

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB1603**

By: Stiles of the House and Anderson of the Senate

Title: Marriage and family; creating the Deployed Parents Custody Act; effective date.

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Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendment No. 1; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**HOUSE CONFEREES**

Jordan \_\_\_\_\_

Martin (Steve) Steve Martin

McCullough \_\_\_\_\_

Moore J. H. Moore

Morrisette \_\_\_\_\_

Roan Paul D. Roan

Roberts (Dustin) D. Roberts

Schwartz Colby Schwartz

Sherrer Ben Sherrer

Sullivan Alan Sullivan

Tibbs Steve Tibbs

Wesselhoft \_\_\_\_\_

Williams \_\_\_\_\_

Mr. Speaker Chris Steele

**SENATE CONFEREES**

Anderson \_\_\_\_\_

Sykes \_\_\_\_\_

Russell \_\_\_\_\_

Nichols \_\_\_\_\_

Ivester \_\_\_\_\_

Garrison \_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1603

By: Stiles of the House

and

7 Anderson, Russell and  
8 Simpson of the Senate

9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to deployed parent custody of child;  
11 amending 43 O.S. 2001, Section 112, as last amended  
12 by Section 10, Chapter 358, O.S.L. 2010 (43 O.S.  
13 Supp. 2010, Section 112), which relates to custody  
14 and support of minor children in divorce proceedings;  
15 modifying requirements; authorizing the entry of  
16 certain orders; specifying that a military deployment  
17 shall not be used as evidence for certain purposes;  
18 creating the Deployed Parents Custody and Visitation  
19 Act; providing short title; defining terms; providing  
20 for jurisdiction; directing court to provide for  
21 custody of child when parent has been deployed;  
22 authorizing court to designate visitation; specifying  
23 limitation of designation; requiring deploying parent  
24 to provide certain notice; specifying notice  
requirements; providing exception; authorizing  
motions for certain custody hearings; specifying  
procedure; specifying required contents of motion;  
authorizing expedited hearing motions; requiring  
parent designating visitation to identify family  
member so designated; authorizing the use of  
electronic means for certain hearings; authorizing  
certain limitations; authorizing the entry of certain  
orders; establishing presumption that certain  
existing orders are in best interest of child;  
specifying certain requirements of temporary order;  
providing for visitation of other family members;  
specifying limitations of visitation orders;  
directing court to order reasonable visitation;

1 providing exceptions; specifying visitation order  
2 shall be temporary; limiting authority of court to  
3 modify certain existing arrangements; providing  
4 exception; requiring notice of change of address  
5 under certain circumstances; authorizing orders for  
6 child support; providing for designation of  
7 visitation rights; specifying visitation orders shall  
8 be temporary; establishing visitation requirements;  
9 providing exception; requiring attendance of certain  
10 family member at hearing; specifying rebuttable  
11 presumptions for deploying parents; requiring notice  
12 at the end of deployment; specifying certain  
13 temporary orders shall terminate upon deployment  
14 completion; providing that certain existing orders  
15 shall be reinstated; providing for sanctions;  
16 providing for codification; and declaring an  
17 emergency.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last  
20 amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010,  
21 Section 112), is amended to read as follows:

22 Section 112. A. A petition or cross-petition for a divorce,  
23 legal separation, or annulment must state whether or not the parties  
24 have minor children of the marriage. If there are minor children of  
the marriage, the court:

1. Shall make provision for guardianship, custody, medical  
care, support and education of the children;

2. Unless not in the best interests of the children, may  
provide for the visitation of the noncustodial parent with any of  
the children of the noncustodial parent; and

1           3. May modify or change any order whenever circumstances render  
2 the change proper either before or after final judgment in the  
3 action; provided, that the amount of the periodic child support  
4 payment shall not be modified retroactively or payment of all or a  
5 portion of the past due amount waived, except by mutual agreement of  
6 the obligor and obligee, or if the obligee has assigned child  
7 support rights to the Department of Human Services or other entity,  
8 by agreement of the Department or other entity. Unless the parties  
9 agree to the contrary, a completed child support computation form  
10 provided for in Section 120 of this title shall be required to be  
11 filed with the child support order.

12           The social security numbers of both parents and the child shall  
13 be included on the child support order summary form provided for in  
14 Section 120 of this title, which shall be submitted to the Central  
15 Case Registry as provided for in Section 112A of this title with all  
16 child support or paternity orders.

17           B. In any action in which there are minor unmarried children in  
18 awarding or modifying the custody of the child or in appointing a  
19 general guardian for the child, the court shall be guided by the  
20 provisions of Section 112.5 of this title and shall consider what  
21 appears to be in the best interests of the child.

