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SENATE BILL 5339

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State of Washington

67th Legislature

2021 Regular Session

By Senators Das and Nguyen

1 AN ACT Relating to juvenile records; amending RCW 13.50.260 and  
2 13.50.150; and reenacting and amending RCW 13.50.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 13.50.010 and 2019 c 470 s 22 and 2019 c 82 s 1 are  
5 each reenacted and amended to read as follows:

6 (1) For purposes of this chapter:

7 (a) "Expunge" means to destroy the applicable documents or data  
8 named in the expungement order so as to make it permanently  
9 irretrievable and erase or completely remove any direct connection of  
10 the case to the offender in any system maintained by any agency as  
11 named in the order. Previous findings in an expunged case are  
12 considered vacated and nonexistent.

13 (b) "Good faith effort to pay" means a juvenile offender has  
14 either (i) paid the principal amount in full; (ii) made at least  
15 ~~((eighty))~~ 80 percent of the value of full monthly payments within  
16 the period from disposition or deferred disposition until the time  
17 the amount of restitution owed is under review; or (iii) can show  
18 good cause why he or she paid an amount less than ~~((eighty))~~ 80  
19 percent of the value of full monthly payments;

20 ~~((b))~~ (c) "Juvenile justice or care agency" means any of the  
21 following: Police, diversion units, court, prosecuting attorney,

1 defense attorney, detention center, attorney general, the oversight  
2 board for children, youth, and families, the office of the family and  
3 children's ombuds, the department of social and health services and  
4 its contracting agencies, the department of children, youth, and  
5 families and its contracting agencies, schools; persons or public or  
6 private agencies having children committed to their custody; and any  
7 placement oversight committee created under RCW 72.05.415;

8 ~~((e))~~ (d) "Official juvenile court file" means the legal file  
9 of the juvenile court containing the petition or information,  
10 motions, memorandums, briefs, notices of hearing or appearance,  
11 service documents, witness and exhibit lists, findings of the court  
12 and court orders, agreements, judgments, decrees, notices of appeal,  
13 as well as documents prepared by the clerk, including court minutes,  
14 letters, warrants, waivers, affidavits, declarations, invoices, and  
15 the index to clerk papers;

16 ~~((d))~~ (e) "Records" means the official juvenile court file, the  
17 social file, and records of any other juvenile justice or care agency  
18 in the case;

19 ~~((e))~~ (f) "Social file" means the juvenile court file  
20 containing the records and reports of the probation counselor.

21 (2) Each petition or information filed with the court may include  
22 only one juvenile and each petition or information shall be filed  
23 under a separate docket number. The social file shall be filed  
24 separately from the official juvenile court file.

25 (3) It is the duty of any juvenile justice or care agency to  
26 maintain accurate records. To this end:

27 (a) The agency may never knowingly record inaccurate information.  
28 Any information in records maintained by the department of social and  
29 health services or the department of children, youth, and families  
30 relating to a petition filed pursuant to chapter 13.34 RCW that is  
31 found by the court to be false or inaccurate shall be corrected or  
32 expunged from such records by the agency;

33 (b) An agency shall take reasonable steps to assure the security  
34 of its records and prevent tampering with them; and

35 (c) An agency shall make reasonable efforts to insure the  
36 completeness of its records, including action taken by other agencies  
37 with respect to matters in its files.

38 (4) Each juvenile justice or care agency shall implement  
39 procedures consistent with the provisions of this chapter to  
40 facilitate inquiries concerning records.

1 (5) Any person who has reasonable cause to believe information  
2 concerning that person is included in the records of a juvenile  
3 justice or care agency and who has been denied access to those  
4 records by the agency may make a motion to the court for an order  
5 authorizing that person to inspect the juvenile justice or care  
6 agency record concerning that person. The court shall grant the  
7 motion to examine records unless it finds that in the interests of  
8 justice or in the best interests of the juvenile the records or parts  
9 of them should remain confidential.

10 (6) A juvenile, or his or her parents, or any person who has  
11 reasonable cause to believe information concerning that person is  
12 included in the records of a juvenile justice or care agency may make  
13 a motion to the court challenging the accuracy of any information  
14 concerning the moving party in the record or challenging the  
15 continued possession of the record by the agency. If the court grants  
16 the motion, it shall order the record or information to be corrected  
17 or destroyed.

