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CRIMES AND OFFENSES

Sexual Offenses: Change Provisions Relating to the Offense of Pandering; Expand Definition of Pandering; Provide for Publication of the Photograph of a Person Convicted of Pandering; Provide for Testing for Sexually Transmitted Diseases of Persons Convicted of Pandering and for the Release of Such Test Results; Provide for Increased Penalty for Pandering Within a Certain Distance of Specified Areas

CODE SECTIONS:	O.C.G.A. §§ 16-6-12 to -13 (amended), -13.1 (new)
BILL NUMBER:	SB 158
ACT NUMBER:	950
GEORGIA LAWS:	1998 Ga. Laws 1301
SUMMARY:	The Act expands the definition of pandering by making the offense applicable to persons who solicit prostitution individually as well as persons who solicit prostitution for a third person. The Act also increases fines for a person found guilty of pandering when the offense involves the solicitation of a person under the age of seventeen. Further, the Act provides that the clerk of the county in which a person is deemed guilty of pandering shall publish a notice of conviction, along with a photograph of the convicted, in the county's legal publication. If an individual solicits a prostitute within 1000 feet of specified areas, including centers where children under the age of seventeen are normally present or public places of worship, an additional fine is assessed. In addition to increased fines and notice publication, the Act adds a new Code section, which provides that the guilty defendant is required to submit to medical testing for eight sexually transmitted diseases. Further, if married, the defendant must consent to having the

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test results sent to his or her spouse. The Act provides that sexually transmitted disease testing is required as a condition of parole.

EFFECTIVE DATE: July 1 , 1998

History

Prostitution is one of the oldest "professions" in the world and in some places one of the most common crimes.[1] For decades, Georgia lawmakers have deemed prostitution illegal.[2] Yet, according to Senator Robert Brown, the main sponsor of SB 158, law enforcement agencies give little attention to either the problem of prostitution or the act of soliciting a prostitute (*i.e.*, pandering).[3] According to Senator Brown, pandering has become a problem in lower income communities.[4] In an effort to combat the problem of prostitution in these communities, Senator Brown introduced SB 158 to increase the penalties of pandering in an attempt to deter solicitation of prostitutes.[5] Further, because SB 158 increases the penalties for pandering, Senator Brown believed that the Act would give law enforcement a greater incentive to pursue panderers just as increased penalties in Georgia drug statutes increased law enforcement's awareness of and attempts to arrest and convict drug dealers.[6]

Prior Law

The Act amends chapter 6 of title 16 of the Code relating to pandering.[7] Under prior law, a person committed the offense of pandering when he or she (1) "solicit[ed] a person to perform an act of prostitution" or (2) "knowingly assemble[d] persons at a fixed place for

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1. *See* Telephone Interview with Rep. Billy McKinney, House District No. 51 (June 8, 1998) [hereinafter McKinney Interview].

2. *See, e.g.*, GA. CODE ANN. § 26-6201 (Harrison 1933). Currently, the Georgia statute on prostitution is found at O.C.G.A. § 16-6-9 (1992).

3. *See* Telephone Interview with Sen. Robert Brown, Senate District No. 26 (June 8, 1998) [hereinafter Brown Interview].

4. *See id.*

5. *See id.*

6. *See id.; see also* Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (June 3, 1998) (indicating that Sen. Oliver, also a sponsor of SB 158, perceived the Act as an effective tool for police to enforce anti-prostitution legislation).

7. *Compare* 1988 Ga. Laws 1797, §§ 1-2, at 1797-98 (formerly found at O.C.G.A. §§ 16-6-12 to -13 (1992)), *with* O.C.G.A. §§ 16-6-12 to -13.1 (Supp. 1998).

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the purpose of being solicited by others to perform an act of prostitution."[8] Thus, a person could be convicted of pandering in two ways: soliciting a prostitute or soliciting others to engage in prostitution. As to the former, the previous Code section did not specify whether a person was guilty of pandering if he or she solicited a prostitute on his or her own behalf, on behalf of a third person, or both.[9] Under prior law, a person guilty of pandering could be convicted for a "misdemeanor of a high and aggravated nature."[10] However, if the person convicted of pandering solicited a prostitute under the age of seventeen, the act was considered a felony punishable by a fine, imprisonment, or both.[11]

SB 158

The Act amends chapter 6 of title 16 of the Code in four main ways. In particular, the Act serves to: (1) clarify the definition of pandering; (2) increase the fines imposed; (3) add a publication provision; and (4) provide a mandatory medical testing requirement for sexually transmitted diseases.[12] Changes in the prior law are generally set forth below.

