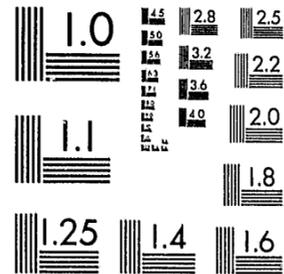


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# Federal Probation

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JUNE 1984

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# Federal Probation

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## This Issue in Brief

**The Evolution of Probation: The Historical Contributions of the Volunteer.**—In the second of a series of four articles on the evolution of probation, Lindner and Savarese trace the volunteer/professional conflict which emerged shortly after the birth of probation. The authors reveal that volunteers provided the courts with probation-like services even before the existence of statutory probation. Volunteers were also primarily responsible for the enactment of early probation laws. With the appointment of salaried officers, however, a movement towards professionalism emerged, signaling the end of volunteerism as a significant force in probation.

**Don't throw the Parole Baby Out With the Justice Bath Water.**—Allen Breed, former director of the National Institute of Corrections, reviews the question of parole abolition in light of the experience with determinate sentencing legislation in California, the current crisis of prison overcrowding, and the improvements that have been made in parole procedures in recent years. He concludes that the parole board—while it may currently not be politically fashionable—serves important "safety net" functions and retention of parole provides the fairest, most humane, and most cost-effective way of managing the convicted offender that is protective of public safety.

**LEAA's Impact on a Nonurban County.**—LEAA provided funds for the purpose of improving the justice system for 15 years. To date, relatively little effort has been made to evaluate the impact of LEAA on the delivery of justice. In this article, Professor Robert Sigler and Police Officer Rick Singleton evaluate the impact of LEAA funds on one nonurban county in Northwestern Alabama. Distribution of funds, retention and impact are assessed. While no attempt has been made to assess the dollar value of the change, the data indicate that the more than one million dollars spent in Lauderdale County did change the system.

**Developments in Shock Probation.**—Focusing on a widely used and frequently researched probation program, this paper by Professor Gennaro Vito examines research findings in an attempt to clearly identify the policy implications surrounding its continued use.

**Family Therapy and the Drug-Using Offender: The Organization of Disability and Treatment in**

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# Developments in Shock Probation

## A Review of Research Findings and Policy Implications\*

BY GENNARO F. VITO, PH.D.

*School of Justice Administration, University of Louisville*

A SIZEABLE portion of published criminal justice research in recent years has been devoted to program evaluation. Ostensibly, the purpose of this applied research is to provide decisionmakers with accurate information to help guide the policymaking process. However, researchers are often understandably reluctant to voice clear policy recommendations based upon evaluation research findings, due to the methodological impediments and data limitations which frequently plague research efforts. As Feeley and Sarat (1978:122) state in their autopsy of the defunct LEAA criminal justice planning process:

Good evaluators are reluctant to draw sweeping conclusions from extremely limited data, and their conclusions are likely to be tentative, equivocal, and if anything, erring on the side of caution . . . While evaluators speak about the marginal effects of a host of variables, planners want a simple yes/no answer.

Yet, if one reviews research findings and peers through this "fog of equivocation," policy implications can be ferreted out and more clearly drawn. The purpose of this paper is to review past research findings and current statistics for a widely used and closely examined program, shock probation, and draw some definite policy implications about its use.

### Program Definition

Originally adopted in 1964, Ohio's shock probation statute is but one example of early release procedures presently in operation in the United States (for review, see Parisi, 1980). Basically, shock probation parallels other split-sentencing procedures in that it attempts to: (a) impress offenders with the hardship and psychological problems of isolation and prison life; (b) provide an opportunity to better evaluate the

\*An earlier version of this article was presented at the "Emerging Issues in Probation and Parole" panel of the annual meeting of the Academy of Criminal Justice Sciences in San Antonio, Texas, March 23, 1983. The author's permission is required for quotation and/or reproduction of this article. Dr. Vito expresses his gratitude to George W. Farmer, superintendent of the Probation Development Section of the Ohio Adult Probation Commission, Division of Information Services, for providing recent official figures on the use of shock probation and to Drs. Nicolette Parisi, Ronald M. Holmes, and Gary W. Sykes for their writings and comments on this subject.

needs of offenders in more detail and help them utilize training and other educational services provided by prisons; (c) provide greater protection to society; and (d) "shock" individuals into a realization of the grimness of prison life through the experience of imprisonment and (e) to make offenders aware of the seriousness of their crimes without resorting to a long and potentially damaging prison sentence (Friday, Petersen, and Allen, 1973). The shock probation program represents a unique attempt to combine elements of the criminal justice system (probation and parole) that have not been previously combined.

