Housing Rights for Survivors Who Have Interacted with the Criminal Justice System: Admissions and Nuisance Ordinances

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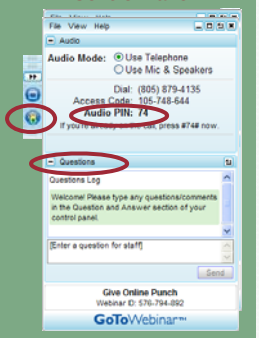

Housekeeping

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- Materials were emailed yesterday and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at http://nhlp.org/node/1484/
- MCLE certificates will be emailed to California attorneys.

Today We'll Cover

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- Barriers to access federally assisted housing faced by domestic violence survivors who have interacted with the criminal justice system
- Laws and rules affecting access to housing for such persons
- Strategies (Case Examples) for helping such survivors to obtain housing
- Policies that can improve housing access for survivors who have interacted with the criminal justice system

Discussion

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- What are some reasons why a domestic violence survivor might have interacted with the criminal justice system (including police reports, an arrest, conviction, or guilty plea)?
- Enter answers in the Questions Box.

The Problem

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- Survivors often have interacted with the criminal justice system:
  - Survivors who acted in self-defense simply plead to charges.
  - Survivors who are limited English proficient may be unable to communicate with law enforcement.
  - Survivors commit criminal acts (i.e. prostitution, selling or taking drugs) under threats or coercion from their abusers.
- Many housing providers adopt overly restrictive admission policies for criminal history.
- As a result, criminal history is frequently a barrier for survivors applying for housing.

Housing and Criminal History: Laws and Rules

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AN OVERVIEW OF THE HOUSING LAW POLICIES THAT AFFECT HOUSING APPLICANTS INTERACTING WITH THE CRIMINAL JUSTICE SYSTEM

Federal Housing Rules

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- There are federal rules that apply to Public Housing Agencies (PHAs) and Owners of certain "Federally Assisted Housing."
- The term "Federally Assisted Housing" is defined in the statute, includes the largest affordable housing programs (Public Housing, Section 8 Voucher and Project-based Section 8)
- But does not apply to all housing that is federally assisted
- Thus the following rules are not applicable to some federally assisted housing.

"Federally Assisted Housing": Restricted Programs

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Public Housing Agency (PHA)-Administered Programs
Public housing
Section 8 voucher program
Section 8 moderate rehab

Rural Development (RD) Programs
Section 514 and 515* Rural Housing

HUD-Assisted Programs
Project-based Section 8
Section 202 elderly housing
Section 811 supportive housing for people with disabilities
Section 221(d)(3) Below Market Interest Rate Program
Section 236 Rental Program

*A federal statute extends the criminal history bars to Section 514 and 515 Rural Housing, but United States Department of Agriculture regulations do not make the bars mandatory.

Federal Housing Programs Without Restrictions

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NO Federal Restrictions
Low-Income Housing Tax Credit (LIHTC)
Shelter Plus Care (serves homeless persons with disabilities)
Supportive Housing Program for the Homeless
Housing Opportunities for Persons with AIDS (HOPWA)

Federal Housing Rules

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- PHAs and Owners must deny applicants for two types of criminal activity:
  - PHAs and Owners must deny an applicant if any member of the family is a lifetime registered sex offender.
  - A PHA only must deny an applicant if any member was convicted of methamphetamine manufacture/production on the premise of "Federally Assisted Housing."
- PHAs and Owners must adopt policies to deny admission to current users of illegal drugs.
  - Voucher landlords are responsible for screening tenants.

Federal Housing Rules

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- For other types of criminal activity, the PHA or Owner:
  - May adopt rules to deny admission to the housing or the program for drug related, violent criminal activity or other criminal activity.
  - May consider mitigation; PHAs for public housing are required to consider time, place and seriousness of the activity.

Local or Owner Adopted Admission Policies

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- Most PHAs and Owners adopt local admission policies regarding applicants who have interacted with the criminal justice system.
  - ACOP, Administrative Plan, Tenant Selection Policy
- Restrictions re: those polices:
  - Denial permitted only if engaged in criminal activity during a reasonable period of time before admission decision. 42 USC § 13661; *James v. Park Place*
  - Arrests alone may be insufficient to show that applicant was a threat to safety and welfare of the community. *Landers v. Chicago HA*, 936 NE2d 735 (2010)
  - Threaten the health, safety, or right to peaceful enjoyment of the premises by other residents

HUD's Position

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- Letters from HUD Secretary Donovan to all PHAs (6/17/2011) and to Owners (3/14/2012):
  - Encourages PHAs and Owners to allow ex-offenders to rejoin their families in federally assisted housing, where appropriate
  - Says that PHAs and Owners should consider evidence of rehabilitation and evidence of the applicant's participation in social services
  - Notes the explicit bans on occupancy based on criminal history
- Letters have been used in working with housing providers on their admissions policies.

