

## **Options for Increasing Judicial Resources of the Georgia Court of Appeals**

There are numerous models of how judicial resources for an intermediate court of appeals might be expanded. These possible solutions include: addition of judges and panels, creation of geographical divisions, vertical extension of the appellate process by adding another level of appeals; shifting of certain subject matter appeals such as appeals from administrative agency decisions or from limited jurisdiction courts to the highest trial court level, or by creating special subject matter appellate courts.

The appellate courts have been stated in various texts to have the following functions: (1) to provide accountability in decision making in the courts; (2) to insure that the law has been applied correctly; (3) to provide a group decision rather than an individual's response which helps to reinforce the social acceptability of the decision; and (4) to prevent variations in results and assure the uniformity of decisions throughout the system as a whole. The nature of an appellate court is to provide contemplative, reflective and well reasoned decisions through a group process. Several of the possible options for providing resources to the Georgia Court of Appeals are discussed below outlining advantages and disadvantages of each approach with consideration of the above functions.

## **OPTION A**

### **ADD FOUR OR MORE JUDGES TO THE EXISTING COURT OF APPEALS.**

**\*One additional panel of three judges.**

**\*One chief judge, who is the administrative judge, chosen by judges from among themselves for a two-year term.**

**\*Seven judges decide case if one judge of three-judge panel dissents.**

### **Advantages of this Option:**

1. Provides the simplest, most direct, most immediate solution to the chronic problem. Nine states are shown to have intermediate appellate courts with more than 9 members (members range from 10 to 16) which sit in panels in one central location in the 1993 State Court Organization, a publication of the U.S. Bureau of Justice Statistics .
2. Retains a single intermediate appellate court, with certiorari to highest court.
3. Allows continued collegiality among members, who work in one location.
4. Allows centralized rule-making, internal administrative and operations revisions, technological changes. Because of this centralization, operation will usually be at the least cost to state.
5. Allows there to be a specialized panel, such as a criminal appeals panel, with rotation by the judges.
6. Maintains a higher degree of uniformity of decisions than other options. Maintains consistency of doctrine. Some non-uniformity is inherent in a multi-division court

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composed of judges representing diversities. However, uniformity can be enhanced by technological issue-tracking and seven judge decisions when one judge of three dissents.

7. Reduces current problems of cumbersomeness and overextended use of nine judge decisions when one judge of three dissents, by deciding such cases with seven instead.
8. Avoids jurisdictional division-drawing as to subject matter.
9. Avoids jurisdictional division-drawing as to geographical boundaries.
10. Allows chief judge to participate in decisions of the Court and also serve as administrative judge with reasonable dedication of time and focus.
11. Requires a limited amount of space to implement with some nearby space expected to be available soon.
12. Permits immediate relief to court with time for consideration of other possible long-term solutions for future needs, such as district courts of appeal.
13. Costs \$525,000 to \$600,000 per judge. This is minimal compared to whole judicial branch budget of state. With four judges, this would be approximately \$2.3 million as compared to \$70 million for the state judicial branch budget for 1995.
14. Reduces current judicial stress, prevents possibility that nine judge court will not be able to process caseload within two terms.
15. Allows application of technology to be considered for long distance communication, conferencing, filing, etc. for statewide litigants and attorneys.

## Disadvantages of this Option:

1. Loss of some degree of social collegiality, important for members of court to work together.
2. May result in more dissents and, therefore, more work per judge if full court decision-making required when panels disagree. Disagreements more difficult to resolve if more members required to agree. This is avoidable if seven judges rather than thirteen decide cases in which there is a dissent on a panel.
3. Unwieldy, slower decision-making process in whole court cases, but these cases would be rare since whole court decisions by thirteen judges would occur only when recommended by a majority of three or seven in a case.
4. Tendency to not publish may be greater, which creates greater body of non-precedential case law. Although result may be opposite, if panel of new judges provides relief so that each judge has more time to spend per case.
5. May reduce uniformity in decisions because four panels, rather than three, are creating precedential opinions. This, itself, may spawn some additional litigation.
6. Little or no room for expansion beyond thirteen judges. Additional panels beyond four may be too unwieldy and facilities space may limit close proximity of judges.
7. Requires all Georgia appellate judges to live in metropolitan Atlanta or commute long distances, which may eliminate some qualified candidates.
8. Requires parties and litigants to travel to Atlanta to appear at central forum.
9. Costs \$525,000 to \$600,000 per judge annually which will increase Court of Appeals budget by about one-third.

