

The Sentencing Guideline



A Publication of the
National Association of Sentencing Commissions

State Sentencing Directors Attend National Workshop on Sentencing and Corrections

For the first time, State Sentencing Directors were invited to participate in a National Workshop on Sentencing and Corrections sponsored by the U.S. Department of Justice in conjunction with the National Institute of Justice and the Corrections Programs Office.

The workshop was convened in Ponte Vedra Beach, Florida on May 31 through June 1, 2001. The Workshop, which was the fourth in a series of national

workshops, focused on creating partnerships and developing re-entry strategies to meet the challenges of monitoring and successfully reintegrating the half a million offenders leaving state and federal prisons each year.

This unique initiative brought together teams of state level policy makers from all fifty states, the District of Columbia and Puerto Rico. Each team engaged in open and candid conversation over

important sentencing and corrections issues that included such topics as sentencing reform, juvenile and youthful offenders accountability, special need populations and re-entry issues for released offenders from incarceration. The U.S. Department of Justice expressed its willingness to learn more about the needs of individual states so that information and technical assistance can be made available to them.

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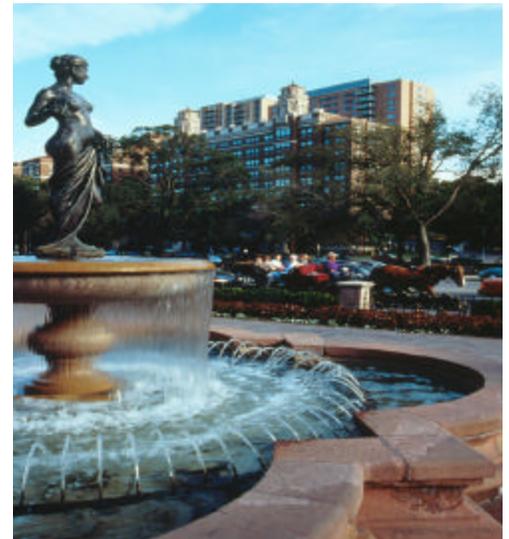
Kansas Sentencing Commission Hosts Summer Conference

DON'T FORGET TO REGISTER

THE
NATIONAL ASSOCIATION OF
SENTENCING COMMISSIONS

2001 ANNUAL CONFERENCE
Kansas City
August 5-7, 2001

The NASC 2001 Annual Conference will be held August 5-7, 2001 at the elegant Fairmont Hotel, located on the famous Country Club Plaza amidst some of Kansas City's best restaurants, shopping, and blues clubs. (continued on page 4)



Country Club Plaza, Kansas City Missouri

NASC Mission Statement

“ To facilitate the exchange of ideas, data and expertise among sentencing commissions and to educate and inform policymakers and the public on issues related to sentencing policies and sentencing commissions.”

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Message From the Chairman...



The National Association of Sentencing Commission Executive Board is composed of 6 members elected by the membership attending the Annual Conference, this year scheduled for August 5-7 in Kansas City. Four board positions will be selected. Members are encouraged to run for one of these positions. At least one new Board member will be selected, as Deb Dailey (MN) completes her second and final term this year. If you are interested in standing for election to the Board, please submit a biographical sketch to Kim Hunt, Executive Director, DC Advisory Commission on Sentencing by Fax (202-353-7831) or email (khunt@dcacs.com) by July 25. The biographical sketches and the ballot will be available at the conference. The Executive Board encourages all members and prospective members to register and attend the Annual Conference in Kansas City, August 5-7, and participate in the selection of the new Board members.

The NASC Program Committee, in conjunction with the Executive Board, has organized two roundtable discussions at the upcoming 2001 NASC Conference. The first roundtable will feature the Vera Institute's State Sentencing and Corrections and a discussion of the resources available through that program. The second roundtable will feature representatives of the National Institute of Justice and other Justice Program offices. This discussion will center of the forms of federal assistance currently available to sentencing commissions and ideas for the future.

Best regards,

Kim Hunt
Chair, NASC Executive Committee

DC Sentencing Commission Conducts National Review of Sentencing Practices

The Advisory Commission on Sentencing was formed to recommend policies consistent with the National Capital Revitalization and Self-Government Improvement Act of 1997, which mandated Truth-in-sentencing provisions for the District of Columbia. Through the Act, Congress abolished parole for the most serious felonies, and required that good time credit be calculated according to federal law.

