

By the Committees on Children, Families and Seniors, Criminal Justice and Senators Gutman, Horne, Klein, Diaz-Balart and Cowin

300-1747-98

1                                   A bill to be entitled  
2           An act relating to sexually violent predators;  
3           requesting that the Division of Statutory  
4           Revision redesignate ch. 916, F.S.; amending s.  
5           916.10, F.S.; providing a short title; creating  
6           s. 916.30, F.S.; providing a short title;  
7           creating s. 916.31, F.S.; providing legislative  
8           findings and intent; creating s. 916.32, F.S.;  
9           defining terms; creating s. 916.33, F.S.;  
10          requiring notice of release from custody of a  
11          person alleged to be a sexually violent  
12          predator; providing for evaluation of such  
13          person; creating s. 916.34, F.S.; providing for  
14          petition to have such person declared a  
15          sexually violent predator; creating s. 916.35,  
16          F.S.; providing for determination of probable  
17          cause, for hearings, and for taking such person  
18          into custody; creating s. 916.36, F.S.;  
19          providing for trial on the issue of whether  
20          such person is a sexually violent predator;  
21          creating s. 916.37, F.S.; providing for  
22          commitment of a person determined to be a  
23          sexually violent predator; creating s. 916.38,  
24          F.S.; requiring examinations of persons  
25          committed; creating s. 916.39, F.S.; providing  
26          for petitions for release; creating s. 916.40,  
27          F.S.; authorizing petition for release;  
28          creating s. 916.41, F.S.; providing for access  
29          to certain records; creating s. 916.42, F.S.;  
30          requiring detention and commitment to conform  
31          to constitutional requirements; creating s.

1           916.43, F.S.; providing immunity from civil  
2           liability; creating s. 916.44; providing  
3           severability; creating s. 916.45, F.S.;  
4           providing for retrospective and prospective  
5           application; creating s. 916.46, F.S.;  
6           providing for notice to victims; creating s.  
7           916.47, F.S.; penalizing escape; creating s.  
8           916.48, F.S.; authorizing subsistence fees and  
9           costs; creating s. 916.49, F.S.; providing that  
10          the Department of Health is responsible for  
11          costs; providing that other costs for  
12          psychological evaluations, expert witnesses,  
13          and court-appointed counsel are paid from state  
14          funds; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18           Section 1. The Division of Statutory Revision of the  
19 Joint Legislative Management Committee shall change the name  
20 of chapter 916, Florida Statutes, from "Mentally Deficient and  
21 Mentally Ill Defendants" to "Mentally Deficient and Mentally  
22 Ill Defendants; Civil Commitment of Sexually Violent  
23 Predators."

24           Section 2. Section 916.10, Florida Statutes, is  
25 amended to read:

26           916.10 Short title.--Sections 916.10-916.20 ~~This~~  
27 ~~chapter~~ may be cited as the "Forensic Client Services Act."

28           Section 3. Section 916.30, Florida Statutes, is  
29 created to read:

30           916.30 Sections 916.30-916.49 may be cited as the "The  
31 Jimmy Ryce Act of 1998."

1           Section 4. Section 916.31, Florida Statutes, is  
2 created to read:

3           916.31 Legislative findings and intent.--The  
4 Legislature finds that a mentally abnormal and extremely  
5 dangerous group of sexually violent predators exists and  
6 requires involuntary civil commitment for long-term control,  
7 care, and treatment. The Legislature further finds that the  
8 likelihood that sexually violent predators will engage in  
9 repeat acts of sexual violence, if not treated for their  
10 mental conditions, is significant. Because the existing civil  
11 commitment process under the Baker Act is inadequate to  
12 address the special needs of sexually violent predators and  
13 the risks that they present to society, the Legislature  
14 determines that a separate involuntary civil commitment  
15 process for the long-term control, care, and treatment of  
16 sexually violent predators is necessary. The Legislature also  
17 determines that, because of the nature of the mental  
18 conditions from which sexually violent predators suffer and  
19 the dangers they present, it is necessary to house  
20 involuntarily committed sexually violent predators in an  
21 environment separate from persons involuntarily committed  
22 under traditional civil commitment statutes.