22           C. 1. When it is in the best interests of a minor unmarried  
23 child, the court shall:

24

- 1           a.    assure children of frequent and continuing contact  
2                   with both parents after the parents have separated or  
3                   dissolved their marriage, and  
4           b.    encourage parents to share the rights and  
5                   responsibilities of child rearing in order to effect  
6                   this policy.

7           2.    There shall be neither a legal preference nor a presumption  
8 for or against joint legal custody, joint physical custody, or sole  
9 custody.

10          3.    When in the best interests of the child, custody shall be  
11 awarded in a way which assures the frequent and continuing contact  
12 of the child with both parents. When awarding custody to either  
13 parent, the court:

14           a.    shall consider, among other facts, which parent is  
15                   more likely to allow the child or children frequent  
16                   and continuing contact with the noncustodial parent,  
17                   and

18           b.    shall not prefer a parent as a custodian of the child  
19                   because of the gender of that parent.

20          4.    In any action, there shall be neither a legal preference or  
21 a presumption for or against private or public school or home-  
22 schooling in awarding the custody of a child, or in appointing a  
23 general guardian for the child.

1           5. Notwithstanding any custody determination made pursuant to  
2 the Oklahoma Children's Code, when a ~~custodial~~ parent of a child is  
3 required to be separated from a child due to military service, ~~a~~ the  
4 court shall not enter a final order modifying an existing custody  
5 order until such time as the ~~custodial~~ parent has completed the term  
6 of duty requiring separation. For purposes of this paragraph:

7           a. in the case of a parent who is a member of the Army,  
8 Navy, Air Force, Marine Corps or Coast Guard, the term  
9 "military service" means a combat deployment,  
10 contingency operation, or natural disaster requiring  
11 the use of orders that do not permit any family member  
12 to accompany the member, ~~and~~

13           b. in the case of a parent who is a member of the  
14 National Guard, the term "military service" means  
15 service under a call to active service authorized by  
16 the President of the United States or the Secretary of  
17 Defense for a period of more than thirty (30)  
18 consecutive days under 32 U.S.C. 502(f) for purposes  
19 of responding to a national emergency declared by the  
20 President and supported by federal funds. "Military  
21 service" shall include any period during which a  
22 member is absent from duty on account of sickness,  
23 wounds, leave or other lawful cause, and

1           c. the court may enter a temporary custody or visitation  
2           order pursuant to the requirements of the Deployed  
3           Parents Custody and Visitation Act.

4           6. In making an order for custody, the court shall require  
5 compliance with Section 112.3 of this title.

6           D. 1. Except for good cause shown, a pattern of failure to  
7 allow court-ordered visitation may be determined to be contrary to  
8 the best interests of the child and as such may be grounds for  
9 modification of the child custody order.

10          2. For any action brought pursuant to the provisions of this  
11 section which the court determines to be contrary to the best  
12 interests of the child, the prevailing party shall be entitled to  
13 recover court costs, attorney fees and any other reasonable costs  
14 and expenses incurred with the action.

15          E. Except as otherwise provided by Section 112.1A of this  
16 title, any child shall be entitled to support by the parents until  
17 the child reaches eighteen (18) years of age. If a child is  
18 regularly enrolled in and attending high school, as set forth in  
19 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means  
20 of high school education, or an alternative high school education  
21 program as a full-time student, the child shall be entitled to  
22 support by the parents until the child graduates from high school or  
23 until the age of twenty (20) years, whichever occurs first. Full-  
24 time attendance shall include regularly scheduled breaks from the

1 school year. No hearing or further order is required to extend  
2 support pursuant to this subsection after the child reaches the age  
3 of eighteen (18) years.

4 F. In any case in which provision is made for the custody or  
5 support of a minor child or enforcement of such order and before  
6 hearing the matter or signing any orders, the court shall inquire  
7 whether public assistance money or medical support has been provided  
8 by the Department of Human Services, hereafter referred to as the  
9 Department, for the benefit of each child. If public assistance  
10 money, medical support, or child support services under the state  
11 child support plan as provided in Section 237 of Title 56 of the  
12 Oklahoma Statutes have been provided for the benefit of the child,  
13 the Department shall be a necessary party for the adjudication of  
14 the debt due to the State of Oklahoma, as defined in Section 238 of  
15 Title 56 of the Oklahoma Statutes, and for the adjudication of  
16 paternity, child support, and medical insurance coverage for the  
17 minor children in accordance with federal regulations. When an  
18 action is filed, the petitioner shall give the Department notice of  
19 the action according to Section 2004 of Title 12 of the Oklahoma  
20 Statutes. The Department shall not be required to intervene in the  
21 action to have standing to appear and participate in the action.  
22 When the Department is a necessary party to the action, any orders  
23 concerning paternity, child support, medical support, or the debt

24

1 due to the State of Oklahoma shall be approved and signed by the  
2 Department.