The Commission continues to study the advisability of structured sentencing for the identifying the variety of sentencing structures nationally. The Commission is attempting to catalogue these practices and recommend a set of sentencing practices to the District's Council for its consideration. As part of the study of best practices, the Commission will investigate the operation of selected sentencing systems in greater detail, including at least one jurisdiction without sentencing guidelines, one with voluntary guidelines, and one with presumptive guidelines.

In coming months, the District of Columbia Advisory Commission on Sentencing will be working on the development of a computer simulation model to evaluate the impact on prison populations of various structured sentencing schemes. Also, the Commission will extend previous focus group meetings to solicit feedback on the subject of structured sentencing.

Oklahoma Legislature Passes Crime Bill

State senators approved a major criminal justice reform bill Tuesday that will make more criminals serve longer prison sentences. The bill toughens laws against drunken drivers, too. It also raises the felony limits on property crimes, including writing bogus checks and embezzlement, from \$50 to \$500.

Senate Bill 397 by Senator Dick Wilkerson also will repeal the prison cap law, which requires a governor to order the release of some inmates when the inmate population reaches a certain level.

"I think it will have a significant impact on criminals and will make nonviolent people responsible for their conduct," Wilkerson said.

A provision in the bill would allow nonviolent inmates to earn additional credits toward release.

The legislation toughens laws on drunken driving by changing the blood alcohol content for driving under the influence from .10 per-

"We're trying to be both tough and smart on crime with this legislation"

***Sen. Dick Wilkerson, D-Atwood
Chairman, Oklahoma Sentencing Commission***

cent to .08 percent.

The legislation also adds more violent crimes to the law requiring offenders to serve 85 percent of their sentences.

Those new crimes include second-degree murder, first-degree manslaughter, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, first-degree robbery and robbery committed by two or more people.

A person convicted of manufacturing and distributing drugs also

would have to serve 85 percent of his sentence, Wilkerson said.

Adding these crimes to the list for which a person must serve 85 percent of his sentence is expected to increase by 91 the number of prison beds needed in fiscal 2002, according to the Criminal Justice Resource Center.

Increasing the felony limit from \$50 to \$500 could result in 120 fewer prisoners next year.

SB 397 also would change habitual offender provisions, which state that people convicted on their third felony must be sentenced to a minimum of 20 years and up to life.

SB 397 would set out a less severe sentence for a person convicted on the third offense of a nonviolent crime.

Rep. Fred Morgan, House Republican leader, said he has been told the effect of the bill eventually could mean 300 fewer inmates in the system.

The bill has the support of House and Senate Democrat and Republican leaders, the state District Attorneys Association and the governor's office, Wilkerson said.

Wilkerson called the legislation a true product of bipartisanship in the Legislature.

"The changes should make the streets safer without taking a huge bite out of the taxpayers' pocketbooks," Wilkerson said. "Our prison system has been somewhat of a budget black hole in recent years, but this should help us get a better handle on

things and improve public safety at the same time."

The bill creates a felony for planning, attempting, conspiring or endeavoring to perform an act of violence involving serious bodily harm or death. The penalty would be up to 10 years in prison.

The bill creates a misdemeanor of threatening to perform an act of violence. This is punishable by up to 6 months in prison.

It would apply to everyone, but in

"I think it's the most important criminal justice reform act I've seen"

Sen. Cal Hobson, D-Lexington

particular, will help law enforcement officers investigate threats made by school children, Wilkerson said.

Someone making a verbal threat now cannot be arrested unless he makes that threat over the telephone, Wilkerson said.

In addition to raising the felony limit for bogus checks and embezzlement, the legislation also raises from \$50 to \$500 the felony limit for obtaining property by trick or deception, taking domesticated fish or game, larceny of merchandise and taking oil, gas or gasoline products.

Wilkerson said Oklahoma's retail merchants won't be hurt by the legislation even though it raises the felony limit on bogus checks.

This article appeared in the



Nichols Fountain, Kansas City Mo.

