picture of the needs of families in the dependency system.



EFFECTIVE JUNE 6, 2024

## E2SSB 6109 → RCW 13.34.030: HIGH- POTENCY SYNTHETIC OPIOIDS AND CHILD WELFARE - DEFINITION



Added a definition of high-potency  
synthetic opioid.

"High-potency synthetic opioid" means an unprescribed synthetic opioid classified as a schedule II controlled substance or controlled substance analog in chapter 69.50 RCW or by the pharmacy quality assurance commission in rule including, but not limited to, fentanyl.



# E2SSB 6109 → RCW 13.34.050: PICK UP ORDERS

## OLD

... reasonable grounds to believe that removal is necessary to prevent **imminent physical harm** to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect.

## NEW

... reasonable grounds to believe that removal is necessary to prevent imminent physical harm to the child due to ... a high-potency synthetic opioid.

The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids in determining whether removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect.

## E2SSB 6109 → RCW 26.44.050: PROTECTIVE CUSTODY

### NEW

... probable cause to believe that taking the child into custody is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from .... a high-potency synthetic opioid, ...



# E2SSB 6109 → RCW 26.44.056(1): ADMINISTRATIVE HOLDS

## NEW

... probable cause to believe that detaining the child is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from ... a high-potency synthetic opioid, ...



## E2SSB 6109 → RCW 13.34.065(5)(a)(ii)(B)(I): SHELTER CARE - REMOVAL

### REMOVAL QUESTION...

In assessing imminent physical harm due to child abuse, the new statute includes “that which results from a high-potency synthetic opioid.”

- 1 Imminent physical harm.
- 2 Casual relationship between particular conditions in home and imminent physical harm to child.
- 3 Contrary to welfare to return/remain in home.
- 4 Imminent harm outweighs harm or removal.

The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids when determining whether removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect.

E2SSB 6109 → RCW 13.34.065(5)(b)(i):  
SHELTER CARE – PREVENTION SERVICES

**In home with services  
question...**

- 5** Whether participation by parent in prevention services would prevent/eliminate need for removal.
- 6** Whether the parent agrees to participate in prevention services.

**... The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids when deciding whether to place the child with the parent.**

## E2SSB 6109→ RCW 13.34.065(5)(c)(i)(A): RELATIVE PLACEMENT



**Relative inquiry:** placement  
with a relative unless:

Placement in licensed foster care  
is necessary to prevent imminent  
physical harm to the child due to  
child abuse or neglect, including  
that which results ... a high-  
potency synthetic opioid, ...



## E2SSB 6109 → RCW 13.34.130(6)(c): DISPOSITION

### OLD

The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

### NEW

....The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids, including fentanyl, when deciding whether a manifest danger exists.



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