Lisa Sandburg *Legislative Service Commission*

Am. H.B. 528

123rd General Assembly
(As Passed by the General Assembly)

Reps. **Callender, Allen, Buehrer, Clancy, Flannery, Haines, Jacobson, Pringle, Schuring, Taylor, Tiberi, Trakas, Van Vyven, A. Core, Logan, DePiero, Willamowski, Calvert, Hartnett, Robinson, Harris, Grendell, Cates, Vesper, O'Brien, Schuck, Distel, Young**

Sens. **Gardner, Oelslager, Kearns, Spada, Watts, Latta**

Effective date: *

ACT SUMMARY

- Incorporates, in a revised form, the previously existing prohibition that pertains to preparing drugs for sale into the section containing the continuing drug trafficking offenses, thereby enhancing the penalties for preparing drugs for sale to drug trafficking offense levels.

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* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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CONTENT AND OPERATION

Overview

The act repeals the section containing the previously existing prohibition that pertains to preparing drugs for sale and incorporates that prohibition, in a revised form, into the section containing the continuing drug trafficking offenses, thereby enhancing the penalties for violating the preparation of drugs for sale prohibition to drug trafficking offense levels.

The prohibitions

Prior and continuing law

Preparation of drugs for sale. R.C. 2925.07(A) prohibited a person from knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance *when the person intended to sell or resell the controlled substance* or when the person knew or had reasonable cause to believe that another person intended to sell or resell the controlled substance. The name of the offense depended on the type of controlled substance involved in the violation (e.g., "aggravated preparation of drugs for sale," "preparation of drugs for sale," "preparation of cocaine for sale," etc.).

Drug trafficking. R.C. 2925.03(A) prohibits a person from knowingly selling or offering to sell a controlled substance. The name of the offense depends on the type of controlled substance involved in the violation (e.g., "aggravated trafficking in drugs," "trafficking in drugs," "trafficking in cocaine," etc.).

Operation of the act

The act repeals the prior preparation of drugs for sale prohibition and expands the continuing prohibition contained in the drug trafficking offenses so that it additionally prohibits a person from knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled

substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person. (R.C. 2925.03(A)(2).)

Exceptions

Continuing law

Drug trafficking. R.C. 2925.03(B) provides that the drug trafficking prohibitions do not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with specified laws;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act" and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

Preparation of drugs for sale offenses. R.C. 2925.07(B) provides that the preparation of drugs for sale prohibition does not apply to any person listed in R.C. 2925.03(B) to the extent and under the circumstances described in that division.

Operation of the act

Due to the relocation of the preparation of drugs for sale prohibition into the drug trafficking prohibitions, the exceptions to the drug trafficking prohibitions apply to the preparation of drugs for sale prohibition. Thus, the exceptions to the preparation of drugs for sale prohibition remain unchanged under the act (R.C. 2925.03(B)).

Penalties for a violation of the preparation of drugs for sale prohibition (see **COMMENT** 1)

Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish

If the drug involved is a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(1) and 2925.03(C)(1)):

Amount of drug involved and location of offense (see COMMENT 2)	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) Bulk amount or less--	F4	No presumption	F4	No presumption
School or juvenile--	F3	No presumption	F3	No presumption
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount--	F4	No presumption	F3	Mandatory prison term
School or juvenile--	F3	No presumption	F2	Mandatory prison term
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk amount--	F4	No presumption	F2	Mandatory prison term
School or juvenile--	F3	No presumption	F1	Mandatory prison term
(4) *Exceeds* 50 times bulk amount and *does not exceed* 100 times bulk amount--	F4	No presumption	F1	Mandatory prison term
School or juvenile--	F3	No presumption	F1	Mandatory prison term

Amount of drug involved and location of offense (see COMMENT 2)	Degree of offense under existing R.C. 2925.07	Presumption for or against prison term under existing R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(5) *Exceeds* 100 times bulk amount--	F4	No presumption	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years
School or juvenile--	F3	No presumption	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