23           Section 5. Section 916.32, Florida Statutes, is  
24 created to read:

25           916.32 Definitions.--As used in ss. 916.30-916.49, the  
26 term:

27           (1) "Agency with jurisdiction" means the agency that  
28 releases, upon lawful order or authority, a person serving a  
29 sentence in the custody of the Department of Corrections, a  
30 person adjudicated delinquent and committed to the custody of  
31 the Department of Juvenile Justice or a person who was

1 involuntarily committed to the custody of the Department of  
2 Children and Family Services upon an adjudication of not  
3 guilty by reason of insanity.

4 (2) "Convicted of a sexually violent offense" means a  
5 person who has been:

6 (a) Adjudicated guilty of a sexually violent offense  
7 after a trial, guilty plea, or plea of nolo contendere;

8 (b) Adjudicated not guilty by reason of insanity of a  
9 sexually violent offense; or

10 (c) Adjudicated delinquent of a sexually violent  
11 offense after a trial, guilty plea, or plea of nolo  
12 contendere.

13 (3) "Department" means the Department of Health.

14 (4) "Likely to engage in acts of sexual violence"  
15 means the person's propensity to commit acts of sexual  
16 violence is of such a degree as to pose a menace to the health  
17 and safety of others.

18 (5) "Mental abnormality" means a mental condition  
19 affecting a person's emotional or volitional capacity which  
20 predisposes the person to commit sexually violent offenses.

21 (6) "Person" means an individual 18 years of age or  
22 older who is a potential or actual subject of proceedings  
23 under ss. 916.30-916.49.

24 (7) "Sexually motivated" means that one of the  
25 purposes for which the defendant committed the crime was for  
26 sexual gratification.

27 (8) "Sexually violent offense" means:

28 (a) Murder of a human being while engaged in sexual  
29 battery in violation of s. 782.04(1)(a)2.;

30 (b) Kidnapping of a child under the age of 16 and, in  
31 the course of that offense, committing:

1           1. Sexual battery; or  
2           2. A lewd, lascivious, or indecent assault or act upon  
3 or in the presence of the child;  
4           (c) Committing the offense of false imprisonment upon  
5 a child under the age of 16 and, in the course of that  
6 offense, committing:  
7           1. Sexual battery; or  
8           2. A lewd, lascivious or indecent assault or act upon  
9 or in the presence of the child;  
10          (d) Sexual battery in violation of s. 794.011;  
11          (e) Lewd, lascivious, or indecent assault or act upon  
12 or in presence of the child in violation of s. 800.04;  
13          (f) An attempt, criminal solicitation, or conspiracy,  
14 in violation of s. 777.04, of a sexually violent offense;  
15          (g) Any conviction for a felony offense in effect at  
16 any time before July 1, 1998, which is comparable to a  
17 sexually violent offense under paragraphs (a)-(f) or any  
18 federal conviction or conviction in another state for a felony  
19 offense that in this state would be a sexually violent  
20 offense; or  
21          (h) Any criminal act that, either at the time of  
22 sentencing for the offense or subsequently during civil  
23 commitment proceedings under ss. 916.30-916.49, has been  
24 determined beyond a reasonable doubt to have been sexually  
25 motivated.  
26          (9) "Sexually violent predator" means any person who:  
27          (a) Has been convicted of a sexually violent offense;  
28 and  
29          (b) Suffers from a mental abnormality or personality  
30 disorder that makes the person likely to engage in acts of  
31

1 sexual violence if not confined in a secure facility for  
2 long-term control, care, and treatment.

3 (10) "Total confinement" means that the person is  
4 currently being held in any physically secure facility being  
5 operated or contractually operated for the Department of  
6 Corrections, the Department of Juvenile Justice, or the  
7 Department of Children and Family Services.