Alabama Establishes Sentencing Commission

“The Vera Institute of Justice, through its States Sentencing and Corrections program, has provided invaluable assistance to the Commission and the State of Alabama on this vital project”...

*Linda Flynt,
Executive Director
Alabama Sentencing
Commission*

Based on the recommendations of the Permanent Study Commission of the Alabama Judicial System, on May 17, 2000, Alabama's legislature established a state Sentencing Commission. Created as an agency of the Alabama Supreme Court, the Commission is charged with reviewing and revising Alabama's sentencing laws and practices and recommending ways to resolve the current jail and prison overcrowding crisis. The statutory mandates include the development of a sentencing structure that will “promote truth in sentencing”; “prevent prison overcrowding and the premature release of prisoners”; “provide judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences”; “create a wider array of sentencing options in appropriate cases”; and “limit

the discretion of district attorneys in determining the charge or crime.” § 12-25-2 (a)(1), *Code of Alabama* (Supp. 2000).

Although the bill creating the Commission was approved last year, the members of the advisory council and the executive director were not appointed until this year. Despite the temporary delay in getting underway, the Commission has met 3 times this year, six work groups have been formed (meeting 14 times since March), and reports from the work groups are scheduled to be completed and submitted to the Commission by September 1, 2001.

According to Executive Director Lynda Flynt, The Vera Institute of Justice, through its States Sentencing and Corrections program, has

provided invaluable assistance to the Commission and the State of Alabama on this vital project. The Commission has also just contracted with Applied Research Services, Inc. (ARS), an Atlanta-based criminal justice consulting company, to create a comprehensive database from records of various state agencies to assist the Commission in obtaining valid data and meeting its mandate to produce a comprehensive discretionary sentencing plan for the 2002 legislative session.

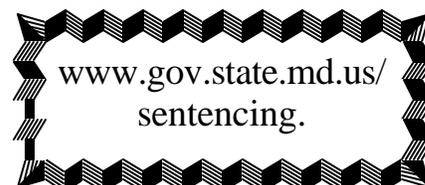
With the assistance of these professionals and the support and commitment of the state's Attorney General Bill Pryor, Chief Justice Hooper and Governor Siegleman, sentencing reform can become a reality in Alabama.

MD Commission Web Site to Feature Sentencing Related Research

To inform policymakers and the public in Maryland about the current research on sentencing-related issues, the State Commission on Criminal Sentencing Policy has begun posting reports and bibliographic materials on its web site: The action follows the recommendations of Commission member, Senator Delores G. Kelley, to have available a ready reference source to inform legislative and other deliberation and debate on sentencing issues. The documents, prepared by graduate students from the University of Maryland's Department of Criminology & Criminal Justice, will be short summaries and over-

views of recent academic and governmental research on selected topics, particularly items of stated concern to one or more Maryland commissioners. The reports, however, should also be of interest for general use by other web site users and will be found under the “REPORTS” section of the site. The first two reports, on diminution credits and on the effect of lead on development and possible criminality, will go online in June 2001. Combined with the regular monthly summaries of research and legal activity related to sentencing found under

“SENTENCING IN THE NEWS,” these materials will provide users with a thorough foundation to inform careful discussion and formulation of sentencing policy.



Pennsylvania Commission Approves D&A Treatment Study

At its Quarterly Meeting in May, the Pennsylvania Commission on Sentencing approved a staff proposal to study the effectiveness of Restrictive Intermediate Punishment sentences with drug and alcohol treatment [RIP/D&A] for Level 3 and 4 offenders. This initiative to substitute a clinically prescribed treatment/supervision program for incarceration was incorporated into the sentencing guidelines in 1994 and expanded in 1997. The research project will be twofold: 1) to examine the shift in sentencing patterns from incarceration to RIP for targeted offenders; and 2) to study whether these RIP/D&A sentences have reduced crime.

Since 1997, the Pennsylvania General Assembly has provided select counties with funding to support comprehensive RIP/D&A treatment consistent with the sentencing guidelines.

Through a competitive application process, 22 counties currently receive funding from an annual appropriation of \$13 million. Thus far, however, no comprehensive evaluation of the effectiveness of RIP/D&A programs has been conducted.