In the field of corrections, the shock probation program encompasses two basic theories: deterrence and reintegration. It appears that the theory of shock probation best fits the category of primary or specific deterrence. The major premise of the program is that the "shock" of incarceration will cause the offender to avoid future involvement with crime. The argument is that a brief application of the rigors of imprisonment (in Ohio, 90-130 days served) will deter criminal behavior and not impede the readjustment of the individual upon release. Thus, the program combines a punishment rationale with a reintegration philosophy designed to return the offender to the outside world.

In Ohio, shock probation is not a part of the original sentence; rather, it is a program of judicial reconsideration. First, offenders who have been arrested, charged, and convicted face the judicial dispositional decisions on their cases. The judge, utilizing information about the offender contained in the presentence investigation, has a number of options available. Based upon the findings of the case, the judge in general can either (a) place the offender on probation, (b) sentence the offender to a stay in a community-based correctional facility (i.e., halfway house), or (c) sentence the offender to jail or prison.<sup>1</sup>

<sup>1</sup>The Ohio legislation served as a model for other states which subsequently adopted the program. For example, the Texas statute (1977) reads that "The jurisdiction of the courts in this state in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction of a felony shall continue for 120 days from the date the execution of the sentence actually begins. After the expiration of 60 days but prior to the expiration of 120 days from the date the sentence actually begins, the judge of the court that imposed such sentence may, on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation (Division of Data Services, 1981:1)

It is the fact of incarceration in prison that brings shock probation into play. At this point, a motion for release on shock probation can be initiated by the inmate, the trial lawyer, or through direct action by the court. If granted shock probation, the offender is supervised in the community by the probation departments and is subject to the same rules and regulations that apply to regular probationers, including the possibility of revocation. In sum, it is clear that the decision to grant early release under this program lies with the judiciary.<sup>2</sup> State and local probation departments cannot release offenders on shock probation through their own initiative. Release on shock probation is limited to the discretion of the sentencing judge.

### Research Questions and Policy Implications

Given the legal boundaries of this program, evaluation research studies focused upon a number of different yet related questions regarding its effectiveness. These questions will now be considered separately and the policy implications of the research findings will be indicated.

#### 1. Which type of offender is the best candidate for release on shock probation?

In other words, what is the target population of this program? Who is most likely to benefit from the shock of incarceration? Proponents of shock probation generally agree that the period of incarceration (the "shock") should be brief and its use should be limited to youthful first offenders. For example, Denton, et al. (1971:1) issued a series of suggested guidelines for the use of shock probation, including:

(1) Shock probation was "felt to be especially applicable to first offenders to whom the shock of reformatory or penitentiary life, even for a brief period, would be a constant reminder of an experience which he would not wish to repeat."

(2) Shock probation should not be used with convicts who had experienced numerous convictions.

These rationales have carried over to other states which use the shock procedure. In the 1981 TAPC

<sup>1</sup>Previous research on the judicial decision to grant shock probation by Petersen and Friday (1975) revealed that whites were more likely to be released than similarly situated blacks. In a replication of that study conducted with persons who had actually filed a motion to be released on shock probation in one Ohio municipal court, Vito (1978) discovered that probation officer recommendation, not race, was the most significant factor. Individuals who received a favorable recommendation were more than twice as likely to be granted release on shock probation.

<sup>2</sup>Similarly, in her analysis of all 6,304 offenders released under the Federal split sentencing statute in 1974, Parisi (1981) reported a minimal effect of prior incarceration upon recidivism rates. Specifically, those persons without prior incarceration experience tended to be more successful than those who had been incarcerated before (96% versus 91%).