8 Section 6. Section 916.33, Florida Statutes, is  
9 created to read:

10 916.33 Notice to state attorney and multidisciplinary  
11 team of release of sexually violent predator; establishing  
12 multidisciplinary team.--

13 (1) The agency having jurisdiction over a person who  
14 has been convicted of a sexually violent offense shall give  
15 written notice, to the state attorney of the circuit where  
16 that person was last convicted of a sexually violent offense,  
17 180 days or, in the case of an adjudicated committed  
18 delinquent, 90 days before:

19 (a) The anticipated release from total confinement of  
20 a person who has been convicted of a sexually violent offense,  
21 except that in the case of persons who have been returned to  
22 confinement for no more than 90 days, written notice must be  
23 given as soon as practicable following the person's return to  
24 confinement; or

25 (b) The anticipated hearing regarding possible release  
26 of a person who has been found not guilty by reason of  
27 insanity or mental incapacity of a sexually violent offense.

28 (2) The agency having jurisdiction shall provide the  
29 state attorney with the following information:

30 (a) The person's name; identifying characteristics;  
31 anticipated future residence; the type of supervision the

1 person will receive in the community, if any; and the person's  
2 offense history; and

3 (b) Documentation of institutional adjustment and any  
4 treatment received and, in the case of an adjudicated  
5 delinquent committed to the Department of Juvenile Justice,  
6 copies of the most recent performance plan and performance  
7 summary.

8  
9 The provisions of this section are not jurisdictional, and  
10 failure to comply with them in no way prevents the state  
11 attorney from proceeding against a person otherwise subject to  
12 the provisions of ss. 916.30-916.49.

13 (3) The Secretary of Health shall establish a  
14 multidisciplinary team, which may include individuals from  
15 other state agencies, to review available records of each  
16 person referred to such team under subsection (1). The team,  
17 within 30 days after receiving notice, shall assess whether  
18 the person meets the definition of a sexually violent  
19 predator. The team shall provide the state attorney with its  
20 written assessment within 60 days after it has received  
21 notice.

22 Section 7. Section 916.34, Florida Statutes, is  
23 created to read:

24 916.34 Petition; time; contents.--When a  
25 multidisciplinary team determines that a person meets the  
26 definition of a sexually violent predator as provided in s.  
27 916.32, the state attorney in the judicial circuit where the  
28 person committed the sexually violent offense may file a  
29 petition with the circuit court alleging that the person is a  
30 sexually violent predator and stating facts sufficient to  
31 support such allegation.

1           Section 8. Section 916.35, Florida Statutes, is  
2 created to read:

3           916.35 Determination of probable cause; hearing;  
4 evaluation; respondent taken into custody; bail.--

5           (1) When the state attorney files a petition seeking  
6 to have a person declared a sexually violent predator, the  
7 judge shall determine whether probable cause exists to believe  
8 that the person named in the petition is a sexually violent  
9 predator. If the judge determines that there is probable cause  
10 to believe that the person is a sexually violent predator, the  
11 judge shall direct that the person be taken into custody and  
12 held in a county jail or, in the case of an adjudicated  
13 committed delinquent, the closest regional juvenile secure  
14 detention facility to the county where the petition was filed.

15           (2) Within 72 hours after a person is taken into  
16 custody pursuant to subsection (1), the person shall be  
17 provided with notice of, and an opportunity to appear in  
18 person at, an adversary hearing to contest the judge's  
19 probably cause determination. At this hearing, the judge  
20 shall:

21           (a) Receive evidence and hear argument from the person  
22 and the state attorney; and

23           (b) Determine whether probable cause exists to believe  
24 that the person is a sexually violent predator.

25           (3) At the probable cause hearing, the person has the  
26 right to:

27           (a) Be represented by counsel;

28           (b) Present evidence;

29           (c) Cross-examine any witnesses who testify against  
30 the person; and

31



1           (d) View and copy all petitions and reports in the  
2 court file.

3           (4) If the court again concludes that there is  
4 probable cause to believe that the person is a sexually  
5 violent predator, the court shall direct that the person be  
6 held in a county jail or a detention facility in the county  
7 where the petition was filed for an evaluation by a mental  
8 health professional.

9           (5) After a court finds probable cause to believe that  
10 the person is a sexually violent predator, the person must be  
11 held in custody in a secure facility without opportunity for  
12 pretrial release or release during the trial proceedings.

13           Section 9. Section 916.36, Florida Statutes, is  
14 created to read:

15           916.36 Trial; counsel and experts; indigent persons;  
16 jury.--

17           (1) Within 60 days after the completion of the  
18 probable cause hearing, the court shall conduct a trial to  
19 determine whether the person is a sexually violent predator.