First, the Act expands the definition of pandering.[13] Pandering, as amended by the Act, applies when a person solicits a prostitute in "his or her own behalf or in behalf of a third person. . . ."[14] Thus, the language of the Act goes beyond the language of the prior law by clarifying that the offense of pandering not only applies to an individual who solicits a prostitute for his or her own purpose, but also to anyone who solicits a prostitute for a third person.[15] As with the prior law, the offense of pandering continues to apply to anyone who assembles persons for the purpose of being solicited for prostitution.[16]

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8. 1988 Ga. Laws 1797, § 1, at 1797 (formerly found at O.C.G.A. § 16-6-12 (1992)).
9. *See id.*
10. *Id.* § 2, at 1797-98 (formerly found at O.C.G.A. § 16-6-13 (1992)).
11. *See id.* The previous Code section set the minimum fine at $1000 and the maximum fine at $5000. *See id.* A person guilty of engaging in prostitution with a person under the age of 17 could also be imprisoned between one and five years. *See id.*
12. *See* O.C.G.A. §§ 16-6-12 to -13.1 (Supp. 1998).
13. *See id.* § 16-6-12.
14. *Id.*
15. *Compare id. with* 1988 Ga. Laws 1797, § 1, at 1797 (formerly found at O.C.G.A. § 16-6-12 (1992)).
16. *Compare* O.C.G.A. § 16-6-12 (Supp. 1998), *with* 1988 Ga. Laws 1797,§ 1, at 1797 (formerly found at O.C.G.A. § 16-6-12 (1992)).

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The next change increases the fines for a person found guilty of violating the Act when the violation involves the solicitation of a person under the age of seventeen.[17] However, as under prior law, if a person is guilty of soliciting a person under the age of seventeen to perform an act of prostitution he or she will be guilty of a felony.[18] The new language simply increases the minimum fine from $1000 to $2500 and the maximum fine from $5000 to $10,000.[19]

Lawmakers added subsection (c) to the previous Code section. This new subsection requires the clerk of the court, in the county where an individual was convicted of pandering, to publish a notice of the conviction.[20] The notice is to be published in the same manner that legal notices are routinely published.[21] Most legal notices are published in the "legal organ," most often the newspaper, in the county where the convicted individual resides.[22] If the convicted person is a "nonresident," the notice is published in the county in which the person was convicted.[23] However, the Act does not specify whether nonresident refers to a resident of another state or a resident of another county.[24] Although a publication requirement alone may not appear radical, the Act establishes that the contents of the publication must include a photograph.[25] The Act further provides that the convicted person shall be assessed the cost of the publication.[26] This subsection also protects any person involved in the publication process from criminal or civil liability as long as the publication was made in good faith, even if the notice published was erroneous.[27]

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17. *See* O.C.G.A. § 16-6-13(b) (Supp. 1998).

18. *Compare id. with* 1988 Ga. Laws 1797, § 2, at 1797-98 (formerly found at O.C.G.A. § 16-6-13(b) (1992)).

19. *Compare* O.C.G.A. § 16-6-13(b) (Supp. 1998), *with* 1988 Ga. Laws 1797, § 2, at 1797-98 (formerly found at O.C.G.A. § 16-6-13(b) (1992)).

20. *See* O.C.G.A. § 16-6-13(c) (Supp. 1998).

21. *See id.*

22. *Id.*

23. *Id.*

24. *See id.* (providing only a separate provision for nonresident without defining "nonresident").

25. *See id.* The Act provides that the notice should be one column wide by two inches long. *See id.* The Act states that the column should include: (1) name and address of the convicted person; (2) the date, time, and place of arrest; (3) a photograph taken by the arresting law enforcement agency; and (4) a disposition of the case. *See id.* The notice is to be published once in the second week following the conviction or as soon thereafter as publication may be made. *See id.*

26. *See id.*

27. *See id.*

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Lawmakers added subsection (d) to the Code to provide an additional penalty if a person commits the offense of pandering within 1000 feet of specified areas.[28] Those specified areas include: (1) school buildings or "school grounds"; (2) "public place[s] of worship"; or (3) "playground[s] or recreation center[s], . . . used primarily by persons under the age of 17 years."[29] The penalty for committing the offense of pandering within such designated areas includes a fine of $2500 *in addition* to the penalty assessed under subsections (a) and (b).[30]

The Act further amends chapter 6 of title 16 by adding a new Code section that involves medical testing for sexually transmitted diseases.[31]

