Date of Hearing:July 2, 2024Counsel:Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY Kevin McCarty, Chair

SB 1414 (Grove) – As Amended May 20, 2024

SUMMARY: Increases the punishment from a misdemeanor to a wobbler for solicitation of a minor where the person solicited was under 16 years of age at the time of the offense; and makes a second or subsequent offense a straight felony. Specifically, **this bill**:

- Provides that, if a crime of solicitation is committed by a defendant who is 18 years of age or older, the person who was solicited was a minor at the time of the offense, and the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in the county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment, except as specified.
- 2) Provides that a first offense for solicitation of a minor who was under 16 years of age at the time of the offense is an alternate misdemeanor-felony punishable by up to one year in county jail or a fine of up \$10,000, or imprisonment in county jail for 16 months, 2 years, or 3 years.
- 3) Provides that a second or subsequent offense for solicitation of a minor who was under 16 years of age at the time of the offense is a felony punishable by 16 months, 2 years, or 3 years in county jail.
- 4) Requires a person who is 18 years of age or older, is convicted on or after January 1, 2025, of solicitation of a minor who was under 16 years of age at the time offense, and who has a previous conviction for the same offense, to register as sex offender if the person was more than 10 years older than the solicited minor, as measured from the minor's date of birth to the person's date of birth, and the conviction is the only one requiring the person to register.
- 5) Provides that the court is not precluded from requiring a person to register as a sex offender if the person is not otherwise required to register under the provision above.

EXISTING LAW:

- Makes it a misdemeanor to solicit anyone to engage in or engage in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view. (Pen. Code, § 647, subd. (a).)
- 2) Makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. This act is punishable by (Pen. Code, § 647, subd. (b)(1).)

- Makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647, subd. (b)(2).)
- 4) Makes it a misdemeanor to solicit, or agree to engage in, or engage in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. (Pen. Code § 647, subd. (b)(3).)
- 5) Provides that if the crime of solicitation of a minor is committed and the defendant knew or should have known that the person solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for a minimum of two days and not more than one year, or by a fine not \$10,000, or by both that fine and imprisonment. (Pen. Code § 647, subd. (1)(1).)
- 6) Authorizes a court, in unusual cases, when the interests of justice are best served, to reduce or eliminate the mandatory two days of imprisonment in a county jail required under Penal Code section 647, subd. (1)(1). If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record. (Pen. Code, § 647, subd. (1)(2).)
- 7) Requires persons convicted of specified crimes to annually register as a sex offender for a minimum term of ten or twenty years, or life. (Pen. Code, § 290.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "California consistently ranks number one in the nation in the number of human trafficking cases reported to the National Human Trafficking Hotline.

"Children, tragically, are a large portion of sex trafficking victims in the United States and are undoubtedly one of the most vulnerable populations. Most trafficking victims are brought into this dark underworld as children and they grow-up in this abusive system. When it comes to the exploitation of children, the individuals purchasing sex from them are no less culpable than the trafficker who is selling them.

"The legislature clearly sent a message last year when we passed SB 14. We admitted that sex trafficking of children is a serious crime that is prevalent in California and deserves a serious punishment.

"We cannot address one side of the issue, while ignoring the other. It takes two criminals to commit the crime of human trafficking: a buyer and a seller.

"Under existing law, a person who solicits, or engages in commercial sex with a minor is guilty of a misdemeanor only, which means the punishment for purchasing a child for sex can be as minor as paying a fine. Individuals that purchase, or attempt to purchase sex from children should be charged with a felony and sent to prison. In order to stop the supply of children into sexual exploitation, we must stop the demand.