20           (2) The trial may be continued upon the request of  
21 either party and a showing of good cause, or by the court on  
22 its own motion in the interests of justice, when the person  
23 will not be substantially prejudiced.

24           (3) The person is entitled to the assistance of  
25 counsel and, if the person is indigent, the court shall  
26 appoint counsel to assist the person.

27           (4) If the person is subjected to a mental health  
28 examination under this chapter, the person also may retain  
29 experts or mental health professionals to perform an  
30 examination. If the person wishes to be examined by a  
31 professional of the person's own choice, the examiner must be

1 provided reasonable access to the person, as well as to all  
2 relevant medical and mental health records and reports. In the  
3 case of a person who is indigent, the court, upon the person's  
4 request, shall determine whether such an examination is  
5 necessary. If the court determines that an examination is  
6 necessary, the court shall appoint a mental health  
7 professional and determine the reasonable compensation for the  
8 professional's services.

9 (5) The person or the state attorney has the right to  
10 demand that the trial be before a jury. A demand for a jury  
11 trial must be filed, in writing, at least 5 days before the  
12 trial. If no demand is made, the trial shall be to the court.

13 Section 10. Section 916.37, Florida Statutes, is  
14 created to read:

15 916.37 Determination; commitment procedure; mistrials;  
16 housing.--

17 (1) The court or jury shall determine by clear and  
18 convincing evidence whether the person is a sexually violent  
19 predator. If the determination is made by a jury, the decision  
20 must be unanimous. If a majority of the jury finds that the  
21 person is a sexually violent predator, but the decision is not  
22 unanimous, the state attorney may refile the petition and  
23 proceed according to the provisions of ss. 916.30-916.49. Any  
24 retrial must occur within 90 days after the previous trial,  
25 unless the subsequent proceeding is continued in accordance  
26 with s. 916.36(2). The determination that a person is a  
27 sexually violent predator may be appealed.

28 (2) If the judge, in a trial to the court, or at least  
29 half of the jury finds that the person is not a sexually  
30 violent predator, the court shall direct that the person be  
31 released.

1           (3) If the court or jury determines that the person is  
2 a sexually violent predator, the person shall be committed to  
3 the custody of the department for control, care, and treatment  
4 until such time as it is safe for the person to be at large  
5 and the person has been ordered released pursuant to ss.  
6 916.30-916.49.

7           (4) Sexually violent predators committed for control,  
8 care, and treatment under ss. 916.30-916.49 shall be kept in a  
9 secure facility operated by a private contractor. The  
10 Department of Health shall contract with private contractors  
11 for this purpose. A facility operated by a private contractor  
12 and housing sexually violent predators shall be operated  
13 exclusively to control, care for, and treat sexually violent  
14 predators and shall only house sexually violent predators.

15           Section 11. Section 916.38, Florida Statutes, is  
16 created to read:

17           916.38 Examinations.--

18           (1) A person committed under ss. 916.30-916.49 shall  
19 have an examination of his or her mental condition once every  
20 3 years or more frequently at the court's discretion. The  
21 person may retain or, if the person is indigent and so  
22 requests, the court may appoint, a qualified professional to  
23 examine the person. Such a professional shall have access to  
24 all records concerning the person. The results of the  
25 examination shall be provided to the court that committed the  
26 person under ss. 916.30-916.49. Upon receipt of the report,  
27 the court shall conduct a review of the person's status.

28           (2) The department shall provide the person with  
29 annual written notice of the person's right to petition the  
30 court for release over the objection of the director of the  
31 facility where the person is housed. The notice must contain a

1 waiver of rights. The director of the facility shall forward  
2 the notice and waiver form to the court.

3 (3) The court shall hold a limited hearing to  
4 determine whether there is probable cause to believe that the  
5 person's condition has so changed that it is safe for the  
6 person to be at large and that the person will not engage in  
7 acts of sexual violence if discharged. The person has the  
8 right to be represented by counsel at the probable cause  
9 hearing, but the person is not entitled to be present. If the  
10 court determines that there is probable cause to believe it is  
11 safe to release the person, the court shall set a trial before  
12 the court on the issue.