<u>Schedule III, IV, or V controlled substance</u>

If the drug involved is a Schedule III, IV, or V controlled substance, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(2) and 2925.03(C)(2)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) Bulk amount or less--	F5	No presumption	F5	No presumption
School or juvenile--	F4	No presumption	F4	No presumption
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount--	F4	Presumption for	F4	Presumption for
School or juvenile--	F3	Presumption for	F3	Presumption for
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk				

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
amount-- School or juvenile--	F4 F3	Presumption for Presumption for	F3 F2	Presumption for Presumption for
(4) *Exceeds* 50 times bulk amount-- School or juvenile--	F4 F3	Presumption for Presumption for	F2 F1	Mandatory prison term Mandatory prison term

Marihuana (but not hashish)

If the drug involved is marihuana that is not hashish, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(3) and 2925.03(C)(3)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) 200 grams or less-- School or juvenile--	F5 F4	No presumption No presumption	F5 F4	No presumption No presumption
(2) *Exceeds* 200 grams and *does not exceed* 1,000 grams-- School or juvenile--	F4 F3	No presumption No presumption	F4 F3	No presumption No presumption
(3) *Exceeds* 1,000 grams and *does not exceed* 5,000 grams-- School or	F4	No presumption	F3	No presumption Presumption for

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
juvenile--	F3	No presumption	F2	
(4) *Exceeds* 5,000 grams and *does not exceed* 20,000 grams--	F4	No presumption	F3	Presumption for
School or juvenile--	F3	No presumption	F2	Presumption for
(5) *Exceeds* 20,000 grams--	F4	No presumption	F2	Mandatory 8-year prison term
School or juvenile--	F3	No presumption	F1	Mandatory 10-year prison term

If the trafficking offense involves a gift of 20 grams or less of marihuana, it is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense, provided that, if the offense is committed in the vicinity of a school or a juvenile, it is a misdemeanor of the third degree. There is no comparable penalty provision for the prior offense of preparing drugs for sale. (R.C. 2925.03(C)(3)(g).)

Cocaine

If the drug involved is cocaine, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(4) and 2925.03(C)(4)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) 5 grams or less of cocaine that is not crack cocaine or one gram or less of crack cocaine--	F5	No presumption	F5	No presumption
School or juvenile--	F4	No presumption	F4	No presumption

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(2) *Exceeds* 5 grams of cocaine that is not crack cocaine or one gram of crack cocaine and *does not exceed* 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine--				
School or	F4	Presumption for	F4	Presumption for
juvenile--	F3	Presumption for	F3	Presumption for
(3) *Exceeds* 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine and *does not exceed* 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine--				
School or	F4	Presumption for	F3	Mandatory prison term
juvenile--	F3	Presumption for	F2	Mandatory prison term
(4) *Exceeds* 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine and *does not exceed* 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine--				
School or	F4	Presumption for	F2	Mandatory prison term
juvenile--	F3	Presumption for	F1	Mandatory prison term

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(5) *Exceeds* 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine and *does not exceed* 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F4	Presumption for	F1	Mandatory prison term
School or juvenile--	F3	Presumption for	F1	Mandatory prison term
(6) *Exceeds* 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F4	Presumption for	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years
School or juvenile--	F3	Presumption for	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

L.S.D.

If the drug involved is L.S.D., the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(5) and 2925.03(C)(5)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) 10 unit doses or less of solid L.S.D. or 1 gram or less of liquid L.S.D.--	F5	No presumption	F5	No presumption
School or juvenile--	F4	No presumption	F4	No presumption
(2) *Exceeds* 10 unit				

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
doses of solid L.S.D. or 1 gram of liquid L.S.D. and *does not exceed* 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D.--				
School or	F4	Presumption for	F4	Presumption for
juvenile--	F3	Presumption for	F3	Presumption for
(3) *Exceeds* 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D. and *does not exceed* 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D.--				
School or	F4	Presumption for	F3	Mandatory prison term
juvenile--	F3	Presumption for	F2	Mandatory prison term
(4) *Exceeds* 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D. and *does not exceed* 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D.--				
School or	F4	Presumption for	F2	Mandatory prison term
juvenile--	F3	Presumption for	F1	Mandatory prison term
(5) *Exceeds* 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D. and *does not exceed* 5,000 unit doses of solid L.S.D. or 500 grams of				