"We cannot sit idly by while children are bought and sold in California like pieces of meat in an underground grocery store. We must do everything in our power to stop the horrific abuses that are being perpetuated on our children every day. We must make it unpalatable to purchase sex from children in the state of California. Not one more child should have to suffer at the hands of those who seek to exploit and harm them.>

2) Solicitation of a Minor: Existing law provides that the penalty for solicitation of a minor, who the person knew or should have known was a minor, is a minimum of two days imprisonment in county jail and up to one year in county jail and/or a fine of not more than \$10,000. Existing law also provides that the court may, in unusual circumstance eliminate the mandatory two days in jail. (Pen. Code, § 647, subd. (l).) Where there is no showing that the defendant knew or should have known the person was a minor, the offense is punishable by up to six months in the county jail and/or a fine up to \$1,000. (Pen. Code, § 647, subd. (b)(3).)

This bill would instead make solicitation of a minor a wobbler for a first offense when the solicited minor was under 16 years of age at the time of the offense—punishable by either a year in county jail and a fine of up to \$10,000, or up to three years in county jail. A second offense would be a straight felony punishable by up to 3 years in county jail, except as discussed below.

A number of other crimes, including crimes with felony penalties, already exist relating to solicitation of a minor. Soliciting (arranging a meeting with) a minor for lewd purposes is punishable as a misdemeanor, or as a state prison felony under some circumstances (if the defendant goes to the arranged meeting or is required to register as a sex offender). (Pen. Code, § 288.4.) To be guilty of this offense the defendant must believe the person is a minor. (*Ibid.*) Contacting a minor with the intent to commit a specified sex offense is punishable in state prison. (Pen. Code, § 288.3.) To be guilty of this offense, the defendant must have known or should have known the person is a minor. (*Ibid.*) "Sexting" a minor is a wobbler punishable as a misdemeanor or state prison felony. (Pen. Code, § 288.2.) To be guilty of this offense, the defendant must have known, or should have known, or believed that the person is a minor. (*Ibid.*) Luring or attempting to lure a minor under the age of 14 is punishable as an infraction or misdemeanor. (Pen. Code, § 272, subd. (b)(1).) To be guilty of this offense, the defendant must have known or reasonably should have known that the minor is under 14 years of age. (*Ibid.*)

Statutory rape is punishable as a misdemeanor or a county jail felony depending on the difference in age between the defendant and the victim. (Pen. Code, § 261.5.) Good faith reasonable belief that that minor was an adult is a defense to the crime. (*People v. Hernandez* (1964) 61 Cal. 2d 529.) Lewd acts with a minor 14 or 15 years of age and under is punishable as a misdemeanor in some circumstances or a state prison felony. (Pen. Code, § 288.) Due to the younger age of the intended victims in this offense, mistake of fact regarding the minor's age is not a defense. (*People v. Paz* (2000) 80 Cal. App. 4th 293.)

3) **History of Sex Offender Registration**: California was the first state to require sex offender registration in 1947. The stated purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative

tool, and increase public protection. [*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 277; *Hatton vs. Bonner* (2004) 365 F. 3rd 955, 961.] California's sex offender registration law historically required lifetime registration by persons convicted of specified sex crimes. (Pen. Code, § 290 subd. (a).)

In 1996, California enacted "Megan's Law" allowing the public to access an address list of registered sex offenders. Before 2003, members of the public could only obtain the information on the Megan's Law list by calling a "900" number or visiting certain designated law enforcement agencies and reviewing a CD-ROM. However, in 2003, California required the Department of Justice (DOJ) to put the Megan's Law list of offenders on a public access website with the offender's address, photo and list of offenses. (See Pen. Code, § 290.46, subd. (a).) For some offenders with less serious offenses, only their ZIP code is listed. Now, a citizen can enter their address and see if there are registered sex offenders living in the community or even next door.