**OPTION B**

**SHIFT SOME APPELLATE JURISDICTION FROM COURT OF APPEALS TO SUPERIOR COURTS.**

- \*Existing superior court judges sit in rotating panels of three in each existing district.**
- \*Jurisdiction: misdemeanors and all discretionary appeals, which would remain such. (In 1994, there were approximately 119 misdemeanors, 162 domestic relations applications and 212 workers compensation applications.)**
- \*Certiorari to Supreme Court.**
- \*Two-to-one panel vote transfers case to Court of Appeals.**
- \*Existing rules of Court of Appeals are applied.**
- \*Opinions are published or not published on same basis as current Court of Appeals decisions.**
- \*Dispositions are filed in the office of the clerk of the chief administrative judge of the district.**
- \*Substitution of three judge appeals to superior court for all existing one-judge appeals, such as workers compensation, and substitution of Supreme Court certiorari for existing appeal to Court of Appeals.**
- \*Elimination of de novo trials in superior court.**

## Advantages of this Option:

1. Allowed by 1983 Georgia Constitution, Art. VI, Sec. IV.
2. Reduces appellate caseload by up to approximately 500 filings per year.
3. Costs less than adding judges (although there may need to be: increases in salaries to accommodate additional responsibility; an additional one to three staff attorneys, full-time or part-time, per district; one administrative assistant per district; and enhanced technology for communication and decision-making process).
4. Localizes appellate function.
5. May reduce litigant travel.
6. Could allow all superior court judges appellate experience.
7. Requires no new space or physical facilities other than any for additional support staff.
8. Results in a small workload increase for each of 169 superior court judges which equals a large workload reduction for the nine judges of the Court of Appeals.
9. Reduces a level in the appellate process for workers compensation cases.
10. Retains uniformity of law's application by publication of significant decisions.
11. Maintains size of Court of Appeals at collegial nine.
12. Is flexible because uneven appellate workload per district can be handled by judges having other duties.
13. Allows new use for senior judges who cannot participate in the Senior Judge Program of Court of Appeals due to distance or desire.

## **Disadvantages of this Option:**

1. Adds to workload of existing superior court judges, which is already uneven between rural and urban circuits in terms of numbers, complexity and novelty. There are generally more appeals from certain areas of state thus resulting in uneven workloads among the ten districts. Most appeals will probably be filed from circuits with the busiest trial judges.
2. Eliminates de novo appeals from trial courts in which judge is not an attorney.
3. Reduces predictability and guidance to lower trial courts, since panels chosen from group of 169 rather than 9 individuals.
4. May increase number of two-to-one decisions since mix of thinking on panels can be product of many more combinations (that of the number of superior court judges in each of the ten districts) than of nine judges.
5. Increases time spent on administrative duties related to rotation system. Care will be needed to ensure trial judge did not handle original trial case. To avoid conflicts of interest, appellate review of colleagues' cases by judges from the same circuit, and unequal appellate caseloads, it may be necessary to continue a central statewide filing system with centralized rotational assignments to the districts. This might be accomplished by filing a copy of the notice of appeal in the Court of Appeals, and then sending the record from the trial court directly to the district to which the appeal has been assigned.
6. Costs more than current system since it will probably necessitate some additional staff to provide secretarial, administrative and legal research assistance to each panel.

7. Delays finality in some cases, where two to one decision reached at district appellate division.
8. Localization could result in more politicalization of the process.
9. Greater possibility of lack of uniformity in interpretation and application of law. No mechanism to reconcile different decisions from different districts. This lack of uniformity may result in increased certiorari to Supreme Court.
10. Requires training for new skills for superior court judges. Appellate function and process differs significantly from trial function and process.
11. May be only temporary solution, as statewide trial court caseload increases if no corresponding increase in number of trial judges.
12. Senior judge availability may be problematic since it does not provide permanent full-time or consistent judicial resource.
13. If oral argument is still permitted, two superior court judges on panel must travel to one location and seek scheduling of courtroom space as needed. New technology may be necessary to provide means for long distance decision-making and drafting of opinions.
14. Requires substantial legislation to accomplish.