Subsection (a) of the new Code section sets forth and defines the meaning of terms used in the Code section.[32] Subsection (b) applies in the case of a guilty verdict, guilty plea, or plea of nolo contendere to the offense of pandering.[33] Basically, subsection (b) establishes that, as a condition of probation, the defendant must submit to testing for sexually transmitted diseases.[34] Three days after the date of the guilty verdict or plea or plea of nolo contendere, the clerk must send a copy of the verdict or plea to the Department of Human Resources (DHR), which administers the tests.[35] The Act requires such testing be administered within forty-five days of the date of the verdict or plea;[36] provided, however, if the defendant is not a resident of Georgia, he or she will be ordered to undergo testing for sexually transmitted diseases immediately and be required to remain in custody until the testing is complete.[37] The Act limits testing to the eight most common sexually transmitted diseases as determined by the DHR.[38] Additionally, as a further condition of probation, the Act requires the

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28. *See id.* § 16-6-13(d).
29. *Id.*
30. *See id.*
31. *See id.* § 16-6-13.1.
32. *See id.* Subsection (a) references O.C.G.A. § 31-22-9.1 that applies to AIDS transmitting crimes, including prostitution. *See* 1988 Ga. Laws 1799, § 8, at 1818 (codified at O.C.G.A. § 31-22-9.1 (1992)).
33. *See* O.C.G.A. § 16-6-13.1(b) (Supp. 1998).
34. *See id.*
35. *See id.*
36. *See id.*
37. *See id.*
38. *See id.*

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defendant to consent to have the test results released to the defendant's spouse if he or she is married.[39]

Subsection (c) clarifies the obligations of the DHR.[40] The subsection provides that the DHR will arrange for testing of the defendant.[41] According to the subsection, medical testing must be made within thirty days following notification to the DHR under subsection (b).[42] Further, subsection (c) states that the defendant, not the State, bears the costs for such tests.[43]

Subsection (d) describes the consequences for a defendant who fails or refuses to submit to the testing.[44] In essence, the defendant will be subject to any "measures deemed necessary by the court [that required the] submission to the tests."[45]

The Senate unanimously[46] supported the above provisions. Similarly, the House supported the final version of the bill by a vote of 164 yeas to 6 nays.[47] The Act was signed into law by Georgia Governor Zell Miller on April 20, 1998, and the law became effective on July 1, 1998.[48]

Original Version of SB 158

SB 158 was originally introduced to the General Assembly in 1997.[49] SB 158, as introduced in the 1997 General Assembly, did not address notice publication or sexually transmitted disease testing.[50] Instead,

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39. *See id.*
40. *See id.* § 16-6-13.1(c).
41. *See id.*
42. *See id.*
43. *See id.*
44. *See id.* § 16-6-13.1(d).
45. *Id.*
46. *See* Georgia Senate Voting Record, SB 158 (Mar. 16, 1998). Forty-three Senators voted yea, zero Senators voted nay, seven Senators abstained from voting, and six Senators were excused from the vote. *See id.*
47. *See* Georgia House of Representatives Voting Record, SB 158 (Mar. 9, 1998). One hundred sixty-four Representatives voted yea, six Representatives voted nay, including: Reps. Billy McKinney, Tyrone Brooks, Lynmore James, David Lucas, George Maddox, and Theo Titus. *See id.* Eight lawmakers did not vote on the bill. *See id.* Those who opposed the bill voted nay because it was too harsh and ultimately punitive in nature, especially the requirement of publication. *See* McKinney Interview, *supra* note 1; Joan Kirchner, *House Agrees to Punish Prostitutes' Customers*, ONLINE ATHENS (Mar. 10, 1998) <http://www.onlineathens.com/1998/031098/0310.a2house.html>.
48. *See* 1998 Ga. Laws 1301; State of Georgia Final Composite Status Sheet, Mar. 19, 1998.
49. *See* SB 158, as introduced, 1997 Ga. Gen. Assem.
50. *See id.*

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the bill provided that any motor vehicle used in any way in connection with the offense of pandering would be deemed contraband and ultimately be seized and forfeited.[51] After confiscation of the vehicle, the district attorney of the county in which the vehicle was seized would have been required to file an action against the seized vehicle and *any* person having an interest in the seizure or sale of the vehicle.[52] Thus, a copy of the action would not only be served upon the possessor, owner, and/or lessee, but a copy would also be served upon any person having a "duly recorded security interest" in the motor vehicle at the time the vehicle was seized.[53] Ultimately, the confiscated vehicle could be retained for official use in law enforcement or sold.[54]