In 2017, California modified its sex registry to a three-tiered registration system based on seriousness of the crime, risk of sexual reoffending, and criminal history. (SB 384 (Wiener), chapter 541, statutes of 2017.) The recommendation to move to a tiered system came from the California Sex Offender Management Board's 2010 recommendations report. (See https://casomb.org/docs/CASOMB%20Report%20Jan%202010 Final%20Report. (See https://casomb.org/docs/CASOMB%20Report%20Jan%202010 Final%20Report.pdf (Jan. 2010), p. 50 [as of Apr. 8, 2024].) According to the committee's analysis for the bill which started off as SB 421 (Wiener) of that same year:

Based on a survey of several municipal law enforcement agencies in California, it is estimated that local law enforcement agencies spend between 60-66% of their resources dedicated for sex offender supervision on monthly or annual registration paperwork because of the large numbers of registered sex offenders on our registry. If we can remove low risk offenders from the registry it will free up law enforcement officers to monitor the high risk offenders living in our communities. Law enforcement cannot protect the community effectively when they are in the office doing monthly or annual paperwork for low risk offenders. Furthermore, the public is overwhelmed by the number of offenders displayed online in each neighborhood and do not know which offenders are considered low risk and which offenders are considered high risk and therefore truly dangerous.

(Sen. Com. on Public Safety, Analysis of Senate Bill No. 421 (2017-18 Reg. Sess.) as amended Apr. 17, 2017, p. 9.) A tier one offender is someone who is required to register for a misdemeanor sex offense or a felony conviction that is not a serious or violent felony. Tier one requires a person to register for a minimum of 10 years. (Pen. Code, § 290, subd. (d)(1).) A tier two offender is a person who is required to register for a felony that is defined as a serious or violent felony or other specified sex offenses, unless the person is otherwise required to register under tier three. Tier two requires a person to register for a minimum of 20 years. (Pen. Code, § 290, subd. (d)(2).) A tier three offender is a person who is convicted a specified offense or under the one-strike sex law, or is designated as a sexually violent predator or habitual sex offender, in addition to other qualifying offenses and circumstances. (Pen. Code, § 290, subd. (d)(3).)

Sex offenders are required to register annually within five working days of their birthday. (Pen. Code, § 290 subd. (b).) If the offender has no fixed address, they are required to register every 30 days. (Pen. Code, § 290.011 subd. (a).) A person is also required to notify law enforcement of any change of address within five days of moving. (Pen. Code, § 290.013.) A person who fails to register as a sex offender within the period required by law is guilty of a felony punishable by 16 months, 2 or 3 years. (Pen. Code, § 290.018 subd. (b).) A person who changes their name is required to inform law enforcement within 5 working days. (Pen. Code, § 290.14, subd. (a).) A person who is required to register their Internet identifiers who adds or changes an Internet identifier is required to report this change within 30 working days of the change. (Pen. Code, § 290.14, subd. (b).)

The minimum time period for completion of the required registration period in tier one or tier two begins on the date of the person's release from incarceration or other commitment on the registerable offense. The time period is tolled during any period of subsequent incarceration or commitment, except that arrests not resulting in conviction, adjudication or revocation of supervision shall not toll the registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction (Pen. Code, § 290, subd. (e).)

The registration statute requires all persons convicted of a listed crime to register annually within five days of their birthday. (Pen. Code, § 290.012 subd. (a).) Although most registerable offenses are felonies, there some alternate felony/misdemeanor penalties and a few straight misdemeanors. (*See* (Pen. Code, § 243.4 (sexual battery); (Pen. Code, § 266c (obtaining sexual consent by fraud); (Pen. Code, § 311.1, 311.2, subd. (c), 311.4, 311.11 (child pornography); (Pen. Code § 647.6 (annoying or molesting a child); and, (Pen. Code, § 314, (1)(2) (indecent exposure).) Certain offenses where the act was engaged in voluntarily, albeit without consent because minors cannot legally consent, only require sex offender registration when there is more than a 10-year age gap between the defendant and the minor. (Pen. Code, § 290, subd. (c)(2).)

A court may also order a person not otherwise required to register as a sex offender if they find that the person committed the offense as a result of sexual compulsion or for the purposes of sexual gratification. (Pen. Code, § 290.006.)

