

SECOND REGULAR SESSION

HOUSE BILL NO. 2699

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

5302H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 452.375, 452.400, 452.425, 565.150, and 565.153, RSMo, and to enact in lieu thereof five new sections relating to the custody or visitation of a child, with penalty provisions.

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

Section A. Sections 452.375, 452.400, 452.425, 565.150, and 565.153, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 452.375, 452.400, 452.425, 565.150, and 565.153, to read as follows:

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

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

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

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

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

2. The court shall determine custody in accordance with the best interests of the child. When the parties have not reached an agreement on all issues related to custody, the court shall

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

16 consider all relevant factors and enter written findings of fact and conclusions of law, including,
17 but not limited to, the following:

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

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

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

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

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

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

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

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

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

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

47 (b) A violation of section 568.020;

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

49 (d) A violation of section 568.065;

50 (e) A violation of section 573.200;

51 (f) A violation of section 573.205; or

52 (g) A violation of section 568.175.

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

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

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

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

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

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

79 (4) Sole custody to either parent; or

80 (5) Third-party custody or visitation:

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

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

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

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

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

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

114 10. After August 28, 2016, every court order establishing or modifying custody or
115 visitation shall include the following language: "In the event of noncompliance with this order,
116 **the offending party shall be referred to the local prosecuting attorney's office and may be**
117 **subject to criminal liability under section 565.150 or 565.153.** The aggrieved party may file
118 a verified motion for contempt. If custody, visitation, or third-party custody is denied or
119 interfered with by a parent or third party without good cause, the aggrieved person may file a
120 family access motion with the court stating the specific facts that constitute a violation of the
121 custody provisions of the judgment of dissolution, legal separation, or judgment of paternity.
122 The circuit clerk will provide the aggrieved party with an explanation of the procedures for filing

123 a family access motion and a simple form for use in filing the family access motion. A family
124 access motion does not require the assistance of legal counsel to prepare and file."

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

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

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

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

156 15. If the court finds that domestic violence or abuse as defined in section 455.010 has
157 occurred, the court shall make specific findings of fact to show that the custody or visitation
158 arrangement ordered by the court best protects the child and the parent or other family or

159 household member who is the victim of domestic violence, as defined in section 455.010, and
160 any other children for whom such parent has custodial or visitation rights from any further harm.

452.400. 1. (1) A parent not granted custody of the child is entitled to reasonable
2 visitation rights unless the court finds, after a hearing, that visitation would endanger the child's
3 physical health or impair his or her emotional development. The court shall enter an order
4 specifically detailing the visitation rights of the parent without physical custody rights to the
5 child and any other children for whom such parent has custodial or visitation rights. In
6 determining the granting of visitation rights, the court shall consider evidence of domestic
7 violence. If the court finds that domestic violence has occurred, the court may find that granting
8 visitation to the abusive party is in the best interests of the child.

9 (2) (a) The court shall not grant visitation to the parent not granted custody if such
10 parent or any person residing with such parent has been found guilty of or pled guilty to any of
11 the following offenses when a child was the victim:

12 a. A felony violation of section 566.030, 566.032, 566.031, 566.060, 566.062, 566.064,
13 566.067, 566.068, 566.061, 566.083, 566.101, 566.100, 566.111, 566.151, 566.203, 566.206,
14 566.209, 566.211, or 566.215;

15 b. A violation of section 568.020;

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

17 d. A violation of section 568.065;

18 e. A violation of section 573.200;

19 f. A violation of section 573.205; or

20 g. A violation of section 568.175.

21 (b) For all other violations of offenses in chapters 566 and 568 not specifically listed in
22 paragraph (a) of this subdivision or for a violation of an offense committed in another state when
23 a child is the victim that would be a violation of chapter 566 or 568 if committed in Missouri,
24 the court may exercise its discretion in granting visitation to a parent not granted custody if such
25 parent or any person residing with such parent has been found guilty of, or pled guilty to, any
26 such offense.

27 (3) The court shall consider the parent's history of inflicting, or tendency to inflict,
28 physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on
29 other persons and shall grant visitation in a manner that best protects the child and the parent or
30 other family or household member who is the victim of domestic violence, and any other
31 children for whom the parent has custodial or visitation rights from any further harm.

32 (4) The court, if requested by a party, shall make specific findings of fact to show that
33 the visitation arrangements made by the court best protect the child or the parent or other family

34 or household member who is the victim of domestic violence, or any other child for whom the
35 parent has custodial or visitation rights from any further harm.

36 2. (1) The court may modify an order granting or denying visitation rights whenever
37 modification would serve the best interests of the child, but the court shall not restrict a parent's
38 visitation rights unless it finds that the visitation would endanger the child's physical health or
39 impair his or her emotional development.