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
liquid L.S.D.-- School or juvenile--	F4 F3	Presumption for Presumption for	F1 F1	Mandatory prison term Mandatory prison term
(6) *Exceeds* 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.-- School or juvenile--	F4 F3	Presumption for Presumption for	F1 F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Heroin

If the drug involved is heroin, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(6) and 2925.03(C)(6)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) One gram or less-- School or juvenile--	F5 F4	No presumption No presumption	F5 F4	No presumption No presumption
(2) *Exceeds* one gram and *does not exceed* 5 grams-- School or juvenile--	F4 F3	Presumption for Presumption for	F4 F3	Presumption for Presumption for
(3) *Exceeds* 5 grams and *does not exceed* 10 grams-- School or juvenile--	F4 F3	Presumption for Presumption for	F3 F2	Presumption for Presumption for
(4) *Exceeds* 10 grams and *does not exceed* 50 grams-- School or	F4	Presumption for	F2	Mandatory prison term

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
juvenile--	F3	Presumption for	F1	Mandatory prison term
(5) *Exceeds* 50 grams and *does not exceed* 250 grams--	F4	Presumption for	F1	Mandatory prison term
School or juvenile--	F3	Presumption for	F1	Mandatory prison term
(6) *Exceeds* 250 grams--	F4	Presumption for	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years
School or juvenile--	F3	Presumption for	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Hashish

If the drug involved is hashish, the following chart describes the penalties for a violation of the preparation of drugs for sale prohibition under prior law and under the act (R.C. 2925.07(C)(7) and 2925.03(C)(7)):

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
(1) Ten grams or less of solid hashish or 2 grams or less of liquid hashish--	F5	No presumption	F5	No presumption
School or juvenile--	F4	No presumption	F4	No presumption
(2) *Exceeds* 10 grams of solid hashish or 2 grams of liquid hashish and *does not exceed* 50 grams of solid hashish or 10 grams of liquid hashish--				
School or	F4	No presumption	F4	No presumption

Amount of drug involved and location of offense	Degree of offense under prior R.C. 2925.07	Presumption for or against prison term under prior R.C. 2925.07	Degree of offense under R.C. 2925.03 as amended by the act	Presumption for or against prison term and mandatory prison term under R.C. 2925.03 as amended by the act
juvenile--	F3	No presumption	F3	No presumption
(3) *Exceeds* 50 grams of solid hashish or 10 grams of liquid hashish and *does not exceed* 250 grams of solid hashish or 50 grams of liquid hashish--	F4	No presumption	F3	No presumption
School or juvenile--	F3	No presumption	F2	Presumption for
(4) *Exceeds* 250 grams of solid hashish or 50 grams of liquid hashish and *does not exceed* 1,000 grams of solid hashish or 200 grams of liquid hashish--	F4	No presumption	F3	Presumption for
School or juvenile--	F3	No presumption	F2	Presumption for
(5) *Exceeds* 1,000 grams of solid hashish or 200 grams of liquid hashish--	F4	No presumption	F2	Mandatory 8-year prison term
School or juvenile--	F3	No presumption	F1	Mandatory 10-year prison term

Other penalties

Prior law

In addition to any prison term or other sanction authorized or required as specified in the chart, above, and by other provisions of the Felony Sentencing Law, prior law required a court that sentences an offender who is convicted of or pleads guilty to a violation of the preparation of drugs for sale prohibition to do all of the following that are applicable regarding the offender (R.C. 2925.07(D)):

(1) If the violation was a felony of the third degree, the court was required to impose upon the offender the mandatory fine specified for the offense under the Felony Sentencing Law unless, as specified in that Law, the court determined that the offender is indigent.

(2) The court was required to suspend the driver's or commercial driver's license or permit of the offender for not less than six months or more than five years.

(3) If the offender was a professionally licensed person, the court forthwith was required to transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency that had the administrative authority to suspend or revoke the offender's professional license. If the offender had been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules, the court forthwith was required to transmit a certified copy of the judgment entry of conviction to the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court and to either the disciplinary counsel or the president, secretary, and chairman of each certified grievance committee.