## **OPTION C**

**EXPAND FUNCTION OF SENTENCE REVIEW PANELS (OCGA §17-10-6) TO INCLUDE APPELLATE REVIEW OF CRIMINAL CASES EXCEPT THOSE WITHIN JURISDICTION OF SUPREME COURT.**

**\*Create one such rotating panel for each district, with assignments by chief administrative judge of district for six month periods.**

**\*Permit transfer to Court of Appeals if majority on panel agrees there is a close or novel question.**

**\*Include sentence review to extent now provided for by statute.**

**\*Follow rules of Court of Appeals with respect to published opinions, unpublished opinions, and affirmances without opinion.**

**\*Provide for one to two staff attorneys for each district, and one administrative assistant.**

**\*Certiorari to Supreme Court.**

### **Advantages of this Option:**

1. Creates special subject matter courts of appeal with potential to assume about 1,110 filings from current court's caseload.
2. Costs less than adding judges (although there may need to be: increases in salaries to accommodate additional responsibility; additional staff attorneys, (one to three full-time or part-time per district); employment of one administrative assistant per district; and enhanced technology for this new function.
3. Localizes criminal appellate functions changing it from statewide to district-wide.

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4. Reduces travel of counsel.
5. Could allow all superior court judges appellate experience.
6. Requires no new space or physical facilities other than any for additional support staff.
7. Results in small workload increase for 169 superior court judges which equals a large workload reduction for nine Court of Appeals judges.
8. Retains uniformity of law's application by publication of significant decisions.

**Disadvantages of this Option:**

1. Adds to workload of existing superior court judges, which is already uneven between rural and urban circuits in terms of numbers, complexity and novelty. There are generally more appeals from certain areas of state thus resulting in uneven workload in the ten districts. Most appeals probably filed from circuits with busiest trial judges.
2. Reduces predictability and guidance to lower trial courts, since panels chosen from group of 169 rather than 9 individuals.
3. May increase number of two-to-one decisions since mix of thinking on panels can be product of many more combinations (that of the number of superior court judges in each of the ten districts) than of 9 judges.
4. Increases time spent on administrative duties related to rotation system. Care will be needed to ensure trial judge did not handle original trial case. To avoid conflicts of interest, appellate review of colleagues' cases by judges from the same circuit, and unequal appellate caseloads, it may be necessary to continue a central statewide filing system with centralized rotational assignments to the districts. This might be

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accomplished by filing a copy of the notice of appeal in the Court of Appeals, and then sending the record from the trial court directly to the district to which the appeal has been assigned.

5. Costs more than current system since it will probably necessitate some additional staff to provide secretarial, administrative and legal research assistance to each panel.
6. Delays finality in some cases, where two-to-one decision reached at district appellate division.
7. Localization could result in more politicalization of the process.
8. Greater possibility of lack of uniformity in interpretation and application of law. No mechanism to reconcile different decisions from different districts. This lack of uniformity may result in increased certiorari to Supreme Court.
9. Requires training for new skills for superior court judges.
10. May be only temporary solution, as statewide trial court caseload increases if no corresponding increase in number of trial judges.
11. If oral argument is still permitted, two superior court judges on panel must travel to one location and seek scheduling of courtroom space as needed. New technology may be necessary to provide means for long distance decision-making and drafting of opinions.