<sup>3</sup>Evidence from the 1981 TAPC Survey suggested that the judiciary might be more willing to utilize shock probation if the offenders received intensive supervision upon release (Division of Data Services, 1981:11). Research on a subsample of shock probationers who are also subjects of intensive supervision is presently underway by this author and Dr. Edward J. Latessa of the University of Cincinnati. For a presentation of findings regarding this particular intensive supervision project, see Latessa (1980).

*School Probation Survey* (Division of Data Services, 1982:6), a majority of the 121 Texas judges who responded to the survey felt that the program should be considered as an alternative to lengthy incarceration, but they still emphasized the "shock value" of the procedure for nonviolent and nonhabitual offenders.

As Parisi (1981) has noted, specific deterrence is a major rationale behind split sentence statutes. Therefore, if the shock experience is to have the maximum deterrent effect, incarceration should be a brief, yet "novel experience" (i.e., the offender's first time behind bars) followed by an "unanticipated release." In short, to borrow a phrase from a well-publicized juvenile delinquency program, the first-time offender released on shock probation will be "shocked straight" (see Finckenauer, 1982).

Since the "shock" rationale was so strongly held, previous research has addressed the effect of the sentence upon first-time offenders.<sup>3</sup> Utilizing an availability sample of 1980 Ohio shock probationers released in 1975, Vito and Allen (1980) tested this assumption. A number of attributes (prior record, present offense, age, race, etc.) were examined in terms of their relationship to recidivism (reincarceration in an Ohio prison for either a new offense or a technical violation over a 2-year period). The results seemed to validate the contention that first-time offenders were the best candidates for shock probation. First offenders had a 130 percent lower possibility of reincarceration than offenders who had a prior record (10 versus 23%). Yet, it was also discovered that among the 556 shock probationers who had a prior record, the over-21 subsample had significantly lower rates of failure than the younger subsample (15.5 versus 34.4%). If the rationale behind the program had been followed to the letter, these previously convicted, older felons would not have been released and thus denied an opportunity to enjoy successful readjustment to society.

On the basis of these findings, it is clear that the shock experience should not be limited to first time offenders. Offenders with other characteristics can also benefit from this form of early release from incarceration. Future research on this subject will consider the effect of intensive supervision and employment upon the performance of shock probation to determine whether these offenders can benefit from experiences other than the shock of incarceration.<sup>4</sup>

#### 2. What is the effect of length of incarceration upon the performance of shock probationers?

The time frame of the Ohio legislation (90-130 days in prison) was designed to achieve the maximum deterrent effect upon the offender while avoiding the

debilitating aspects of long-term imprisonment.<sup>5</sup> Previous studies of shock probation in Ohio and Kentucky have focused upon the length of incarceration as a key variable of interest.

In their study of 418 male inmates released in 1966 and 1970, Waldron and Angelino (1977) discovered that 26 percent of the men and 18 percent of the women were returned to prison (see table 1). Their followup period was 4½ years for the men and 3½ years for the women. The authors also divided the sample with regard to their time served prior to release on shock probation (with 4 months as the cutoff point), then examined the arrest, conviction and reincarceration of the sample, and concluded that "a felon is as likely to recidivate after three months in prison as he or she is after seven months to a year in prison."

In his study of 1,508 Ohio offenders released on shock probation in 1975, Vito (1978) divided the sample by length of sentence according to offenders who served from: (1) 1-30, (2) 31-130 and (3) over 130 days in prison. Using ANOVA, no difference in reincarceration rates was discovered. Subsequent dichotomization of the sample yielded only a statistically significant relationship: shock probationers who were imprisoned for 30 days or less had a lower reincarceration rate than those offenders who served more than 30 days.

On the basis of these findings, it is clear that the length of incarceration under the shock probation program can be drastically shortened without affecting reincarceration rates. Specifically, this conclusion opens up two possible uses of the program. Offenders could be released after a jail rather than a prison sentence or offenders who are sent to prison can be released on shock after their classification period. Use of the program in this manner could reduce the currently overcrowded institutional population.