13 (4) At the trial before the court, the person is  
14 entitled to be present and is entitled to the benefit of all  
15 constitutional protections afforded the person at the initial  
16 trial, except for the right to a jury. The state attorney  
17 shall represent the state and has the right to have the person  
18 examined by professionals chosen by the state. At the hearing  
19 the state bears the burden of proving, by clear and convincing  
20 evidence, that the person's mental condition remains such that  
21 it is not safe for the person to be at large and that, if  
22 released, the person is likely to engage in acts of sexual  
23 violence.

24 Section 12. Section 916.39, Florida Statutes, is  
25 created to read:

26 916.39 Authorized petition for release; procedure.--

27 (1) If the Secretary of Health or the secretary's  
28 designee at any time determines that the person is not likely  
29 to commit acts of sexual violence if conditionally discharged,  
30 the secretary or the secretary's designee shall authorize the  
31 person to petition the court for release. The petition shall

1 be served upon the court and the state attorney. The court,  
2 upon receipt of such a petition, shall order a trial before  
3 the court within 30 days, unless continued for good cause.

4 (2) The state attorney shall represent the state, and  
5 has the right to have the person examined by professionals of  
6 the state attorney's choice. The state bears the burden of  
7 proving, by clear and convincing evidence, that the person's  
8 mental condition remains such that it is not safe for the  
9 person to be at large and that, if released, the person is  
10 likely to engage in acts of sexual violence.

11 Section 13. Section 916.40, Florida Statutes, is  
12 created to read:

13 916.40 Petition for release.--Sections 916.30-916.49  
14 do not prohibit a person from filing a petition for discharge  
15 at any time. However, if the person has previously filed such  
16 a petition without the approval of the Secretary of Health or  
17 the secretary's designee and the court determined that the  
18 petition was without merit, a subsequent petition shall be  
19 denied unless the petition contains facts upon which a court  
20 could find that the person's condition has so changed that a  
21 probable-cause hearing is warranted.

22 Section 14. Section 916.41, Florida Statutes, is  
23 created to read:

24 916.41 Release of records to state attorney.--

25 (1) In order to protect the public, relevant  
26 information and records that are otherwise confidential or  
27 privileged shall be released to the agency having jurisdiction  
28 or to the state attorney for the purpose of meeting the notice  
29 requirements of ss. 916.30-916.49 and determining whether a  
30 person is or continues to be a sexually violent predator.

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1           (2) Psychological or psychiatric reports, drug and  
2 alcohol reports, treatment records, medical records, or victim  
3 impact statements that have been submitted to the court or  
4 admitted into evidence under ss. 916.30-916.49 shall be part  
5 of the record, but shall be sealed and may be opened only  
6 pursuant to a court order.

7           Section 15. Section 916.42, Florida Statutes, is  
8 created to read:

9           916.42 Constitutional requirements.--The long-term  
10 control, care, and treatment of a person committed under ss.  
11 916.30-916.49 must conform to constitutional requirements.

12           Section 16. Section 916.43, Florida Statutes, is  
13 created to read:

14           916.43 Immunity from civil liability.--The agency with  
15 jurisdiction and its officers and employees; the department  
16 and its officers and employees; the state attorney and the  
17 state attorney's employees; and those involved in the  
18 evaluation, care, and treatment of sexually violent persons  
19 committed under ss. 916.30-916.49, are immune from any civil  
20 liability for good-faith conduct under ss. 916.30-916.49.

21           Section 17. Section 916.44, Florida Statutes, is  
22 created to read:

23           916.44 Severability.--If any section, subsection, or  
24 provision of ss. 916.30-916.49 is held to be unconstitutional  
25 or invalid by a court of competent jurisdiction, the remaining  
26 portions of ss. 916.30-916.49 shall be unaffected because the  
27 Legislature declares that the provisions of ss. 916.30-916.49  
28 are severable from each other.

29           Section 18. Section 916.45, Florida Statutes, is  
30 created to read:

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1           916.45 Applicability of act.--Sections 916.30-916.49  
2 apply to all persons currently in custody who have been  
3 convicted of a sexually violent offense, as that term is  
4 defined in s. 916.32(8), as well as to all persons convicted  
5 of a sexually violent offense in the future.