**OPTION D**

**EXPAND COURT OF APPEALS AND SIT IN DIVISIONS AROUND STATE WITH  
EQUAL JURISDICTION IN EACH DIVISION.**

**\*Each panel composed of three judges.**

**\*Three-to-zero or two-to-one decisions.**

**\*Certiorari to Supreme Court.**

**\*Published opinions, unpublished opinions and affirmances without  
opinion as currently provided.**

**\*Except for Atlanta, judges' offices in courthouse of home county with  
oral argument in an available courthouse in district, upon decision of  
panel.**

**\*One to two staff attorneys and one administrative assistant per judge,  
depending on caseload.**

**\*Retain centralized court reporter function.**

**\*Uniform rules, as provided by council of district courts of  
appeal.**

**Advantages of this Option:**

1. Reduces workload for current Court of Appeals, to share it with others of equal rank.
2. Localizes intermediate appellate review, permitting judges around state to serve as appellate judges without moving or commuting to Atlanta, and permitting attorneys and citizens easier access to intermediate appellate court.

3. Is expandable as needed in the future, by dividing districts or adding judges in those districts where needed.
4. Does not add any caseload to existing superior court judges.
5. Does not depend on availability of senior judges.
6. Reduces need for space in Atlanta on Capitol Hill.
7. Allows experimentation with non-uniform internal operating processes and model procedures such as interactive television for oral arguments.
8. Avoids slower or unwieldy whole-court decision making (which would involve thirteen judges) in instances where whole-court review is recommended by a majority of a panel. Although with continued growth in caseload in the future, it is possible that each division would have as many members as the current unitary Court of Appeals.
9. Avoids necessity of dividing subject matter jurisdiction between two levels of intermediate appellate review.

**Disadvantages of this Option:**

1. Costs for this option would be substantially greater than the current court.
2. Requires office and courtroom space in several locations around state. Courthouses around the state are generally crowded, difficult to locate space.
3. Decentralizes Court of Appeals. May result in non-uniformity of procedure.
4. Greatly reduces collegiality.
5. Could yield unequal workload among districts because of geographic division of intermediate appellate workload, unless case assignment is centralized rather than remaining in district from which initiated or number of panels vary among districts.

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6. Requires new geographic line-drawing which may not conform to current judicial districts.
7. Localizes case law and judicial philosophy, creating greater lack of uniformity in matters of law which would not prompt grant of certiorari.
8. Localization could result in more politicalization of the process.
9. May result anyway in the majority of panels locating in the Atlanta-Metropolitan area. Atlanta will probably be the origination point of the majority of appeals since this is where the great majority of state population resides.

**OPTION E**

**DISTRICT COURTS OF APPEAL WITH LIMITED JURISDICTION.**

- \*Four districts based on geography, population and volume of litigation.**
- \*Each district has at least one panel of three judges.**
- \*Judges would have the same qualifications as current judges of the Court of Appeals.**
- \*One law assistant and one administrative assistant for each judge.**
- \*Court clerk/administrator for each district, plus staff.**
- \*Same terms of court and constitutional deadlines as existing appellate court.**
- \*Uniform rules.**
- \*Two-to-one decisions, quorum two. Written decisions but not published, not precedent. If even split, or absence of quorum, transfers case to Supreme Court or Court of Appeals.**
- \*Appeals by certiorari to the Supreme Court.**
- \*Oral argument heard wherever decided by panel, in existing public facilities.**
- \*Divide Supreme Court jurisdiction in Art. VI, Sec. VI, Para III, except cases involving death penalty, between Court of Appeals and district courts of appeal, or give all to district courts of appeal. Certiorari to Supreme Court to maintain uniformity.**

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**\*Substitute direct appeal to district courts of appeal for all cases now requiring discretionary appeal procedure of OCGA §5-6-35 (both Court of Appeals and Supreme Court); increase jurisdictional dollar amount in OCGA §5-6-35 (a) (6).**

**\*Transfer current appellate jurisdiction of superior courts to district courts of appeal (e.g., OCGA §5-3-1 et seq.; §5-4-1 et seq.; §50-13-19). Retain only de novo appeals under OCGA §5-3-29. Certiorari to the Supreme Court.**

**\*Include jurisdiction over all misdemeanors (about 119 cases annually) and possibly other categories of criminal cases. Certiorari to the Supreme Court.**

**\*Include jurisdiction over all appeals from juvenile courts (about 13 cases a year) and probate courts (about 51 cases a year).**

#### **Advantages of this Option:**

1. Relieves overload on Court of Appeals and provides some relief to superior courts by shifting jurisdiction.
2. Changes role of Supreme Court by shifting some jurisdiction from it so as to become primarily certiorari court.
3. Makes intermediate appellate process more accessible and convenient to bench, litigants and the bar.
4. Tailored to Georgia's intermediate appellate needs and court structure.
5. Constitutes lower level of complete courts of appeal with both criminal and civil jurisdiction.