The primary focus of this study will be on the second issue, the impact of RIP on recidivism, and will be addressing questions such as: Is RIP/D&A effective in reducing crime? Do offenders sentenced to RIP/D&A do better than similar offenders who are incarcerated? What are the predictors of success for offenders who receive this sentence? Is RIP more successful with certain types of offenders? What is the impact of RIP funding on recidivism – do offenders in counties with RIP funding have lower recidivism rates than offenders in counties without funding?

Through a partnership agreement with the Pennsylvania State University, the Commission contracts annually with faculty to conduct research on behalf of the Commission. The Principal Investigators for this study, Professors John Kramer and Jeffery Ulmer, recently completed a study examining guideline departures for violent offenders. It is anticipated that the RIP/D&A study will be a one-year project that is targeted to begin in August 2001. This evaluation research is being supported in part by a Drug Control & System Improvement (DCSI) federal grant administered through the Pennsylvania Commission on Crime and Delinquency. The federal funding will allow for a more comprehensive evaluation by providing resources to include multiple data sources.

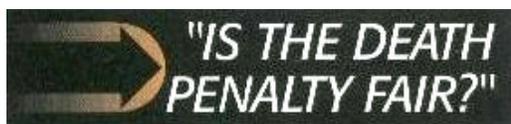
Upward Departure Sentences in Kansas Deemed Unconstitutional

For the first time since implementation in 1993, the Kansas Sentencing Guidelines Act completed a legislative session without any notable changes. During the past two legislative sessions, Sentencing Guidelines have undergone both numerous and significant changes relating to offense classifications and sentences imposed in an effort to deal with proportionality issues and limited prison capacity. The Sentencing Commission requested that no proposed changes to the guidelines be enacted for a period of two years to allow for a comprehensive evaluation and review of the impact of prior legislative action. Minus some relatively minor changes, the legislature respected that request and no legislation was enacted that would increase the state's prison population.

On May 25, 2001, the Kansas Supreme Court handed down a decision in *State v. Gould* that the Kansas scheme for imposing upward departures under the Kansas Sentencing Guidelines Act is unconstitutional on its face, violating a defendant's Sixth Amendment and Fourteenth Amendment Due Process Rights. Downward departures are not affected by the opinion. *State v. Gould* was based on the upward departure issues raised in the U.S. Supreme Court Decision *Apprendi v. New Jersey*. The Kansas Supreme Court essentially ruled that upward departures imposed, based on facts determined by a judge and not a jury, are unconstitutional. The court's ruling is retroactive to any upward departure sentences pending on appeal, not yet final or has arisen after June 26, 2000.

The Sentencing Commission in anticipation of this possible ruling by the Kansas Supreme Court had reviewed possible remedies to the issues raised and identified potential corrective solutions. However since the Supreme Court's decision was not handed down until after the end of the 2001 legislative session, it will not be possible to introduce corrective legislation until the 2002 legislative session. Until that time upward departure sentences in Kansas will remain unconstitutional.

The following Point/Counterpoint has been reprinted with the permission of the Council of State Governments. The Copyright 2001 article appeared in the May 2001 State Government Newsmagazine .



Illinois Needed Moratorium On Death Penalty

*Wrongful convictions
raise doubts about
fairness.*

BY GOV. GEORGE H. RYAN

As a member of the Illinois General Assembly, I vividly remember voting for the death penalty. During the debate, an opponent of the death penalty asked whether any of us who supported it would be willing to “throw the switch.” It was a sobering question, and I wish now that I could swallow the words of unqualified support for the death penalty that I offered.

The fact is now as governor, I do “throw the switch. That’s the toughest part of being governor.

I don’t know that courage is the best word to describe what I did last year in declaring a moratorium on the death penalty. I just call it doing the right thing. All I did was to respond to the indisputable facts that the administration of the death penalty in Illinois was not fair and our record was shameful.

I’ve been in elective office for more than 30 years. During that time, as a county board member, legislator and executive officeholder, I was a staunch supporter of the death penalty. Like many other elected officials, I have believed there are crimes that are so heinous that the death sentence is the only proper, societal response for the criminals convicted of those crimes in a court of law.

Since those days as a legislator, a lot has happened to shake my faith in the death-penalty system. I know a lot more about the administration of the death penalty in Illinois — and the more I learn, the more troubled I’ve become.