18 (7) The person making a motion under subsection (5) or (6) of  
19 this section shall give reasonable notice of the motion to all  
20 parties to the original action and to any agency whose records will  
21 be affected by the motion.

22 (8) The court may permit inspection of records by, or release of  
23 information to, any clinic, hospital, or agency which has the subject  
24 person under care or treatment. The court may also permit inspection  
25 by or release to individuals or agencies, including juvenile justice  
26 advisory committees of county law and justice councils, engaged in  
27 legitimate research for educational, scientific, or public purposes.  
28 Each person granted permission to inspect juvenile justice or care  
29 agency records for research purposes shall present a notarized  
30 statement to the court stating that the names of juveniles and  
31 parents will remain confidential.

32 (9) The court shall release to the caseload forecast council the  
33 records needed for its research and data-gathering functions. Access  
34 to caseload forecast data may be permitted by the council for  
35 research purposes only if the anonymity of all persons mentioned in  
36 the records or information will be preserved.

37 (10) Juvenile detention facilities shall release records to the  
38 caseload forecast council upon request. The commission shall not  
39 disclose the names of any juveniles or parents mentioned in the  
40 records without the named individual's written permission.

1 (11) Requirements in this chapter relating to the court's  
2 authority to compel disclosure shall not apply to the oversight board  
3 for children, youth, and families or the office of the family and  
4 children's ombuds.

5 (12) For the purpose of research only, the administrative office  
6 of the courts shall maintain an electronic research copy of all  
7 records in the judicial information system related to juveniles.  
8 Access to the research copy is restricted to the administrative  
9 office of the courts for research purposes as authorized by the  
10 supreme court or by state statute. The administrative office of the  
11 courts shall maintain the confidentiality of all confidential records  
12 and shall preserve the anonymity of all persons identified in the  
13 research copy. Data contained in the research copy may be shared with  
14 other governmental agencies as authorized by state statute, pursuant  
15 to data-sharing and research agreements, and consistent with  
16 applicable security and confidentiality requirements. The research  
17 copy may not be subject to any records retention schedule and must  
18 include records destroyed or removed from the judicial information  
19 system pursuant to RCW 13.50.270 and 13.50.100(3).

20 (13) The court shall release to the Washington state office of  
21 public defense records needed to implement the agency's oversight,  
22 technical assistance, and other functions as required by RCW  
23 2.70.020. Access to the records used as a basis for oversight,  
24 technical assistance, or other agency functions is restricted to the  
25 Washington state office of public defense. The Washington state  
26 office of public defense shall maintain the confidentiality of all  
27 confidential information included in the records.

28 (14) The court shall release to the Washington state office of  
29 civil legal aid records needed to implement the agency's oversight,  
30 technical assistance, and other functions as required by RCW  
31 2.53.045. Access to the records used as a basis for oversight,  
32 technical assistance, or other agency functions is restricted to the  
33 Washington state office of civil legal aid. The Washington state  
34 office of civil legal aid shall maintain the confidentiality of all  
35 confidential information included in the records, and shall, as soon  
36 as possible, destroy any retained notes or records obtained under  
37 this section that are not necessary for its functions related to RCW  
38 2.53.045.

39 (15) For purposes of providing for the educational success of  
40 youth in foster care, the department of children, youth, and families

1 may disclose only those confidential child welfare records that  
2 pertain to or may assist with meeting the educational needs of  
3 current and former foster youth to another state agency or state  
4 agency's contracted provider responsible under state law or contract  
5 for assisting current and former foster youth to attain educational  
6 success. The records retain their confidentiality pursuant to this  
7 chapter and federal law and cannot be further disclosed except as  
8 allowed under this chapter and federal law.

9 (16) For the purpose of ensuring the safety and welfare of the  
10 youth who are in foster care, the department of children, youth, and  
11 families may disclose to the department of commerce and its  
12 contracted providers responsible under state law or contract for  
13 providing services to youth, only those confidential child welfare  
14 records that pertain to ensuring the safety and welfare of the youth  
15 who are in foster care who are admitted to crisis residential centers  
16 or HOPE centers under contract with the office of homeless youth  
17 prevention and protection. Records disclosed under this subsection  
18 retain their confidentiality pursuant to this chapter and federal law  
19 and may not be further disclosed except as permitted by this chapter  
20 and federal law.