This bill requires a person who is 18 years of age or older who is convicted of solicitation of a minor who was under 16 years of age at the time offense, and who has a previous conviction for the same offense, to register as sex offender if the person was more than 10 years older than the solicited minor. This bill also provides that a second or subsequent offense for solicitation of a minor who was under 16 years of age at the time of the offense is punishable as a felony by imprisonment pursuant to subdivision (h) of Section 1170. That section provides for a punishment of 16 months, 2 years, or 3 years in county jail (Pen. Code, § 1170, subd. (h)(2)), except that the term is served in state prison if the felony requires sex offender registration (Pen. Code, § 1170, subd. (h)(3)). Thus, a person who is required to register as a sex offender for second or subsequent conviction for solicitation of a minor where the minor was under 16 years old at the time of the offense, and where the defendant

was more than 10 years older than the solicited minor, would serve the term of incarceration in state prison.

4) **Argument in Support**: According to *Sacramento County Sheriff's Office*, "I'm writing in support of SB 1414 (Grove) which increases the punishment for solicitation of a minor under the age of 16.

"Specifically, SB 1414 will increase the penalty when an adult knew or should have known that the person solicited was a minor, from a misdemeanor to a felony-misdemeanor wobbler on a first offense and makes a second or subsequent offense a straight felony. The bill will also ensure that an adult who is convicted on or after January 1, 2025, of soliciting a minor when the defendant knew or should have known the person solicited was a minor, and who has a prior conviction for a solicitation of a minor, shall be required to register as a sex offender if the adult defendant was more than 10 years older than the solicited minor.

"Human Trafficking has plagued our state and the Sacramento region for years. It is growing to unprecedented levels and is one of the fastest growing criminal enterprises. With the recent removal of Penal Code 653.22 it has been increasingly difficult to prosecute and investigate violations involving solicitation of a minor emboldening traffickers to traffic girls as young as 12 years old on our streets. Once these young girls enter the "life", their life expectancy is only 7-10 years. Just in the past year, there have been over 300,000 commercial sex ads in the Sacramento region alone. Additionally, with advanced technology and social media apps, law enforcement has been losing the battle in this arena. Human Traffickers religiously use their smart devices to further their criminal empire. This bill would give law enforcement a crucial tool to help investigate and stop these unspeakable acts.

"Protecting our children should be the Legislature's highest priority. SB 1414 does just that, it levels the playing field so that law enforcement can go after these evil predators."

5) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "SB 1414 will provide for an alternative felony or misdemeanor, at the prosecutor's discretion, for a first conviction for soliciting a minor under the age of 16 for sex. The conviction is based on speech, the offer of anything of value in exchange for a sex act. A second conviction would be a felony, punishable by up to three years in jail.

"The bill does not require physical contact or sexual contact with the minor victim. There are already felony crimes associated with actual lewd or sexual contact with a minor.

"For the act of "solicitation," that is talking about sex in exchange for something of value, there are current penalties of up to six month in jail, with concomitant loss of employment and shaming by family and community. These are adequate to deter solicitation of any person, adult or minor, for sex in exchange for something of value, but only if the person believes they are likely to be caught and charged. A lack of enforcement of existing law is a more urgent policy problem than is the months or years in a jail or prison cell. Research has consistently shown that the threat or reality of longer sentences does not deter crime – only the fear of apprehension has a proven deterrent effect.

"Further, there is evidence that early childhood education, afterschool programs, and access to meaningful employment reduces the likelihood of any engagement in criminal behavior. Investments in safer communities and economic opportunity work to make us safer – stiff sentences and cold cells do not.

"Based in Oakland, the Ella Baker Center for Human Rights works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color. The Ella Baker Center opposes SB 1414 because it stands against punitive measures that perpetuate systemic injustices, emphasizing instead the need for community-based solutions to ensure the safety and dignity of marginalized individuals, particularly those impacted by racial and economic disparities.

"While we share the goal of protecting minors from exploitation and abuse, we believe that SB 1414 takes an overly punitive approach that fails to address the root causes of these issues. By imposing harsher penalties, including felony sentences and longer periods of sex offender registration, this bill will disproportionately impact marginalized communities, particularly Black and Brown individuals who are already disproportionately targeted by the criminal justice system.