3 G. In any case in which a child support order or custody order  
4 or both is entered, enforced or modified, the court may make a  
5 determination of the arrearages of child support.

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 112.7 of Title 43, unless there  
8 is created a duplication in numbering, reads as follows:

9 A military deployment shall not be used as evidence of a  
10 substantial, material and permanent change of circumstances to  
11 warrant a permanent modification of custody.

12 SECTION 3. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 150 of Title 43, unless there is  
14 created a duplication in numbering, reads as follows:

15 Sections 3 through 13 of this act shall be known and may be  
16 cited as the "Deployed Parents Custody and Visitation Act".

17 SECTION 4. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 150.1 of Title 43, unless there  
19 is created a duplication in numbering, reads as follows:

20 As used in the Deployed Parents Custody and Visitation Act:

21 1. "Close and substantial relationship" means a relationship in  
22 which a bond has been forged between the child and the other person  
23 by regular contact or communication;

24

1       2. "Custodial responsibility" refers to legal custody, physical  
2 custody or visitation rights with respect to a child;

3       3. "Deploying parent" means a legal parent of a minor child or  
4 the legal guardian of a child, who is a member of the United States  
5 Armed Forces and who is deployed or has been notified of an  
6 impending deployment;

7       4. "Deployment" means the temporary transfer of a servicemember  
8 in compliance with official orders to another location in support of  
9 combat, contingency operation, or natural disaster requiring the use  
10 of orders for a period of more than thirty (30) consecutive days,  
11 during which family members are not authorized to accompany the  
12 servicemember at government expense. Deployment shall include any  
13 period during which a servicemember is absent from duty on account  
14 of sickness, wounds, leave or other lawful cause;

15       5. "Guardian" means a person who has been appointed as a  
16 guardian of a minor or incapacitated adult pursuant to the  
17 requirements of Title 30 of the Oklahoma Statutes. The term shall  
18 include a limited guardian, but shall not include a guardian ad  
19 litem;

20       6. "Nondeploying parent" means a legal parent or guardian who  
21 is not deployed and who has a child or ward in common with a  
22 deploying parent;

23       7. "Servicemember" means a member of either:  
24

- 1           a.    the active or reserve components of the Army, Navy,  
2                    Air Force, Marine Corps, or Coast Guard, or  
3           b.    the active or reserve components of the National  
4                    Guard; and

5           8.    "Visitation" means the right to take a child for a limited  
6 period of time to a place other than the habitual residence of the  
7 child.

8           SECTION 5.        NEW LAW        A new section of law to be codified  
9 in the Oklahoma Statutes as Section 150.2 of Title 43, unless there  
10 is created a duplication in numbering, reads as follows:

11           A court of this state may enter an order regarding custodial  
12 responsibility pursuant to the Deployed Parents Custody and  
13 Visitation Act only where the court has jurisdiction pursuant to the  
14 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA),  
15 Sections 551-101 through 551-402 of Title 43 of the Oklahoma  
16 Statutes. If a court of this state has rendered a temporary order  
17 regarding custodial responsibility pursuant to the Deployed Parents  
18 Custody and Visitation Act, the deploying parent shall be deemed to  
19 reside in this state for the purposes of the UCCJEA during the  
20 duration of the deployment. If a court of another state has  
21 rendered a temporary order regarding custodial responsibility  
22 pursuant to deployment, this court shall deem the deploying parent  
23 to reside in the rendering state for the purposes of the UCCJEA  
24 during the duration of the deployment. This section does not

1 prohibit the exercise of temporary emergency jurisdiction by a court  
2 of this state under the UCCJEA.

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 150.3 of Title 43, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. In order to ensure an on going relationship with the child  
7 while deployed, pursuant to the Deployed Parents Custody and  
8 Visitation Act, upon application to the court by the deploying  
9 parent, the court shall designate a family member or another person  
10 with a close and substantial relationship to the child to exercise  
11 his or her visitation rights, unless the court determines it is not  
12 in the best interests of the child.

13 B. Visitation awarded pursuant to this section derives from the  
14 deploying parent's own right to custodial responsibility. Neither  
15 this section nor a court order permitting designation shall be  
16 deemed to create any separate or permanent rights to visitation.