21 (17) For purposes of investigating and preventing child abuse and  
22 neglect, and providing for the health care coordination and the well-  
23 being of children in foster care, the department of children, youth,  
24 and families may disclose only those confidential child welfare  
25 records that pertain to or may assist with investigation and  
26 prevention of child abuse and neglect, or may assist with providing  
27 for the health and well-being of children in foster care to the  
28 department of social and health services, the health care authority,  
29 or their contracting agencies. For purposes of investigating and  
30 preventing child abuse and neglect, and to provide for the  
31 coordination of health care and the well-being of children in foster  
32 care, the department of social and health services and the health  
33 care authority may disclose only those confidential child welfare  
34 records that pertain to or may assist with investigation and  
35 prevention of child abuse and neglect, or may assist with providing  
36 for the health care coordination and the well-being of children in  
37 foster care to the department of children, youth, and families, or  
38 its contracting agencies. The records retain their confidentiality  
39 pursuant to this chapter and federal law and cannot be further  
40 disclosed except as allowed under this chapter and federal law.

1 (18) For the purpose of investigating child sexual abuse, online  
2 sexual exploitation and commercial sexual exploitation of minors, and  
3 child fatality, child physical abuse, and criminal neglect cases for  
4 the well-being of the child, the department of children, youth, and  
5 families may disclose only those confidential child welfare records  
6 that pertain to or may assist with such an investigation pursuant to  
7 RCW 26.44.180 and 26.44.175. The records retain their confidentiality  
8 pursuant to this chapter and federal law and cannot be further  
9 disclosed except as allowed under this chapter and federal law.

10 **Sec. 2.** RCW 13.50.260 and 2020 c 184 s 1 are each amended to  
11 read as follows:

12 (1)(a) The court shall hold regular sealing hearings. During  
13 these regular sealing hearings, the court shall administratively seal  
14 an individual's juvenile record pursuant to the requirements of this  
15 subsection. Although the juvenile record shall be sealed, the social  
16 file may be available to any juvenile justice or care agency when an  
17 investigation or case involving the juvenile subject of the records  
18 is being prosecuted by the juvenile justice or care agency or when  
19 the juvenile justice or care agency is assigned the responsibility of  
20 supervising the juvenile. The juvenile respondent's presence is not  
21 required at any administrative sealing hearing.

22 (b) At the disposition hearing of a juvenile offender, the court  
23 shall schedule an administrative sealing hearing to take place during  
24 the first regularly scheduled sealing hearing after the latest of the  
25 following events that apply:

26 (i) The respondent's (~~eighteenth~~) 18th birthday;

27 (ii) Anticipated end date of a respondent's probation, if  
28 ordered;

29 (iii) Anticipated release from confinement at the juvenile  
30 rehabilitation administration, or the completion of parole, if the  
31 respondent is transferred to the juvenile rehabilitation  
32 administration.

33 (c) The court shall not schedule an administrative sealing  
34 hearing at the disposition and no administrative sealing hearing  
35 shall occur if one of the offenses for which the court has entered a  
36 disposition is at the time of commission of the offense:

37 (i) A most serious offense, as defined in RCW 9.94A.030; or

38 (ii) A sex offense under chapter 9A.44 RCW (~~or~~

39 ~~(iii) A drug offense, as defined in RCW 9.94A.030)).~~

1 (d) At the time of the scheduled administrative sealing hearing,  
2 the court shall enter a written order sealing the respondent's  
3 juvenile court record pursuant to this subsection if the court finds  
4 by a preponderance of the evidence that the respondent is no longer  
5 on supervision for the case being considered for sealing and has paid  
6 the full amount of restitution owing to the individual victim named  
7 in the restitution order, excluding restitution owed to any public or  
8 private entity providing insurance coverage or health care coverage.  
9 In determining whether the respondent is on supervision or owes  
10 restitution, the court shall take judicial notice of court records,  
11 including records of the county clerk, and, if necessary, sworn  
12 testimony from a representative of the juvenile department.