### 3. How do shock probationers perform in comparison with regular probationers?

<sup>5</sup>With regard to the time frame of release, Parisi (1980:9) also notes that another "latent goal" may be at work here. The short time frame under which release on shock probation should be considered for deterrent purposes also avoids possible interference with the parole board's authority to release inmates. In addition, the Ohio research indicates another potential problem, namely the failure of the judiciary to follow these guidelines. Michaelowski and Bohlander discovered that in 1970, 23% of the 632 Ohio prisoners released on shock probation were released after the 130-day limit. Vito (1978) found that in his 1975 sample of 1,508 shock probationers, 11.5% had been held longer than 130 days. Angelino and his associates (1974) reported one-third of his sample of 564 Ohio shock probationers had served more than 130 days (see also Vaughan, 1980). The failure of the judiciary to adhere to program guidelines (probably due to the absence of credible sanctions to enforce violations) has also plagued other programs (see Doleschal, 1982).

<sup>6</sup>It must be stated that employment was not included as a variable in this study and it is possible and even likely that the regular probationers had a higher rate of employment. Since employment is a variable which has been determined to be significantly related to recidivism (see Pritchard, 1979), this omission could have had an effect upon the research findings. However, results from the 1984 TAPC Survey indicate that 68 percent of the Texas shock probationers released since 1977 (2,000/1,492) were employed during their supervision period and that their median annual income was \$8,000.

Table 1 summarizes the studies on the performance of shock probationers. Beyond the exploratory study by Bohlander (1973), three of the studies focused upon a comparison of shock and regular probationers.

Faine and Bohlander (1976) examined the effectiveness of Kentucky's shock probation program. Recidivism was defined as reincarceration for a new offense or technical violation during an 8 to 28-month followup period. It was discovered that 19.2 percent of the shock probationers failed. But, the authors also determined that the successful shock probationer was similar to regular probationers with regard to prior record, length of previous incarcerations, ability to make bond and the low frequency of guilty pleas entered. They concluded, that the more closely the offender conforms to the profile of the average probationer, the greater the possibility of successful performance on shock probation. Of course, this finding begs that question of why was the similarly situated shock probationer originally *not* placed on regular probation?

This question was also pursued by Vito and Allen (1981). They examined the performance of all 1975 state-supervised shock (N=585) and regular (N=938) probationers. A 2-year followup period was utilized to determine whether or not an offender had failed. The outcome indicator was rigorous: reincarceration in an Ohio penal institution. A statistical technique (Multiple Classification Analysis) was used to control for differences between the two groups.<sup>6</sup> When all known differences between the two groups were taken into account, it was discovered that the regular probationers had a 42 percent lower probability of reincarceration than shock probationers.

In a recent study of shock and regular probationers from one metropolitan Kentucky county, Holmes, Sykes, and Revels (1983) discovered that the two groups were almost identical with regard to their rearrest rates (37 vs. 35%). It should also be noted that, in table 2, this study recorded the highest rate of failure. Yet, this finding is probably an artifact of the failure measure itself. Note that the other studies, with the exception of Bohlander (1973), used reincarceration as a measure of failure.

On the basis of these findings, it can be stated that, if the judiciary uses shock probation to imprison individuals who would otherwise be sentenced to probation, shock probation may cause harm. There must be no "widening of the net" in this program (See Doleschal, 1982).

### 4. Was deterrence a true goal of the shock probation program?

In terms of this question, the first issue is whether or not the offender's release from prison is anticipated. Since the Ohio law permits the offender (or

TABLE 1. Summary of Shock Probation Studies

Authors (Year of Publication)	Year of Sample	N	State	Measure of Recidivism <sup>1</sup>	Length of Followup	Failure Rate
Friday, Peterson & Allen (1973)	1966	61 Shock	Ohio	Reincarceration	4 years	15.0%
Bohlander (1973)	1970	60 Shock 120 Regular	Ohio	Rearrest	3 years	26.7% <sup>2</sup>
Waldron and Angelino (1977)	1969	418 Shock-Males 136 Shock-Females	Ohio	Reincarceration	4½ years 3½ years	26.0% <sup>3</sup> 18.0%
Faine and Bohlander (1976)	1972	582 Shock	Kentucky	Reincarceration	8-28 months	19.2%
Vito and Allen (1981)	1975	585 Shock 938 Regular	Ohio	Reincarceration	2 years	17.0% <sup>4</sup> 12.0%
Holmes, Sykes and Revels (1983)	1980-82	115 Shock 177 Regular	Kentucky	Rearrest	2 years	37.0% <sup>5</sup> 35.0%

<sup>1</sup>Includes probation violators as well as new offenses.