"Federally Assisted Housing": Denial Process

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- A written notice of denial is required, stating:
  - The reasons for the denial.
    - A simple statement that the "applicant did not meet the standards for admission" is not sufficient.
  - How and when the applicant can contest the decision.
  - That a person with a disability may request a reasonable accommodation.
- Applicant file should be available for review upon request.
- Special rules if PHA obtains criminal record for PHA or Owner

"Federally Assisted Housing": Informal Review

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- An applicant is entitled by statute, regulations, and/or due process to a review of the decision.
  - The nature of the review varies by program.
  - The review must provide the applicant a reasonable opportunity to contest the basis for the decision.
- The PHA or Owner must provide a written decision within a reasonable period of time after the review/hearing stating the reasons supporting the decision and the evidence relied upon.

VAWA Rules Relating to Denial of Assistance

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VAWA Admission Protections for DV Survivors

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- Violence Against Women Act (VAWA) 2005 and 2013
- An applicant for housing under a "covered housing program" may not be denied admission to or denied assistance under the housing program on the basis that the applicant is or has been a victim of DV, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for admission
- 42 USC § 14043e-11(b); 24 CFR § 5.2005(b)

VAWA Admission Protection for DV Survivors

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- Applicant must qualify for admission or assistance
  - Income eligible 50-80% of AMI
  - Targeted to ELI (30% of AMI)
  - One member is U.S. Citizen or w/ qualifying immigration status
  - Preferences? DV preference?
  - Hard units
    - For general occupancy or only elderly &/or disabled
    - BR sizes?
  - Waiting list (Open or Closed; How long? Priorities?)
- VAWA applies to "covered housing programs"
  - More expansive definition than "Federally Assisted Housing"

VAWA 2005 & 2013: Covered Housing Programs

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Programs that were covered by VAWA 2005:	Programs added by VAWA 2013:
Public Housing	**Other HUD programs**
Section 8 vouchers	• § 236 Multifamily rental housing
Project-based Section 8	• § 221d3 BMIR (Below Market Interest Rate)
Section 202 Supportive Housing for the Elderly*	• HOME
Section 811 Supportive Housing for People with Disabilities*	• HOPWA (Hous. Opp. for Pple w/AIDS)
	• McKinney-Vento (Homelessness Programs)
	Department of Agriculture
	• Rural Development (RD) Multifamily
	Department of Treasury/IRS
	• Low-Income Hous. Tax Credit (LIHTC)

*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.

Poll

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- Under VAWA, can landlords of "covered housing programs" deny housing to a DV survivor based on criminal history related to the violence against her?

HUD's Position on DV & Criminal History

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- HUD VAWA 2005 final regulations, 75 Fed. Reg. 66255, 24 C.F.R. § 982.553(e):
  - "HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking …"
    - Note that VAWA 2013 also protects survivors of sexual assault; final regulations for VAWA 2013 not yet issued

Fair Housing Act

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All Housing: Antidiscrimination Laws

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- In general, a private landlord can deny an applicant on the basis of prior criminal activity.
- But, the Fair Housing Act offers some protection:
  - A blanket rule against renting to individuals with a prior arrest or conviction could constitute race discrimination due to its disparate impact on people of color.
  - Applicants with criminal history related to a disability may seek an exception to an admissions policy (see next slide).
- Local laws may also offer some protection:
  - A few cities bar discrimination based on criminal history.

All Housing: Fair Housing Act & Disability

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- If a survivor's criminal history is related to a disability, he/she may be able to seek an exception to an admissions policy as a "reasonable accommodation."
  - Past addiction can be a disability. A housing provider can be asked to disregard a survivor's pre-rehabilitation convictions where the convictions arose from the survivor's addiction.
  - May be successful if survivor can show that he/she hasn't used substances for a period of time, criminal activity ceased once he/she entered rehab, and/or he/she is receiving supportive services.
  - Note: Current use of illegal substances is not a disability under the Fair Housing Act

Examples of the Impact of Criminal Screening on Survivors

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Barriers to Applying for Housing: Jan

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- Six years ago, at the advice of her attorney, Jan pleaded guilty to assaulting her abuser, even though she acted in self-defense.
- Jan submitted an application for housing at a project-based Section 8 development.
- The property manager at the project denied Jan's application, stating that she failed to meet the complex's criminal screening criteria.