"Research has shown that punitive measures do little to prevent crime or protect communities. Instead, they perpetuate cycles of incarceration and marginalization, exacerbating the very problems they are meant to address. Rather than investing in punitive measures, we should be investing in community-based solutions that address the underlying systemic issues driving exploitation and support survivors in healing and rebuilding their lives.

"Furthermore, SB 1414 fails to take into account the complex realities of sex work and exploitation, including the fact that many individuals engaged in sex work are themselves survivors of exploitation, trafficking, or economic hardship. By criminalizing these individuals without addressing the structural inequalities that push them into vulnerable situations, this bill will only further marginalize and stigmatize already vulnerable populations."

6) Related Legislation:

- a) AB 2034 (Rodriguez), would re-enact, with some changes, the crime of loitering for the purpose of engaging in a prostitution offense which, before it was repealed, criminalized standing or loitering in public in order to engage in sex for compensation. AB 2034 is pending hearing in this committee. AB 2034 was held in committee.
- b) AB 2382 (B. Rubio), would increase the punishment for a second or subsequent conviction for soliciting a minor to engage in prostitution from a misdemeanor to a felony punishable in county jail for 16 months, 2 years, or 3 years. AB 2382 was held in suspense in the Assembly Appropriations Committee.
- c) AB 2419 (Gipson), would the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show that sex trafficking of a person under 18 years of age, as specified, has occurred or is

occurring. AB 2419 will be heard today in the Senate Public Safety Committee.

- d) AB 2924 (Petrie-Norris) would repeal the authorization for a person under 18 years of age to be issued a marriage license or to establish a domestic partnership, thereby prohibiting a person under 18 years of age from being issued a marriage license or from establishing a domestic partnership. The hearing on AB 2924 was canceled at the request of the author.
- e) SB 1128 (Portantino), would require sex offender registration if the defendant is 18 or older, engages in an act of unlawful sexual intercourse with a minor, and the minor is more than three years younger than the defendant; or if the defendant is 21 or older, engages in an act of unlawful sexual intercourse with a minor, and the minor is under 16; but that a person is not required to register, if, at the time of the offense, they are not more than 10 years older than the minor. SB 1128 will be heard in this committee today.
- f) SB 1219 (Seyarto), would make it a misdemeanor for an individual to operate a motor vehicle in any public place and repeatedly beckon to, contact, or attempt to contact or stop pedestrians or other motorists, or impede traffic, with the intent to solicit prostitution. SB 1219 was held in suspense in the Senate Appropriations Committee.

7) Prior Legislation:

- a) AB 1970 (Boerner Horvath), of the 2021-2022 Legislative Session, would have increased the penalty for misdemeanor solicitation of a minor, making it alternatively punishable as a felony by 16 months, two, or three years in the state prison regardless of whether the defendant knew or should have known the person was a minor. AB 1970 was held in this committee.
- b) AB 1193 (B. Rubio), of the 2021-2022 Legislative Session, was substantially similar to AB 1970. The hearing on AB 1193 was cancelled by the author.
- c) AB 892 (Choi), of the 2021-2022 Legislative Session, would have required a person convicted of misdemeanor solicitation of a minor for prostitution to register as a sex offender if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense. AB 892 failed passage in this committee.
- d) AB 2862 (B. Rubio), of the 2019-2020 Legislative Session, was substantially similar to AB 1970. AB 2862 was held in this committee.
- e) AB 663 (Cunningham), of the 2019-2020 Legislative Session, would have increased the maximum fine for solicitation of an adult for purposes of prostitution from a maximum of \$1,000 to a maximum of \$2,000. AB 663 was held in suspense in the Senate Appropriations Committee.
- f) SB 303 (Morrell), of the 2017-2018 Legislative Session, would have increased the penalty solicitation of a minor from a misdemeanor to an alternate misdemeanor-felony. SB 303 was held in the Senate Public Safety Committee.