In November 1999, the *Chicago Tribune* conducted an in-depth investigation of the death penalty cases Illinois that was startling. Half of the nearly 300 capital cases in the state had been reversed for a new trial or sentencing hearing. Thirty-three of the death-row inmates had been represented at trial by an attorney who had later been disbarred or at some point suspended from practicing law. Thirty-five African-Americans on death row had been convicted or condemned by an all-white jury. In fact, two out of three of our 160 Illinois death-row inmates are African-American. Prosecutors used jailhouse informants to convict or condemn 46 death-row inmates.

In January of last year, the 13th inmate on death row was found wrongfully convicted of the murder for which he had been sentenced to die. At that point, I was looking at our shameful scorecard. We had 13 people exonerated of their crimes for which they had been sentenced to die more than the 12 we had convicted and executed since the death penalty had been reinstated. Thirteen people who lived the ultimate nightmare — sitting on death row, waiting to be killed by the state for crimes they did not commit.

Up until then, with each remarkable, complex and sometimes confusing development, I had resisted calls by some to declare a moratorium on executions. But then I had to ask myself: How could I go forward with so many unanswered questions? It was clear to me that when it came to the death penalty in Illinois, there was no justice in the justice system.

On Jan. 31, 2000, I told the citizens of Illinois that I was imposing a moratorium on executions because of grave concerns about our state’s record of convicting innocent people and putting them on death row. I said that a public dialogue must begin on the question of the fairness of the application of the death penalty. That, surely, has taken place since I announced my decision.

In March of last year I empaneled a commission of 14 concerned, smart and honorable people. My instructions to the committee were simple: Until I can be sure that everyone sentenced to death in Illinois is truly guilty, and until I can be sure with moral certainty that no innocent person is facing a lethal injection, no one will meet that fate.

I am comfortable knowing that I did the right thing.

I support Gov. George Ryan's decision to suspend executions in Illinois pending a full review of court and prosecution procedures there.

Illinois had problems, and they need to be fixed, but that does not mean that what is right for Illinois is right for Oklahoma and other capital-punishment states. In fact, I am convinced that Oklahoma administers capital punishment fairly, with restraint and with every possible safeguard to assure that the innocent are protected while the guilty are held accountable for their crimes.

At the outset it is important to establish two facts. First, the governor does not have the authority to arbitrarily suspend any state law, from collection of the income tax to the execution of the death penalty. Such action would have to be taken by the Legislature. Nor does Oklahoma's governor have the independent power of pardon or commutation without a prior affirmative vote by the state's Pardon and Parole Board. So what has been asked – a gubernatorial moratorium is not within my power.

Second, we need to be aware that calls for death-penalty moratoriums in state after state have much less to do with any real or imagined flaws in the capital-punishment systems in those states than with the stated agenda of most moratorium supporters: the abolition of capital punishment. To them, a moratorium is a first step. I fundamentally disagree with the central contentions of most death-penalty opponents. Capital punishment is appropriate for certain crimes.

Any state considering a moratorium on capital punishment (or its abolition) should ask these fundamental questions, as we have in Oklahoma, and as Gov. Ryan did in Illinois:

First, are death sentences rare? Capital punishment is appropriate only for specific crimes, the most brutal and heinous and premeditated of murders. Nationally, about one-twelfth of 1 percent of all homicide cases leads to an execution. Oklahoma's figures are comparable. Between 1976, when we reinstated capital punishment, and the end of January 2001, Oklahoma had experienced more than 8,000 homicides and executed less than 40 killers. Nationally, the figures are similar – some 480,000 homicides since 1977, with about 320 executions. Yes, capital punishment is rare.

Second, are there safeguards against the execution of an innocent person? Oklahoma aggressively funds a statewide indigent-defense system to ensure the best possible trial representation in all capital cases. Oklahoma has a full appeals process; in most cases, condemned killers spend at least 12 years on death row as that process unfolds, with careful review at each step. I signed a law to mandate DNA testing in any case where such testing could be a factor, and in January we stayed the execution of a death-row inmate to allow such a test (which proved his guilt). Prior to execution, inmates have the right to a full clemency hearing before the Pardon and Parole Board, and I review those cases meticulously. Our system works. In two cases, inmates were freed from death row after evidence exonerated them, and in several others, appellate decisions have mandated new sentencing or trial proceedings where flaws were detected in the process.