6. Provides realistic statewide pool for potential appellate judges. Qualified persons would not have to move to Atlanta or live within commuting distance.
7. Is flexible for future growth.
8. Could apply enhanced technology to increase communication and assist in maintaining coherence and uniformity in interpretation of law between districts.
9. Transfer of no-quorum cases can be avoided by appointing a trial judge to fill in.

**Disadvantages of this Option:**

1. Is most costly option. Judges, support staff, and site would be necessary for each district.
2. Is most complicated option requiring substantial legislative changes.
3. Does not provide for chambers for judges and offices for staffs and court clerk/administrator and staff.
4. Eliminates the fast-track method of disposition which the discretionary procedure now provides, adding to the overall appellate workload.
5. May require line-drawing for geographic boundaries of districts not tailored to fit current trial court ten district system.
6. Requires reallocation of subject matter jurisdiction among four levels of courts: superior, district courts of appeal, Court of Appeals and Supreme Court.
7. Data is not available to accurately determine what would be the effect on workload of each level of court if this option was to be chosen.
8. Does not provide for balancing out the workload among the districts as times goes on and workload changes from what was originally measured.

9. --- Creates much non-precedential law, increasing lack of statewide uniformity and even district uniformity, much of which will not be detectible for the purposes of granting certiorari.
10. Unpublished opinions reduces judges' accountability.
11. Transfers jurisdiction from Supreme Court, which does not suffer overload.
12. Bypasses Court of Appeals when two district courts disagree about interpretation or application of a Court of Appeals opinion.
13. Results in loss of some degree of collegiality since district panels are geographically separated and split decisions are transferred to Court of Appeals or Supreme Court.
14. Reduces uniformity of application of law within and across districts.
15. Might be possible for district attorneys and defense counsel to manipulate which appellate court has review if jurisdiction is dependent on whether criminal case is misdemeanor or felony.
16. Fragments intermediate appellate process and could increase levels of appeal adding more complexity to system which may result in more cost and delay.
17. Localizing for benefit of litigants loses much of purpose with increasing technology solutions to long distance communication such as, computerization, fax, Federal Express, interactive television capabilities.
18. Localizing subjects appellate judges to greater local influence.

## **OPTION F**

**MAINTAIN CURRENT COURT STRUCTURE. USE SENIOR APPELLATE JUDGES AND VISITING SUPERIOR COURT JUDGES ON REGULAR BASIS TO INCREASE THE NUMBER OF PERMANENT PANELS BY ONE PANEL.**

**\*One superior court judge sits with two judges from the Court of Appeals on each panel.**

**\*Superior court judge sits on rotating panels for six months.**

### **Advantages of this Option:**

1. Costs less than adding judges or creating district courts of appeal.
2. Could allow over time all superior court judges appellate experience.
3. Requires only limited space and staff support increases.
4. Technology can be used to facilitate communication among panel members.
5. Involves only a limited number of superior court judges at one time.
6. Judges serve by consent at time convenient to them.

### **Disadvantages of this Option:**

1. Reduces collegiality.
2. Increases administrative duties in locating available senior or visiting judges.
3. Interrupts trial schedules of superior court judges. Requires supervision.
4. Requires superior court judge to travel or stay in Atlanta during term of service on Court of Appeals.

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5. May increase number of two-to-one decisions since mix of thinking on panels can be product of many more combinations (that of the number of superior court judges) than of nine judges.
  6. Requires training for new skills for superior court judges.
  7. May cause trial delay depending on caseloads of trial court judge.
  8. Reduces predictability and guidance to lower trial courts, since panels chosen from group of 169 rather than nine individuals.
  9. Increases time spent on administrative duties related to rotation system. Care will need to be taken to ensure trial judge did not handle original trial case - conflicts.
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## OPTION G

### **STREAMLINE CURRENT COURT OF APPEALS**

Before adding additional judicial resources to courts, most courts seek to improve the timeliness of their current process. The Georgia Court of Appeals has made several changes in recent years to do so. Many of the following items have been tried and some have been implemented. Others could be implemented now, but they will provide only a temporary solution as the number of appeals continue to increase. Additionally these items tend to reduce the contemplative, reflective nature of appellate review.