40 (2) (a) In any proceeding modifying visitation rights, the court shall not grant
41 unsupervised visitation to a parent if the parent or any person residing with such parent has been
42 found guilty of or pled guilty to any of the following offenses when a child was the victim:

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

46 b. A violation of section 568.020;

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

48 d. A violation of section 568.065;

49 e. A violation of section 573.200;

50 f. A violation of section 573.205; or

51 g. A violation of section 568.175.

52 (b) For all other violations of offenses in chapters 566 and 568 not specifically listed in
53 paragraph (a) of this subdivision or for a violation of an offense committed in another state when
54 a child is the victim that would be a violation of chapter 566 or 568 if committed in Missouri,
55 the division may exercise its discretion regarding the placement of a child taken into the custody
56 of the state in which a parent or any person residing in the home has been found guilty of, or pled
57 guilty to, any such offense.

58 (3) When a court restricts a parent's visitation rights or when a court orders supervised
59 visitation because of allegations of abuse or domestic violence, a showing of proof of treatment
60 and rehabilitation shall be made to the court before unsupervised visitation may be ordered.

61

62 "Supervised visitation", as used in this section, is visitation which takes place in the presence of
63 a responsible adult appointed by the court for the protection of the child.

64 3. The court shall mandate compliance with its order by all parties to the action,
65 including parents, children and third parties. In the event of noncompliance, the aggrieved
66 person may file a verified motion for contempt. If custody, visitation or third-party custody is
67 denied or interfered with by a parent or third party without good cause, the aggrieved person may
68 file a family access motion with the court stating the specific facts which constitute a violation
69 of the judgment of dissolution, legal separation or judgment of paternity. The state courts

70 administrator shall develop a simple form for pro se motions to the aggrieved person, which shall
71 be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit clerk,
72 shall explain to aggrieved parties the procedures for filing the form. Notice of the fact that clerks
73 will provide such assistance shall be conspicuously posted in the clerk's offices. The location
74 of the office where the family access motion may be filed shall be conspicuously posted in the
75 court building. The performance of duties described in this section shall not constitute the
76 practice of law as defined in section 484.010. Such form for pro se motions shall not require the
77 assistance of legal counsel to prepare and file. The cost of filing the motion shall be the standard
78 court costs otherwise due for instituting a civil action in the circuit court; **however, if such**
79 **motion is accompanied by a copy of a summons, information, or indictment issued for a**
80 **violation of section 565.150 or 565.153, the filing fee shall be waived.**

81 4. Within five court days after the filing of the family access motion pursuant to
82 subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable
83 state law, and applicable local or supreme court rules. A copy of the motion shall be personally
84 served upon the respondent by personal process server as provided by law or by any sheriff.
85 Such service shall be served at the earliest time and shall take priority over service in other civil
86 actions, except those of an emergency nature or those filed pursuant to chapter 455. The motion
87 shall contain the following statement in boldface type:

88 "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND
89 TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE
90 TO RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

91 (1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY,
92 VISITATION OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE
93 AGGRIEVED PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

94 (2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE
95 THE VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A
96 CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

97 (3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS AGAINST
98 THE VIOLATOR;

99 (4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE
100 FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

101 (5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO
102 REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED
103 PARTY AND THE CHILD; AND

104 (6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE
105 EXPENSES, INCLUDING ATTORNEY'S FEES AND COURT COSTS ACTUALLY

106 INCURRED BY THE AGGRIEVED PARTY AS A RESULT OF THE DENIAL OF
107 CUSTODY, VISITATION OR THIRD-PARTY CUSTODY."

108 5. If an alternative dispute resolution program is available pursuant to section 452.372,
109 the clerk shall also provide information to all parties on the availability of any such services, and
110 within fourteen days of the date of service, the court may schedule alternative dispute resolution.

111 6. Upon a finding by the court pursuant to a motion for a family access order or a motion
112 for contempt that its order for custody, visitation or third-party custody has not been complied
113 with, without good cause, the court shall order a remedy, which may include, but not be limited
114 to:

115 (1) A compensatory period of visitation, custody or third-party custody at a time
116 convenient for the aggrieved party not less than the period of time denied;

117 (2) Participation by the violator in counseling to educate the violator about the
118 importance of providing the child with a continuing and meaningful relationship with both
119 parents;

120 (3) Assessment of a fine of up to five hundred dollars against the violator payable to the
121 aggrieved party;

122 (4) Requiring the violator to post bond or security to ensure future compliance with the
123 court's access orders; and

124 (5) Ordering the violator to pay the cost of counseling to reestablish the parent-child
125 relationship between the aggrieved party and the child.

126 7. The court shall consider, in a proceeding to enforce or modify a permanent custody
127 or visitation order or judgment, a party's violation, without good cause, of a provision of the
128 parenting plan, for the purpose of determining that party's ability and willingness to allow the
129 child frequent and meaningful contact with the other party.