17 SECTION 7. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 150.4 of Title 43, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. A deploying parent shall provide a copy of the deployment  
21 orders to the other parent within ten (10) days of receipt. When  
22 the deployment date is less than ten (10) days after receipt of the  
23 orders, a copy shall immediately be provided to the other parent.

24

1 B. If a valid court order requires that the address or contact  
2 information of the nondeploying parent be kept confidential, the  
3 notification shall be made to the court only. The court shall  
4 notify the nondeploying parent, or counsel for the nondeploying  
5 parent, if the deploying parent is prohibited from directly  
6 contacting the nondeploying parent.

7 C. Failure to timely notify the nondeploying parent of a  
8 pending deployment without good cause shall be presumed contrary to  
9 the best interests of the child in future custody proceedings  
10 between the parents.

11 SECTION 8. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 150.5 of Title 43, unless there  
13 is created a duplication in numbering, reads as follows:

14 Following a deploying parent's receiving notice of deployment,  
15 either a deploying parent or nondeploying parent may request an  
16 expedited hearing to be heard within ten (10) days or prior to  
17 deployment, whichever occurs first, on any matter pertaining to  
18 custodial or visitation responsibility. The application shall  
19 include the date on which the deployment began or begins. If the  
20 date of deployment is uncertain, the approximate date shall be  
21 included. The court shall grant a request for an expedited hearing  
22 if the deploying parent's ability, or anticipated ability, to appear  
23 in person at a regularly scheduled hearing would be prevented by the  
24 deployment or preparation for the deployment. If the deployed or

1 deploying parent is seeking the right to designate a family member  
2 to determine visitation, then the name of the family member or  
3 another person with a close and substantial relationship to the  
4 child shall be stated in the application.

5 SECTION 9. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 150.6 of Title 43, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. Upon proper motion made pursuant to Section 8 of this act,  
9 the court shall enter temporary orders regarding custody, visitation  
10 and child support.

11 B. A deploying parent who is entitled to a stay in civil  
12 proceedings pursuant to the Servicemembers Civil Relief Act, 50  
13 U.S.C. App., Sections 501 through 596, may elect to proceed while  
14 the deploying parent is unavailable to appear in the geographical  
15 location in which the litigation is pursued and may seek relief and  
16 provide evidence through video conferencing, Internet camera, e-  
17 mail, telephone, or other reasonable electronic means.

18 C. Except for the privilege offered to the deployed  
19 servicemember in subsection B of this section, the court shall  
20 factor the same consideration and conduct the temporary order  
21 hearing as provided in Section 112 of Title 43 of the Oklahoma  
22 Statutes. Hearings conducted pursuant to this section shall be  
23 considered nonevidentiary hearings and the standard rules of  
24 evidence shall not apply.

1 D. 1. If a prior judicial custody or visitation order contains  
2 provisions for custodial responsibility of the child in the event of  
3 deployment, those provisions shall not be modified by the court  
4 unless:

5 a. a subsequent substantial change of circumstances has  
6 occurred after the prior judicial custody or  
7 visitation order was issued, or

8 b. a showing that enforcement of the provisions of the  
9 prior judicial custody or visitation order would  
10 result in substantial harm to the child.

11 2. If the deploying parent and the nondeploying parent have  
12 previously agreed in writing to provisions for the custodial  
13 responsibility of the child in the event of deployment, there shall  
14 be a rebuttable presumption that the agreement is in the best  
15 interest of the child. The presumption may be overcome only if the  
16 court makes specific findings of fact establishing that the  
17 agreement is not in the best interest of the child.

18 E. When entering a temporary order for custodial responsibility  
19 prior to or during a deployment, the court shall:

20 1. Identify the nature of the deployment that is the basis for  
21 the order;

22 2. Specify that the order is temporary;

23 3. Specify the contact between the deploying parent and the  
24 child during deployment, including the means by which the deploying

1 parent may remain in communication with the child, such as  
2 electronic communication by Internet camera, telephone, e-mail and  
3 other available means; and

4 4. Order liberal contact between the deploying parent and child  
5 when the deploying parent is on leave or is otherwise available,  
6 consistent with the best interest of the child.

7 F. In an order granting designation of a family member or  
8 another person with a close and substantial relationship to the  
9 child to exercise visitation rights pursuant to Section 11 of this  
10 act, the court shall:

11 1. Set out a process to resolve any disputes that may arise  
12 between the person receiving visitation and the nondeploying parent;

13 2. Identify the nature of the deployment that is the basis for  
14 the order; and

15 3. Specify that the order is a temporary order and shall  
16 terminate ten (10) days after notice has been provided to the  
17 nondeploying parent of the end of the deployment.