In Oklahoma, capital punishment is extremely rare. It is only imposed after a painstaking process that begins with a fair trial and includes extensive appeals and safeguards. Oklahoma's capital-punishment statutes and procedures pass the tests of fairness and justice.

One of the best features of federalism is that each state is unique and distinct. I would not seek to impose Oklahoma's school funding formula on Tennessee or Massachusetts or Oregon; it is equally mistaken to extrapolate a demand for a national death-penalty moratorium from Illinois' experience.

"IS THE DEATH
PENALTY FAIR?"



No Moratorium For Oklahoma

*The death penalty can be
administered fairly.*

BY GOV. FRANK KEATING

UNITED STATES SENTENCING COMMISSION INCREASES PENALTIES

The United States Sentencing Commission voted to increase penalties for high-dollar fraud and theft offenders, high-risk sexual predators, ecstasy traffickers, methamphetamine and amphetamine dealers, and human traffickers. The Commission also voted to link money laundering penalties more closely to the scheme that generates the illegal funds. These new guidelines will go into effect on November 1, 2001, absent action by Congress.

A priority for the Commission this year was economic crimes, with the Commission passing many new amendments in this area. The new amendments consolidate existing guidelines on theft, fraud, tax offenses and property destruction in order to increase penalties for high-dollar frauds or thefts and to reduce unwarranted sentencing disparity. Under the new guideline, the perpetrator of a \$500,000 investment fraud, for example, will be subject to a sentence as high as 63 months, as opposed to a sentence as low as 27 months under the old guideline.

The Commission also adopted guidelines related to the Protection of Children from Sexual Predators Act of 1998 and voted to increase penalties in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. The new guideline targets high-risk sex offenders who are convicted of sexual abuse and have a prior felony conviction for sexual abuse.

In response to the Ecstasy Anti-Proliferation Act of 2000, the Commission voted to promulgate a permanent amendment that increases the guideline sentence for trafficking ecstasy. This drug, also known as MDMA, "Adam," or "XTC" on the street, has become increasingly popular with adolescents and young adults. The new amendment will increase sentences for trafficking 800 pills of ecstasy by 300 percent, from 15 months to five years. It increases the penalties for trafficking 8,000 pills by almost 200 percent, from 41 months to ten years. This amendment will become effective May 1, 2001, on an emergency basis, and will become permanent in the same manner as the other amendments on November 1, 2001. Said Commission Chair, Judge Diana E. Murphy, "The Commission shares Congress's concern about the serious threat posed by the illegal importation, trafficking, and use of ecstasy and the danger this drug poses to the youth of America"

*See you in
Kansas City!!!*

Summer Conference (...Continued from page 1)

The theme for the seventh annual NASC Conference is "Developing Rational Sentencing Policy in an Irrational World of Crime." Conference workshops will include such topic areas as racial disparity in sentencing, sentencing and the media, unintended consequences of sentencing policy and steps in the development and enactment of rational sentencing policy. The annual conference provides an excellent opportunity for the formal and informal exchange of information and ideas among policy makers, commission members and practitioners dealing with sentencing issues. In addition, it will be a great opportunity to try some of Kansas City's outstanding barbecue. Hotel room rate for this year's conference will be \$85.00 per night. Conference Material will be mailed in April of 2001.

**For more information contact:
Barbara Tombs
(785) 296-0923**

South Carolina Advances Commission Proposal

The South Carolina Sentencing Guidelines Commission, chaired by David Wilkins, Speaker of the South Carolina House of Representatives, held a productive meeting in March of this year. The Commission members discussed truth in sentencing legislation introduced by Speaker Wilkins and also discussed the sentencing guidelines proposal. The truth in sentencing bill was passed by the South Carolina House and by the Senate Judiciary Committee and will be addressed by the full South Carolina Senate next year. As the Commission's staff revises the guidelines grid, Speaker Wilkins continues to focus on his truth in sentencing initiative.

The Commission's staff provides assistance and constituent services for members of the South Carolina General Assembly and constantly updates criminal justice data for incorporation into the proposed sentencing guidelines grid.

State Sentencing Commissions

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