<sup>2</sup>Difference in rates *not* statistically significant at .05 level.

<sup>3</sup>Difference in rates was *not* considered.

<sup>4</sup>Difference in rates was statistically significant at .05 level.

the offender's attorney) to file for release on shock probation, release is not unexpected.<sup>7</sup> Perhaps, as Parisi (1981:1110) has remarked, the shock in shock probation is "the surprise of release." *The Cincinnati Post* (1981:1 and 10A) reports that certain forces have combined to seriously hamper the deterrent effect of the program:

... on their first day of incarceration, prisoners are greeted by social workers and law school students who hand them forms for shock probation and explain how they might be eligible for

release in 130 days. If the criminal is unable to read or write, the law student will fill out the forms. . . . It's common today for lawyers to tell a client of the possibility for shock probation before they ever stand trial or face a judge. Some lawyers do that to appease their clients, others to earn extra money by charging additional fees to file for shock probation.

Other factors which could conspire to weaken the deterrent effect of the program are plea bargaining and illegal political pressures on the sentencing process. For example, the *Houston Chronicle* (1980)

TABLE 2. Reincarceration Rates Under Ohio's Shock Probation Program

(Source: Ohio Department of Rehabilitation and Correction Statistical Summary)

Year	Number of Shock Cases	Shock Cases Recommittted <sup>1</sup>	Percent Recommittted
1966	85	5	5.8
1967	183	26	14.2
1968	294	18	6.1
1969	480	48	10.0
1970	632	68	10.7
1971	907	83	9.2
1972	1,292	115	8.9
1973	1,132	137	12.9
1974	1,079	118	10.9
1975	1,528	157	10.3
1976	1,478	166	11.2
1977	1,256	146	11.6
1978	1,182	142	12.0
1979	1,484	160	10.8
1980	1,473	134	9.1
1981	1,463	143	9.8
TOTALS	15,948	1,666	10.4

<sup>1</sup>Does not include offenders who absconded supervision.

<sup>7</sup>Duo process requirements may preclude the possibility of keeping release on shock probation a secret. It seems logical that the same legal requirements which presently

reported that the shock probation program in Texas came under great scrutiny and public criticism when convicted, former State District Judge Farth Baines was released on shock probation by District Judge Thomas Rautt. Baines had served 4 months of an 8-year sentence for accepting a \$59,000 bribe in return for a promise to "go easy" on a robbery defendant in his court. The consensus among Rautt's 17 fellow judges was that his decision to free Baines was wrong ("a slap in the face to all of us") and that it served to confirm the public attitude that "all the crooked judges stick together."<sup>8</sup>

To date, the research efforts on shock probation have neglected to address this crucial factor in the deterrence calculus: Did the offender anticipate release? However, a recent survey by the Texas Department of Corrections (Kozuh, et al., 1980:10) of 75 probation departments who placed 1,044 felony adult offenders on shock probation between August 29, 1977, and April 8, 1980, offer some information concerning the offender's prior knowledge of release. The TDC researchers asked probation officers to estimate how many of their shock probationers had prior knowledge of release and they discovered that approximately 65 percent of their felony shock probationers expected to be released. The most recent Texas survey (Division of Data Services, 1982:27) directly questioned 555 shock probationers and found that 44 percent of them had anticipated their release. Given this evidence and the preceding examples, it is clear that the shock probation program has not been administered in a fashion designed to maximize its deterrent impact.

In fact, administration of the program leads one to question whether the deterrence was ever a true goal of shock probation. In Ohio, deterrence was a manifest ("officially proclaimed," see Glaser, 1973:5-10) goal

<sup>8</sup>According to the 1981 TAPC Survey (Division of Data Services, 1982), there is some consensus among court officials regarding the use of shock probation with plea bargaining. A majority of the judges (52%) and defense attorneys (62%) who responded to the survey felt that the use of shock probation as a plea bargaining chip was appropriate.