18 G. If the matter before the court concerns a postdissolution  
19 modification of custody or visitation, the court shall not modify  
20 the previously ordered custody or visitation arrangement until the  
21 expiration of the servicemember's deployment, unless the child is at  
22 risk of serious irreparable harm.

23 H. If the court has rendered a temporary order regarding  
24 custodial responsibility pursuant to the Deployed Parents Custody

1 and Visitation Act, any nondeploying parent or any third party to  
2 whom the court has assigned primary custodial responsibility,  
3 visitation or limited contact shall notify the court of any change  
4 of address until the termination of the temporary order.

5 SECTION 10. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 150.7 of Title 43, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. A court that renders an order on custodial responsibility  
9 under the Deployed Parents Custody and Visitation Act may, on motion  
10 of either party and with appropriate jurisdiction under the Uniform  
11 Interstate Family Support Act ("UIFSA"):

12 1. Enter a temporary order for child support consistent with  
13 the Oklahoma Child Support Guidelines; and

14 2. Require the deploying parent to enroll the child to receive  
15 military dependent benefits.

16 B. Any order entered on child support pursuant to this section  
17 shall state that such order shall terminate following the child's  
18 return to the deploying parent upon conclusion of deployment.

19 SECTION 11. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 150.8 of Title 43, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. If the deploying parent moves to designate a family member  
23 or another person with a close and substantial relationship with the  
24 child to exercise visitation rights, the court shall grant

1 reasonable visitation to a member of the family of the child,  
2 including a stepparent or step sibling, with whom the child has a  
3 close and substantial relationship as defined in the Deployed  
4 Parents Custody and Visitation Act.

5 B. Any visitation ordered by the court pursuant to this section  
6 shall be temporary in nature and shall not exceed or be less than  
7 the amount of custodial time granted to the deploying parent under  
8 any existing permanent order or agreement between the parents, with  
9 the exception that the court may take into account unusual travel  
10 time required to transport the child between the nondeploying parent  
11 and the family members allowed visitation.

12 C. The person designated by the deploying parent to exercise  
13 visitation shall appear at the temporary order hearing.

14 D. Rebuttable presumptions for proceedings under the Deployed  
15 Parents Custody and Visitation Act:

16 1. In postdissolution proceedings, there shall be a rebuttable  
17 presumption that it is in the best interests of the child for a  
18 stepparent to exercise the deployed parent's parental duties;

19 2. There shall be a rebuttable presumption that if the person  
20 designated by the deployed or deploying party meets the requirements  
21 of subsection A of this section, then it shall be in the best  
22 interest of the child that the person receive visitation; and

23 3. There shall be a rebuttable presumption that visitation by a  
24 family member who has perpetrated domestic violence against a

1 spouse, a child, a domestic living partner, or is otherwise subject  
2 to registration requirements of the Sex Offenders Registration Act  
3 is not in the best interest of the child.

4 E. Any temporary order issued under the Deployed Parents  
5 Custody and Visitation Act shall be enforced as any other orders  
6 relating to the care, custody and control of the child.

7 SECTION 12. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 150.9 of Title 43, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. The deploying parent shall notify the nondeploying parent of  
11 the completion of the deployment. If the deploying parent is unable  
12 to locate the nondeploying parent, the deploying parent shall notify  
13 the court of the return.

14 B. A temporary modification order granted in accordance with  
15 the Deployed Parents Custody and Visitation Act shall terminate by  
16 operation of law ten (10) days after notice has been provided to the  
17 nondeploying parent of the completion of deployment and the original  
18 terms of the prior custody or visitation order shall be  
19 automatically reinstated.

20 SECTION 13. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 150.10 of Title 43, unless there  
22 is created a duplication in numbering, reads as follows:

23 If the court finds that a party to a proceeding under the  
24 Deployed Parents Custody and Visitation Act has acted in bad faith

1 or otherwise deliberately failed to comply with the terms of the  
2 Deployed Parents Custody and Visitation Act or a court order issued  
3 under the Deployed Parents Custody and Visitation Act, the court may  
4 assess attorney fees and costs against the opposing party and order  
5 any other appropriate sanctions.

6 SECTION 14. It being immediately necessary for the preservation  
7 of the public peace, health and safety, an emergency is hereby  
8 declared to exist, by reason whereof this act shall take effect and  
9 be in full force from and after its passage and approval.

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11 53-1-7784 SDR 05/12/11

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