g) SB 982 (Huff), of the 2013-2014 Legislative Session, would have provided that soliciting an act of prostitution from a minor, or engaging in an act of prostitution with a minor, is an alternate felony-misdemeanor for a first conviction and a straight felony for a repeated conviction. SB 982 was held in suspense in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association Bakersfield Crisis Pregnancy Center, INC. **Bilateral Safety Corridor Coalition** Breaking the Chains Bridge Network Burbank Police Officers' Association Califonia City Police California Association of Highway Patrolmen California Baptist for Biblical Values California Catholic Conference California Coalition of School Safety Professionals California Commission on Sexual Exploitation California District Attorneys Association California Family Council California Narcotic Officers' Association California Police Chiefs Association California Reserve Peace Officers Association California State Sheriffs' Association Chief Probation Officers' of California (CPOC) Childhelp **Church Without Walls** City of Porterville City of Taft City of Taft Police Department City of Tehachapi **Claremont Police Officers Association** Community Action Partnership of Kern **Compadres Connect** Concerned Women for America Connect 2 Change **Cooliage Triangle Corona Police Officers Association** County of Kern County of San Luis Obispo Crime Victims United of California Culver City Police Officers' Association David G. Valadao, US Representative Deputy Sheriffs' Association of Monterey County **Empowerment (dess Perkins Foundation)** Exodus Cry

Fieldstead and Company, INC. Forgotten Children INC. Fresno County District Attorney Lisa A. Smittcamp Fresno Police Department Fullerton Police Officers' Association Garden Pathways Global Hope 365 Greater Bakersfield Chamber of Commerce Greater Bakersfield Republican Assembly Helping US Individual Interfaith Statewide Coalition Journey Out Kern County Fire Chief Kern County Probation Department Kern County Sheriff's Office Kern County Supervisor Jeff Flores Kern High School District Lighthouse Baptist Church Los Angeles School Police Management Association Los Angeles School Police Officers Association Love Never Fails Lucerne Valley Economic Development Association (LVEDA) Magdalene Hope, INC. Multiple Individuals Murrieta Police Officers' Association My Friend's House Assembly of God Church National Center on Sexual Exploitation (NCOSE) Newport Beach Police Association Novato Police Officers Association Orange County Sheriff's Department Palos Verdes Police Officers Association Peace Officers Research Association of California (PORAC) People's Association of Justice Advocates People's Association of Justice Advocates Perk Advocacy Placer County Deputy Sheriffs' Assocation Pomona Police Officers' Association Private Individual **Project Rescue** Pulse of The Central Coast **Quon Louey** Real Impact Oceanside Real Impact. Republican National Hispanic Assembly of California (rnha Ca) **Riverside Police Officers Association Riverside Sheriffs' Association** Sacramento County Sheriff Jim Cooper San Bernardino County

San Bernardino County Sheriff's Department San Diego City Attorney's Office San Francisco Police Officers Association Santa Ana Police Officers Association Santa Barbara Women's Political Committee Smart Justice California, a Project of Tides Advocacy Soroptimist International of North San Diego Sower Education Group - Rachel Thomas Table Mountain Rancheria The American Council for Evangelicals The Foundation United **Tulare County Probation Department Tulare County Sheriff Tulare District Attorney** Tulare; County of Upland Police Officers Association Visalia Police Department Visit Fresno County Women's Center-high Desert, INC. Women's Liberation Front Zoe International

6 Private Individuals

Opposition

ACLU California Action California Attorneys for Criminal Justice California Public Defenders Association Californians for Safety and Justice Californians United for A Responsible Budget Ella Baker Center for Human Rights Felony Murder Elimination Project Initiate Justice Initiate Justice Action Legal Services for Prisoner With Children Pacific Juvenile Defender Center Rubicon Programs San Francisco Public Defender Santa Cruz Barrios Unidos Young Women's Freedom Center

1 Private Individual

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