<sup>9</sup>Yet, it is also becoming increasingly apparent that shock probationers do not necessarily fit the model of the rational criminal who can be deterred. Again, the 1981 TAPC Survey found that of the 1,492 persons released on shock in Texas since 1977, 48 percent had committed crimes in which the abuse of drugs and alcohol were involved (Division of Data Services, 1982:21).

<sup>10</sup>In particular Parisi (1980:9) has questioned whether this method of releasing short-timers is desirable, particularly from a due process of law standpoint: "Why expand the judiciary's power to release short-timers rather than extend the powers of the parole board?"

<sup>11</sup>At the time of the 1981 TAPC survey, 249 (17%) shock probationers had been terminated from supervision, 1,152 (77%) were still under supervision and 87 (6%) had absconded. Of the 249 cases who had terminated supervision, 142 cases, 89 (62.7%) had been convicted of a new offense, 32 (22.5%) had committed a technical violation and 21 (14.8%) had done both (Division of Data Services, 1982:22-23).

<sup>12</sup>A study by Vito and Allen (1979) examining the cost-effectiveness of shock probation in Ohio estimated that, in 1975 dollars, the program generated a savings of at least \$3,725,839 over the combined cost of probation and parole. In Texas, it was estimated that the direct costs of incarceration were four times as great as those for shock probation.

of the program. Proponents of the law have stated, that, "We want to scare the hell out of them [offenders]" and that the program is "designed so that when the cell door slams shut, that prisoner will be filled with the fear of spending a long, long time behind bars" (Cincinnati Post, 1981).<sup>9</sup> Yet, it is also true that shock probation has a latent goal which accounts for the policies and practices of the program. This law extends new powers to the judiciary, granting them the ability to grant early release after the sentence has been pronounced. It is in this light that the policy implications of the program should be examined and this expansion of discretionary power should be considered. *Rather than pursuing the deterrence argument, the research question should be: What are the cost and benefits of expanding the discretionary power of the judiciary in this manner?*<sup>10</sup>

#### Conclusions

On the basis of these studies, a number of conclusions about shock probation can be reached. As the data in tables 1 and 2 indicate, reincarceration rates for shock probation have never exceeded 26 percent and according to official records from the Ohio Department of Rehabilitation and Correction, only 10.4 percent of the offenders released on shock probation over the 15-year life of the program have been reincarcerated.<sup>11</sup> *The level of these rates indicates that the program has some potential.*

*If shock probation is utilized, it should be used with a select group of offenders who cannot be considered as good candidates for regular probation. The period of incarceration must be short in order to achieve the maximum deterrent effect while reducing the fiscal cost of incarceration.*<sup>12</sup> It is here that the Texas experience with shock probation is most enlightening. In the 1980 survey (Kozuh, et al., 1980), it was estimated that 64 percent of Texas' shock probation population would have been sent to prison in the usual manner if the program had not been in effect. We can no longer afford, in human as well as financial terms, to incarcerate offenders for the shock value. *In this time of severe prison overcrowding, the use of shock probation can only be justified as a diversionary measure to give offenders who would otherwise not be placed on probation a chance to succeed.*

This recommendation calls for a shift in the stated deterrent emphasis of the program toward a reintegration rationale—a move which runs counter to the prevailing mood in corrections today. Some members of the criminal justice community have long held what Barnes and Teeters (1959) have termed a "childlike faith" in the deterrent effect of punishment. The evidence reported here strongly parallels

the negative findings recently reported concerning another widely touted and heavily publicized panacea—the "Scared Straight" program for juvenile delinquents (see Finckenaue, 1982). *It is clear that we cannot wave the "magic wand of deterrence" and expect only positive and healthy things to result.*

Although it is not particularly defensible as a deterrent, shock probation has the potential to become a way to reduce institutional overcrowding which is consistent with the objective of reintegration and public safety. It is also clear that it is important to make evaluation research products more usable to policymakers by stating policy implications in a clear fashion, yet consistent with the demands of scientific objectivity (see Cousineau and Plecas, 1982; Rothman, 1980:131-156; and Rossi and Freeman, 1982:299-344). The arguments presented here should neither be interpreted as a commercial for the use of shock probation nor as a call for its destruction, but as a translation of research findings into policy implications.

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