**\*Use settlement conference in all or selected civil cases. An experiment with this concept was conducted by the court from 1989 to 1995. Since it was not mandatory, there was only limited participation in the program by litigants.**

**\*Increase central staff to undertake fast track process and/or to float. This was done in 1995 to speed up the process on discretionaries and to provide additional assistance to the panels as needed.**

**\*Eliminate motions for reconsideration (in 1994, 1164 filed, 36 granted, 1128 denied); if so eliminated, shifts further review to Supreme Court immediately instead of after further intermediate review and delay.**

**\*Retain discretionary appeal statute as is, consider expansion in future, possibly to misdemeanors, summary judgment cases, others. Give short explanatory orders for denials and dismissals. This is a further restriction on direct appeals. Some in the legal community are already concerned about the extent of the current statute since such changes seem to suggest certain whole areas of the law are not as significant as others.**

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- \*Eliminate oral argument. As of September 1, 1995 rules of the court have been changed to eliminate oral argument as a matter of right and instead for the court to decide in its discretion whether to grant oral argument to the parties.**
- \*More strictly enforce court rules and technical requirements of practice and procedure.**
- \*Increase judges' staff attorneys by one each. Already, there are three staff attorneys per judge, three floaters and five central legal staff positions.**
- \*Greater use of unpublished opinions and affirmances without opinion. The number of unpublished opinions has increased sixty percent from the 1989 to 1993 docketed actions. There were also 147 affirmances without opinions from the 1993 docketed actions. Institute summary opinions.**
- \*Allow two-to-one decisions, or double panel decisions if initial panel is two-to-one, with whole court decision required only if double panel is evenly divided or OCGA §15-3-1 (c) (2) is invoked.**
- \*Introduce state of the art technology. Some work has already been done, with development of a network, automated legal research tools and word processing.**
- \*Provide additional administrative assistant for chief judge. May improve administration of the court, but it could not actually enhance speed of decision-making of whole court.**
- \*Reduce multiple appeals from workers compensation cases by providing for certiorari to Supreme Court from superior court. Have a three-judge-panel of superior court judges, instead of one, review board decision, with certiorari to Supreme Court. Currently, there are three levels of review of the administrative law judge order, even before the grant of an application for discretionary**

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**appeal. The Court of Appeals' review of the application is the third review. This would eliminate one level of appeal for these cases, but it could place a larger caseload burden on the Supreme Court.**

### **Advantages of this Option:**

1. Retains current degree of collegiality among the judges of the court.
2. Adds no additional cost except for items adding staff attorneys and/or administrative assistants and new technology.
3. There is space close-by expected to be available soon if additional staff were added.
4. Many of these items do not require legislation to implement.
5. Technology could be further developed to institute interactive television for oral arguments to avoid attorney travel.
6. Speeds disposition of fast track cases.
7. Speeds disposition of cases in Court of Appeals which would have had motion for reconsideration.
8. Allows further consideration of adding appellate judges either on Court of Appeals or on lower tier at a later time.

### **Disadvantages of this Option:**

1. Generally, each of these are only short term temporary solutions.
2. Further reduces rights of appeal (if ideal is right to direct appeal in every case, full briefing in every appeal, collegial decision-making in every case after oral argument, and full opinion in every case).

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3. Reduces public and bar awareness of decisions and reasons therefore.
  4. Reduces parties' and counsel's and lower court's awareness of reasons for decisions providing less direction to trial courts in application of the law.
  5. Reduces body of precedents and thereby predictability of future court decisions.
  6. Requires achieving more with already strained judicial resources.
  7. Reduces judicial time and attention devoted to each case.
  8. Removes judges farther from decision-making process.
  9. Encourages shortcuts in methods of reaching and documenting dispositions.
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