13 (e) At the time of the administrative sealing hearing, if the  
14 court finds the respondent remains on supervision for the case being  
15 considered for sealing, then the court shall continue the  
16 administrative sealing hearing to a date within (~~(thirty)~~) 30 days  
17 following the anticipated end date of the respondent's supervision.  
18 At the next administrative sealing hearing, the court shall again  
19 determine the respondent's eligibility for sealing his or her  
20 juvenile court record pursuant to (d) of this subsection, and, if  
21 necessary, continue the hearing again as provided in this subsection.

22 (f)(i) During the administrative sealing hearing, if the court  
23 finds the respondent is no longer on supervision for the case being  
24 considered for sealing, but the respondent has not paid the full  
25 amount of restitution owing to the individual victim named in the  
26 restitution order, excluding any public or private entity providing  
27 insurance coverage or health care coverage, the court shall deny  
28 sealing the juvenile court record in a written order that: (A)  
29 Specifies the amount of restitution that remains unpaid to the  
30 original victim, excluding any public or private entity providing  
31 insurance coverage or health care coverage; and (B) provides  
32 direction to the respondent on how to pursue the sealing of records  
33 associated with this cause of action.

34 (ii) Within five business days of the entry of the written order  
35 denying the request to seal a juvenile court record, the juvenile  
36 court department staff shall notify the respondent of the denial by  
37 providing a copy of the order of denial to the respondent in person  
38 or in writing mailed to the respondent's last known address in the  
39 department of licensing database or the respondent's address provided  
40 to the court, whichever is more recent.

1 (iii) At any time following entry of the written order denying  
2 the request to seal a juvenile court record, the respondent may  
3 contact the juvenile court department, provide proof of payment of  
4 the remaining unpaid restitution to the original victim, excluding  
5 any public or private entity providing insurance coverage or health  
6 care coverage, and request an administrative sealing hearing. Upon  
7 verification of the satisfaction of the restitution payment, the  
8 juvenile court department staff shall circulate for signature an  
9 order sealing the file, and file the signed order with the clerk's  
10 office, who shall seal the record.

11 (iv) The administrative office of the courts must ensure that  
12 sealed juvenile records remain private in case of an appeal and are  
13 either not posted or redacted from any clerks papers that are posted  
14 online with the appellate record, as well as taking any other prudent  
15 steps necessary to avoid exposing sealed juvenile records to the  
16 public.

17 (2) Except for dismissal of a deferred disposition under RCW  
18 13.40.127, the court shall enter a written order immediately sealing  
19 the official juvenile court record upon the acquittal after a fact  
20 finding or upon the dismissal of charges with prejudice, subject to  
21 the state's right, if any, to appeal the dismissal.

22 (3) If a juvenile court record has not already been sealed  
23 pursuant to this section, in any case in which information has been  
24 filed pursuant to RCW 13.40.100 or a complaint has been filed with  
25 the prosecutor and referred for diversion pursuant to RCW 13.40.070,  
26 the person who is the subject of the information or complaint may  
27 file a motion with the court to have the court vacate its order and  
28 findings, if any; resolve the status of any debts owing; and, subject  
29 to RCW 13.50.050(13), order the sealing of the official juvenile  
30 court record, the social file, and records of the court and of any  
31 other agency in the case, with the exception of identifying  
32 information under RCW 13.50.050(13).

33 (4) (a) The court shall grant any motion to seal records for class  
34 A offenses made pursuant to subsection (3) of this section if:

35 (i) Since the last date of release from confinement, including  
36 full-time residential treatment, if any, or entry of disposition, the  
37 person has spent five consecutive years in the community without  
38 committing any offense or crime that subsequently results in an  
39 adjudication or conviction;

1 (ii) No proceeding is pending against the moving party seeking  
2 the conviction of a juvenile offense or a criminal offense;

3 (iii) No proceeding is pending seeking the formation of a  
4 diversion agreement with that person;

5 (iv) The person is no longer required to register as a sex  
6 offender under RCW 9A.44.130 or has been relieved of the duty to  
7 register under RCW 9A.44.143 if the person was convicted of a sex  
8 offense;

9 (v) The person has not been convicted of rape in the first  
10 degree, rape in the second degree, or indecent liberties that was  
11 actually committed with forcible compulsion; and

12 (vi) The person has paid the full amount of restitution owing to  
13 the individual victim named in the restitution order, excluding  
14 restitution owed to any public or private entity providing insurance  
15 coverage or health care coverage.