SB 158, as introduced in 1997, passed the Senate unanimously.[55] However, House lawmakers, although perhaps agreeing with the purpose of the bill, determined that SB 158, as introduced, was punitive and, ultimately, too harsh.[56] Regardless, Senator Brown opined that, in reality, conservatives in the House were simply afraid to confiscate the panderer's motor vehicle.[57] Thus, the House voted to send the bill to committee.[58] As a result, the bill failed during the 1997 legislative Session.[59]

House Committee Substitute of SB 158

Senator Robert Brown reintroduced SB 158 during the 1998 legislative session as a House Committee substitute.[60] The House Committee substitute changed penalties in the introduced version of SB 158 to the penalties set forth in the Act.[61] However, the Senate amended some of the language of the House Committee substitute in an attempt to clarify the scope of the law and expand punishable

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51. *See id.*
52. *See id.*
53. *Id.*
54. *See id.*
55. *See* Georgia Senate Voting Record, HB 158 (Jan. 31, 1997); *House Votes to Punish Johns*, THE TIMES, GAINESVILLE, GEORGIA, Mar. 10, 1998, at 4A [hereinafter *House Votes*].
56. *See House Votes, supra* note 55; *cf.* McKinney Interview, *supra* note 1.
57. *See* Brown Interview, *supra* note 3.
58. *See House Votes, supra* note 55.
59. *See* Kirchner, *supra* note 47.
60. *See* Brown Interview, *supra* note 3.
61. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.

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offenses.[62] Ultimately, the final version of the bill that passed the General Assembly was a form of the House Committee substitute.[63]

Like the original version of SB 158, the House Committee substitute also increased the penalties to be imposed on solicitors of prostitutes under prior law.[64] However, the House Committee substitute eliminated all provisions and penalties referring to the seizure or forfeiture of motor vehicles.[65] Instead, the House Committee substitute imposed different penalties on prostitution solicitors, including notice publication and medical testing for sexually transmitted diseases.[66] The House Committee substitute was modeled after the Georgia Driving Under the Influence of Drugs and Alcohol (DUI) statute.[67] In fact, the House Committee substitute language involving publication replicates the publication requirement language of Code section 40-6-391(j), involving the publication of persons convicted a third time for DUI.[68]

The House Committee substitute closely resembles the Act explained above.[69] The House Committee substitute, as amended by the Senate in four main ways, became the passed version of the bill.[70]

The first difference in the House Committee substitute and the Act is a reference in subsection (c) of Code section 16-6-13 involving who bears the cost of publication.[71] The House Committee substitute provided that the convicted person must pay twenty-five dollars for the cost of publication, whereas the Senate amendment to the bill eliminated the specific amount to be assessed.[72] Thus, the resulting

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62. The Senate amended version of the House Committee substitute became the final version of SB 158 as passed by the 1998 Georgia General Assembly. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. §§ 16-6-12 to -13.1 (Supp. 1998).

63. *Compare* SB 158, as introduced, 1997 Ga. Gen. Assem., *with* SB 158 (HCS), 1998 Ga. Gen. Assem., *and* O.C.G.A. §§ 16-6-13, -13.1 (Supp. 1998).

64. *Compare* 1988 Ga. Laws 1797, § 2, at 1797-98 (formerly found at O.C.G.A. § 16-6-13 (1992)), *with* SB 158, as introduced, 1997 Ga. Gen. Assem., *and* SB 158 (HCS), 1998 Ga. Gen. Assem.

65. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.

66. *See id.*

67. *See* Brown Interview, *supra* note 3.

68. *See id. Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* 1997 Ga. Laws 760, § 23, at 789 (codified at O.C.G.A. § 40-6-391 (1992)).

69. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. §§ 16-6-12 to -13.1 (Supp. 1998). *See generally* text accompanying *supra* notes 12-48.

70. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. §§ 16-6-12 to -13.1 (Supp. 1998).

71. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. § 16-6-13(c)(2) (Supp. 1998).

72. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. § 16-6-13(c)(2) (Supp.