6           Section 19. Section 916.46, Florida Statutes, is  
7 created to read:

8           916.46 Notice to victims of release of persons  
9 committed as sexually violent predators.--As soon as is  
10 practicable, the department shall give written notice of the  
11 release of a person committed as a sexually violent predator  
12 to any victim of the committed person who is alive and whose  
13 address is known to the department or, if the victim is  
14 deceased, to the victim's family, if the family's address is  
15 known to the department. Failure to notify is not a reason for  
16 postponement of release. This section does not create a cause  
17 of action against the state or an employee of the state acting  
18 within the scope of the employee's employment as a result of  
19 the failure to notify pursuant to ss. 916.30-916.49.

20           Section 20. Section 916.47, Florida Statutes, is  
21 created to read:

22           916.47 Escape while in lawful custody.--A person who  
23 is held in lawful custody pursuant to a judicial finding of  
24 probable cause under s. 916.35 or pursuant to a commitment as  
25 a sexually violent predator under s. 916.36 and who escapes or  
26 attempts to escape while in such custody commits a felony of  
27 the second degree, punishable as provided in s. 775.082, s.  
28 775.083, or s. 775.084.

29           Section 21. Section 916.48, Florida Statutes, is  
30 created to read:

31           916.48 Subsistence fees and costs of treatment.--

1           (1) In recognition of the fact that persons committed  
2 under ss. 916.30-916.49 may have sources of income and assets,  
3 which may include bank accounts, inheritances, real estate,  
4 social security payments, veteran's payments, and other types  
5 of financial resources, and in recognition of the fact that  
6 the daily subsistence cost and costs of treatment of persons  
7 committed under ss. 916.30-916.49 are a burden on the  
8 taxpayers of the state, each person so committed shall:

9           (a) Upon order of the court committing the person,  
10 disclose all revenue or assets to the department.

11           (b) Pay from such income and assets, except where such  
12 income is exempt by state or federal law, all or a fair  
13 portion of the person's daily subsistence and treatment costs,  
14 based upon the person's ability to pay, the liability or  
15 potential liability of the person to the victim or the  
16 guardian or the estate of the victim, and the needs of his or  
17 her dependents.

18           (2)(a) Any person who is directed to pay all or a fair  
19 portion of daily subsistence and treatment costs is entitled  
20 to reasonable advance notice of the assessment and shall be  
21 afforded an opportunity to present reasons for opposition to  
22 the assessment.

23           (b) An order directing payment of all or a fair  
24 portion of a person's daily subsistence costs may survive  
25 against the estate of the person.

26           Section 22. Section 916.49, Florida Statutes, is  
27 created to read:

28           916.49 Department of Health responsible for  
29 costs.--The Department of Health is responsible for all costs  
30 relating to the evaluation and treatment of persons committed  
31 to the department's custody as sexually violent predators.



1 Other costs for psychological evaluations, expert witnesses,  
2 and court-appointed counsel required by ss. 916.30-916.49  
3 shall be paid from state funds appropriated by general law.

4 Section 23. This act shall take effect July 1, 1998.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 CS for SB 646

- 9 - Adds definition of "total confinement" and defines  
10 "deparment" as the Department of Health rather than the  
11 Department of Children and Family Services for the  
12 purposes of the Jimmy Ryce Act of 1998.  
13 - Authorizes sexually violent predators to be committed for  
14 control, care, and treatment in a secure facility  
15 operated by a private contractor under the Department of  
16 Health exclusively for sexually violent predators.  
17 - Specifies that in the case of an adjudicated committed  
18 delinquent, the agency having jurisdiction must give  
19 written notice to the state attorney 90 days before the  
20 anticipated release from total confinement or the  
21 anticipated hearing regarding possible release.  
22 - Provides that the Department of Health is responsible for  
23 all costs relating to the evaluation and treatment of  
24 persons committed to the department's custody as sexually  
25 violent predators.  
26 - Specifies that other costs for psychological evaluations,  
27 expert witnesses, and court-appointed counsel be paid  
28 from state funds appropriated by general law.  
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