16 (b) The court shall grant any motion to seal records for class B,  
17 class C, gross misdemeanor, and misdemeanor offenses and diversions  
18 made under subsection (3) of this section if:

19 (i) Since the date of last release from confinement, including  
20 full-time residential treatment, if any, entry of disposition, or  
21 completion of the diversion agreement, the person has spent two  
22 consecutive years in the community without being convicted of any  
23 offense or crime;

24 (ii) No proceeding is pending against the moving party seeking  
25 the conviction of a juvenile offense or a criminal offense;

26 (iii) No proceeding is pending seeking the formation of a  
27 diversion agreement with that person;

28 (iv) The person is no longer required to register as a sex  
29 offender under RCW 9A.44.130 or has been relieved of the duty to  
30 register under RCW 9A.44.143 if the person was convicted of a sex  
31 offense; and

32 (v) The person has paid the full amount of restitution owing to  
33 the individual victim named in the restitution order, excluding  
34 restitution owed to any insurance provider authorized under Title 48  
35 RCW.

36 (c) Notwithstanding the requirements in (a) or (b) of this  
37 subsection, the court shall grant any motion to seal records of any  
38 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,  
39 2012, if restitution has been paid and the person is eighteen years  
40 of age or older at the time of the motion.

1 (5) The person making a motion pursuant to subsection (3) of this  
2 section shall give reasonable notice of the motion to the prosecution  
3 and to any person or agency whose records are sought to be sealed.

4 (6) (a) If the court enters a written order sealing the juvenile  
5 court record pursuant to this section, it shall, subject to RCW  
6 13.50.050(13), order sealed the official juvenile court record, the  
7 social file, and other records relating to the case as are named in  
8 the order. Thereafter, the proceedings in the case shall be treated  
9 as if they never occurred, and the subject of the records may reply  
10 accordingly to any inquiry about the events, records of which are  
11 sealed. Any agency shall reply to any inquiry concerning confidential  
12 or sealed records that records are confidential, and no information  
13 can be given about the existence or nonexistence of records  
14 concerning an individual.

15 (b) In the event the subject of the juvenile records receives a  
16 full and unconditional pardon, the proceedings in the matter upon  
17 which the pardon has been granted shall be treated as if they never  
18 occurred, and the subject of the records may reply accordingly to any  
19 inquiry about the events upon which the pardon was received. Any  
20 agency shall reply to any inquiry concerning the records pertaining  
21 to the events for which the subject received a pardon that records  
22 are confidential, and no information can be given about the existence  
23 or nonexistence of records concerning an individual.

24 (c) Effective July 1, 2019, the department of licensing may  
25 release information related to records the court has ordered sealed  
26 only to the extent necessary to comply with federal law and  
27 regulation.

28 (7) Inspection of the files and records included in the order to  
29 seal may thereafter be permitted only by order of the court upon  
30 motion made by the person who is the subject of the information or  
31 complaint, except as otherwise provided in RCW 13.50.010(8) and  
32 13.50.050(13).

33 (8) (a) Any adjudication of a juvenile offense or a crime  
34 subsequent to sealing has the effect of nullifying a sealing order;  
35 however, the court may order the juvenile court record resealed upon  
36 disposition of the subsequent matter if the case meets the sealing  
37 criteria under this section and the court record has not previously  
38 been resealed.

39 (b) Any charging of an adult felony subsequent to the sealing has  
40 the effect of nullifying the sealing order.

1 (c) The administrative office of the courts shall ensure that the  
2 superior court judicial information system provides prosecutors  
3 access to information on the existence of sealed juvenile records.

4 (d) The Washington state patrol shall ensure that the Washington  
5 state identification system provides Washington state criminal  
6 justice agencies access to sealed juvenile records information sealed  
7 after July 24, 2015. To assure and preserve due process rights, the  
8 Washington state patrol shall remove all records sealed prior to this  
9 date from the Washington state identification system and any other  
10 system they maintain.