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language of the Act simply provides that the convicted person will pay the cost of publication without specifying a set amount.[73]

The second difference between the House Committee substitute and the bill as passed concerns Code section 16-6-13(d), regarding the additional penalty assessed when pandering is committed within 1000 feet of specified places.[74] The House Committee substitute provided that the additional fine shall equal $1000.[75] The Senate amendment increased the amount of the fine assessed by $1500.[76] Thus, the Act provides for a maximum fine of $2500.[77]

The third difference between the House Committee substitute and the Act involves the new Code section.[78] Subsection (b) of that Code section pertains to the requirement that the guilty defendant must submit to medical testing for sexually transmitted diseases.[79] The House Committee substitute merely stated that the guilty person must be tested.[80] The Senate amendment added language to the bill providing that such testing should not only be required, but should be made a condition of parole.[81] Further, the House Committee substitute did not distinguish between residents and nonresidents.[82] However, the Senate amendment provided specific language pertaining to nonresidents, including an immediate testing requirement.[83] Finally, subsection (b) of the final version of the bill limits the sexually transmitted disease testing requirement of the House Committee substitute to the eight most common sexually transmitted diseases, as

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1998). The DUI statute assesses a $25 fee for the costs of publication. *See* 1997 Ga. Laws. 760, § 23, at 789 (codified at O.C.G.A. § 40-6-391 (1992)). The elimination of the $25 set fee for the cost of publication is the only difference between the Act's publication requirement and the DUI's publication requirement. *Compare* O.C.G.A. § 16-6-13 (Supp. 1998) *with* 1997 Ga. Laws. 760, § 23, at 789 (codified at O.C.G.A. § 40-6-391 (1992)).

73. *See* O.C.G.A. § 16-6-13(c)(2) (Supp. 1998).

74. *Compare* SB 158 (HCS), 1998 Ga. Gen. Assem., *with* O.C.G.A. § 16-6-13(d) (Supp. 1998).

75. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.

76. *See* O.C.G.A. § 16-6-13(d) (Supp. 1998).

77. *See id.*

78. *See id.* § 16-6-13.1.

79. *See id.*

80. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.

81. *See* O.C.G.A. § 16-6-13.1(b) (Supp. 1998).

82. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.

83. *See* O.C.G.A. § 16-6-13.1(b) (Supp. 1998).

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provided by the DHR.[84] The House Committee substitute did not include such limiting language until amended by the Senate.[85]

The final difference between the House Committee substitute and the Act is that the House Committee substitute did not specify who should bear the costs for the tests.[86] Such language was added to the bill by the Senate amendment.[87] The final Act specifically provides that the guilty defendant, not the State, bears the costs for such tests.[88]

Conclusion

The Act expands the definition of pandering, increases the fines for persons soliciting prostitutes under age seventeen, adds a publication requirement, and establishes a mandatory sexually transmitted disease testing requirement.[89] Ultimately, supporters of the Act hope that the changes to the prior law and nature of the penalties will deter individuals from engaging in the offense of pandering.[90] Supporters of SB 158 say that the Act will "scar[e] potential customers."[91] However, some members of the House believe that the bill is punitive and totally misses the mark because the "john" (the panderer) is treated differently than the prostitute.[92]

Georgia lawmakers recognize that the Act has a potential for constitutional challenges in the future due to right to privacy concerns.[93] Senator Brown is confident that the publication requirement of the Act will withstand any constitutional challenge for the following two reasons: (1) the publication requirement is only one aspect of the Act; and (2) a precedent of publication has been established under the Georgia DUI law.[94] In a neighboring state, a constitutional right to privacy challenge failed when a city mayor placed an advertisement in a local newspaper listing the names of all individuals arrested in "reverse-sting operations for prostitution."[95]

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84. *See id.*
85. *See* SB 158 (HCS), 1998 Ga. Gen. Assem.
86. *See id.*
87. *Compare id. with* O.C.G.A. § 16-6-13.1(c) (Supp. 1998).
88. *See* O.C.G.A. § 16-6-13.1(c) (Supp. 1998).
89. *See id.* §§ 16-6-12 to -13.1.
90. *See House Votes, supra* note 55; James Salzer, *House Targets Those Who Solicit Sex*, AUGUSTA CHRON., Mar. 10, 1998, at 4C.
91. *House Votes, supra* note 55.
92. *See* Kirchner, *supra* note 47.
93. *See* McKinney Interview, *supra* note 1; Brown Interview, *supra* note 3.
94. *See* Brown Interview, *supra* note 3.
95. Florida v. Johnson, No. 93-000767MMA02, 1993 WL 614865, at *1 (Palm Beach

According to Senator Brown, the Act's sexually transmitted disease testing requirement may be more problematic due to privacy laws such as the AIDS Confidentiality statute.[96]

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County Ct. July 29, 1993); *see also* Doe v. Alton Telegraph, 805 F. Supp. 30 (C.D. Ill. 1992) (holding that Illinois AIDS Confidentiality Act does not apply to publication of information already contained in open and public court files and does not prevent publication or dissemination of such information).

96. *See* Brown Interview, *supra* note 3.

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