130 8. The reasonable expenses incurred as a result of denial or interference with custody or
131 visitation, including attorney's fees and costs of a proceeding to enforce visitation rights, custody
132 or third-party custody, shall be assessed, if requested and for good cause, against the parent or
133 party who unreasonably denies or interferes with visitation, custody or third-party custody. In
134 addition, the court may utilize any and all powers relating to contempt conferred on it by law or
135 rule of the Missouri supreme court.

136 9. Final disposition of a motion for a family access order filed pursuant to this section
137 shall take place not more than sixty days after the service of such motion, unless waived by the
138 parties or determined to be in the best interest of the child. Final disposition shall not include
139 appellate review.

140 10. Motions filed pursuant to this section shall not be deemed an independent civil action
141 from the original action pursuant to which the judgment or order sought to be enforced was
142 entered.

452.425. Any court order for the custody of, or visitation with, a child ~~may~~ **shall**
2 include a provision that the sheriff or other law enforcement officer shall enforce the rights of
3 any person to custody or visitation **by issuing a summons for a violation of section 565.150**
4 **or 565.153, as applicable**, unless the court issues a subsequent order pursuant to chapter 210,
5 211, 452 or 455 to limit or deny the custody of, or visitations with, the child. Such sheriff or law
6 enforcement officer shall not **issue a summons for a violation of section 565.150 or 565.153**
7 **or** remove a child from a person who has actual physical custody of **or visitation with** the child
8 unless such sheriff or officer is shown a court order or judgment which clearly and convincingly
9 verifies that such person is not entitled to the actual physical custody of **or visitation with** the
10 child, and there are not other exigent circumstances that would give the sheriff or officer
11 reasonable suspicion to believe that the child would be harmed or that the court order presented
12 to the sheriff or officer may not be valid.

565.150. 1. A person commits the offense of interference with custody **or visitation** if,
2 knowing that he or she has no ~~legal~~ right to do so, he or she takes or entices from legal **or**
3 **physical custody or visitation** any person entrusted by order of a court to the custody **or**
4 **visitation** of another person or institution.

2. ~~[The offense of interference with custody is a class A misdemeanor unless the person~~
6 ~~taken or enticed away from legal custody is removed from this state, detained in another state or~~
7 ~~concealed, in which case it is a class E felony.]~~ **Except as provided in subsection 7 of this**
8 **section, the first violation of the provisions of this section is a class D misdemeanor.**

9 **3. A second violation of the provisions of this section is a class C misdemeanor.**

10 **4. A third violation of the provisions of this section is a class B misdemeanor.**

11 **5. A fourth violation of the provisions of this section is a class A misdemeanor.**

12 **6. A fifth or subsequent violation of the provisions of this section is a class E felony.**

13 **7. Notwithstanding the provisions of subsections 1 to 6 of this section, the offense**
14 **of interference with custody or visitation is a class E felony if the person is taken or enticed**
15 **away from legal or physical custody or visitation and is removed from this state, detained**
16 **in another state, or concealed.**

17 ~~[3-]~~ **8. Upon a finding of guilt for an offense under this section, the court may, in addition**
18 **to or in lieu of any sentence or fine imposed, assess as restitution against the defendant and in**
19 **favor of [the legal custodian or parent] any party entitled to custody or visitation, any**
20 **reasonable expenses incurred by [the legal custodian or parent] such party in searching for or**
21 **returning the child including, but not limited to, attorney's fees.**

565.153. 1. ~~[In the absence of a court order determining rights of custody or visitation to a child,]~~ A person having a right of custody **or visitation** of ~~[the]~~ a child commits the offense of parental kidnapping if he or she removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody **or visitation** right of another person or a public agency also having a custody **or visitation** right to that child.

2. Parental kidnapping is a class E felony, unless committed by detaining or concealing the whereabouts of the child for:

(1) **No less than one day but no longer than sixty days, in which case the offense is a:**

(a) **Class D misdemeanor for a first violation;**

(b) **Class C misdemeanor for a second violation;**

(c) **Class B misdemeanor for a third violation;**

(d) **Class A misdemeanor for a fourth violation; and**

(e) **Class E felony for a fifth and any subsequent violation;**

(2) Not less than sixty days but not longer than one hundred nineteen days, in which case, the offense is a class D felony;

~~(2)~~ (3) Not less than one hundred twenty days, in which case, the offense is a class B felony.

3. A subsequently obtained court order for custody or visitation shall not affect the application of this section.

4. Upon a finding of guilt for an offense under this section, the court may, in addition to or in lieu of any sentence or fine imposed, assess as restitution against the defendant and in favor of ~~[the legal custodian or parent]~~ **any party entitled to custody or visitation**, any reasonable expenses incurred by ~~[the legal custodian or parent]~~ **such party** in searching for or returning the child **including, but not limited to, attorney's fees.**

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