11 (9) If the juvenile court record has been sealed pursuant to this  
12 section, the record of an employee is not admissible in an action for  
13 liability against the employer based on the former juvenile  
14 offender's conduct to show that the employer knew or should have  
15 known of the juvenile record of the employee. The record may be  
16 admissible, however, if a background check conducted or authorized by  
17 the employer contained the information in the sealed record.

18 (10) County clerks may interact or correspond with the  
19 respondent, his or her parents, restitution recipients, and any  
20 holders of potential assets or wages of the respondent for the  
21 purposes of collecting an outstanding legal financial obligation  
22 after juvenile court records have been sealed pursuant to this  
23 section.

24 (11) Persons and agencies that obtain sealed juvenile records  
25 information pursuant to this section may communicate about this  
26 information with the respondent, but may not disseminate or be  
27 compelled to release the information to any person or agency not  
28 specifically granted access to sealed juvenile records in this  
29 section.

30 (12) All criminal justice agencies must not disclose confidential  
31 information or sealed records accessed through the Washington state  
32 identification system or other means, and no information can be given  
33 to third parties other than Washington state criminal justice  
34 agencies about the existence or nonexistence of confidential or  
35 sealed records concerning an individual.

36 **Sec. 3.** RCW 13.50.150 and 1977 ex.s. c 291 s 13 are each amended  
37 to read as follows:

1       (1) Nothing in this chapter shall be construed to prevent the  
2 expungement of any juvenile record ordered expunged by a court to  
3 preserve the due process rights of its subject.

4       (2) For any previously sealed juvenile record, the subject of the  
5 record may petition the superior court to destroy and expunge in its  
6 entirety, the official juvenile court file, the social file, and  
7 records of the court and of any other agency in any case in which a  
8 juvenile offender's record has been sealed pursuant to RCW  
9 13.50.050(14), 13.50.260, or 13.40.127 provided:

10       (a) The subject's offender history consists of one single  
11 offender case, which is not a class A felony, a felony sex offense,  
12 and the offense is no longer subject to inclusion in RCW 9.94A.525.  
13 The request shall be granted if the court finds all obligations have  
14 been completed, restitution has been paid in full, and no proceeding  
15 is pending seeking the conviction of a criminal offense.

16       (b) The subject's offender history consists of two offender  
17 cases, which are not class A felonies, a felony sex offense, and the  
18 offenses are no longer subject to inclusion in RCW 9.94A.525. The  
19 request shall be granted if the court finds all obligations have been  
20 completed, restitution has been paid in full, no proceeding is  
21 pending seeking the conviction of a criminal offense, and an  
22 additional two years have passed since the subject's cases have not  
23 been subject to inclusion in RCW 9.94A.525.

24       (c) The subject's offender history consists of more than two  
25 offender cases, which are not class A felonies, a felony sex offense,  
26 and the offenses are no longer subject to inclusion in RCW 9.94A.525.  
27 The request shall be granted if the court finds all obligations have  
28 been completed, restitution has been paid in full, no proceeding is  
29 pending seeking the conviction of a criminal offense, and an  
30 additional two years for each subsequent case have passed since the  
31 subject's cases have not been subject to inclusion in RCW 9.94A.525.

32       (3) If the court orders the records destroyed and expunged  
33 pursuant to this subsection and RCW 13.50.050(13), it shall order the  
34 official juvenile court record, the social file, and any other  
35 records named in the order and any reference to the record(s) to be  
36 expunged. Thereafter, the findings are vacated, the proceedings in  
37 the case shall be treated as if they never occurred, and the subject  
38 of the records may reply accordingly to any inquiry about the events  
39 of the expunged record(s). Any agency directed to destroy and expunge

1 the subject's records shall do so including any reference to the  
2 records ordered expunged.

3 (4) Subject to RCW 13.50.050(13), the Washington state patrol  
4 shall expunge all information relating to the case from the  
5 Washington state identification system, and any other system it  
6 maintains.

7 (5) The administrative office of the courts shall maintain the  
8 confidentiality of all confidential records and shall preserve and  
9 assure the anonymity of all persons identified in the research copy.

10 (6) Expunged record information maintained by the county clerk's  
11 offices and available for public view shall be limited to case number  
12 and date expunged. The case shall be unassociated from the  
13 individual's name and replaced with "record expunged."

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