The court that sentenced an offender for a violation of the preparation of drugs for sale prohibition could impose upon the offender an additional fine as specified in the Felony Sentencing Law that was to be used solely for the support of one or more eligible alcohol and drug addiction programs as specified in that Law. The fine could not exceed the total value of any personal or real property in which the offender had an interest and that was used in the course of, intended for use in the course of, derived from, or realized through the conduct that constituted preparation of drugs for sale, including property that constituted proceeds derived from the offense. If the offender had no such interest or if the interest could not be ascertained, the fine could not exceed the amount of the mandatory fine for the offense or if no mandatory fine was imposed, the amount of the fine authorized for the level of the offense. (R.C. 2925.07(E) and 2929.18(B)(4) to (7).)

Operation of the act

Under the act, a person convicted of the relocated preparation of drugs for sale prohibition is subject to the same additional penalties as a person convicted of a drug trafficking offense under continuing law.

Under those additional penalties, in addition to any prison term authorized or required as specified in the charts under "***Penalties***," above, and by other provisions of the Felony Sentencing Law, the court that sentences an offender who is convicted of or pleads guilty to the relocated preparation of drugs for sale prohibition must do

all of the following that are applicable regarding the offender (R.C. 2925.03(D) and (G)):

(1) If the violation is a felony of the first, second, or third degree, the court must impose upon the offender the mandatory fine specified for the offense under the Felony Sentencing Law unless the court determines that the offender is indigent (*similar to prior law*).

(2) The court must revoke the offender's driver's or commercial driver's license or permit or suspend that license or permit for not less than six months or more than five years (*similar to prior law*).

(3) If the offender is a professionally licensed person, the court forthwith must transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license. If the offender has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules, the court forthwith must transmit a certified copy of the judgment entry of conviction to the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court and to either the disciplinary counsel or the president, secretary, and chairman of each certified grievance committee. (*Similar to prior law*.)

The court that sentences an offender for a violation of the relocated prohibition may impose upon the offender an additional fine as specified in the existing Felony Sentencing Law that is to be used solely for the support of one or more eligible alcohol and drug addiction programs as specified in that Law. The fine cannot exceed the total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through the conduct that constituted trafficking, including property that constitutes proceeds derived from the offense. If the offender has no such interest or if the interest cannot be ascertained, the fine cannot exceed the amount of the mandatory fine for the offense or if no mandatory fine is imposed, the amount of the fine authorized for the level of the offense. (R.C. 2925.03(H).)

Conforming changes

The act makes a number of conforming changes to reflect the repeal of R.C. 2925.07 (R.C. 2929.13(E)(1) and 2929.18(B)(4), (5), (6), and (7)).

COMMENT

1. "School" and "juvenile," when used in a chart, mean that the penalty for an offense involving a certain amount of a controlled substance is enhanced when the

offense is committed in the vicinity of a school or in the vicinity of a juvenile. If "school" or "juvenile" do not appear in a chart, the penalty listed for the offense applies regardless of the location of the offense. "Mandatory prison term," when used in a chart, means a prison term that a court is required to impose, selected from the range of prison terms authorized for a felony of the appropriate level; in some cases, the court must impose the maximum term from the range, specified in the tables. "Permissive additional prison term of one to ten years," when used in a chart, means an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years that a court is authorized to impose upon a major drug offender if the court determines it necessary to punish the offender and protect the public or to underscore the seriousness of the offense.

2. The act does not include changes to R.C. 2925.03 that were made by Am. Sub. S.B. 107 of the 123rd General Assembly, effective March 23, 2000. In general, these changes revised the ranges of the amounts of the drug involved in a trafficking offense that are used to determine the penalty for the offense. Prior to Am. Sub. S.B. 107, the ranges used the terminology "exceeds X grams but does not exceed Y grams," but, after Am. Sub. S.B. 107, the ranges use the terminology "equals or exceeds X grams but is less than Y grams." This analysis does not reflect the changes made by Am. Sub. S.B. 107.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
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