Tenant Selection Plan Language

CRIMINAL CONVICTION CRITERIA

1. Upon receipt of the rental application and screening charge, landlord will conduct a search of public records to determine whether the applicant or any proposed tenant has been convicted of, or pled guilty to or no-contest to, any crime.
   a) A conviction, guilty plea or no-contest plea for any felony ever involving serious injury, kidnapping, death, arson, rape, sex crimes and/or child sex crimes, extensive property damage or drug-related offenses (sale, manufacture, delivery or possession with intent to sell) class A/felony burglary or class A/felony robbery shall be grounds for denial of the rental application.
   b) A conviction, guilty plea or no-contest plea for any other felony (other than listed above) where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.
   c) A conviction, guilty plea or no-contest plea for any misdemeanor or gross misdemeanor involving assault, intimidation, sex related, drug related (sale, manufacture, delivery or possession with intent to sell) property damage, weapons charges, obscenity and related violations where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.

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What Can Jan Do?

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- Jan can request an informal meeting with the owner. Jan could:
  - Explain circumstances surrounding the guilty plea. Include evidence of DV and note VAWA protections.
  - Argue that a policy of looking at a guilty plea entered 6 years ago is unreasonable since Jan had no other criminal history.
  - Submit letters of support from a DV agency and employer, and evidence of participation in social services programs.
  - Emphasize changed circumstances.

Example: Excerpts from Advocacy Letter

(b) Good behavior

Ms. F's prison record and her conduct after release have been exemplary. Ms. F does not merely stay out of trouble; she is actively involved in positive endeavors. Her activities include helping other battered women and educating the public about the effects of domestic violence.

c) Rehabilitation

Ms. F has undergone years of counseling and treatment for the psychological condition known as battered women's syndrome. While in prison, she took optional classes to learn more about many subjects, including spousal abuse and battered women's syndrome. As a result of her increased knowledge and counseling, she is not likely to involve herself in an abusive relationship again.

(d) Changed circumstances

Ms. F's circumstances have changed drastically. She no longer lives in an abusive environment. This should alleviate any concerns you may have about the health and safety of other residents. Moreover, due to extensive counseling and education, it is implausible that Ms. F will get involved in another abusive relationship. Her focus today is on her children, her grandchildren, her volunteer work, her arts and crafts, and her health.

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Barriers to Applying for Housing: Mina

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- Mina applied for public housing and was asked to complete an application.
  - Applicants were required to disclose "all criminal history."
  - Mina was arrested twice for assault, both times because officers believed her abuser, whose English was superior to hers.
  - Mina disclosed the arrests on her application, but made a note that the charges were dropped in both cases.
- The public housing agency (PHA) denied Mina's application because of her "past criminal activity."

What Can Mina Do?

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- Mina can request an informal hearing with the PHA. Mina could argue:
  - Arrests alone do not prove criminal activity.
  - Denying housing based solely on arrests is arbitrary, because arrests cannot indicate a tenant's propensity for violence.
  - PHAs must consider mitigating circumstances in reviewing public housing applications.
  - Discrimination against DV survivors violates VAWA and fair housing laws.
  - Denying housing based solely on arrests has a disparate impact on people of color, violating fair housing laws.
- Check whether state laws offer additional protections.

Discussion

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- How you would handle Jan or Mina's case?
- Use Questions Box to provide suggestions.

Examples of Policies Adopted to Improve Criminal Screening for Survivors

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ATTORNEYS AND ADVOCATES HAVE PLAYED A ROLE IN ASSISTING PHAs AND OWNERS TO ESTABLISH POLICIES THAT IMPROVE SURVIVORS OPPORTUNITIES TO OBTAIN AFFORDABLE HOUSING

Improvements to Local Policies

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- Advocates have worked with housing providers to adopt reasonable policies on prior criminal activity, and with supportive housing providers to create model policies or plans.
- Plans include ACOP, Administrative Plan, Tenant Selection Plan, Consolidated Plan, and QAP.
  - Advocates have successfully changed PHA policies that considered arrests or that looked at all criminal convictions, regardless of how old.
  - Advocates have worked to create model policies for supportive housing providers.

Lansing, Michigan

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- The housing authority's policy provides:
  - When screening reveals negative information, such as a prior arrest, inquiries will be made regarding the circumstances contributing to the negative reporting, to ascertain whether it was the consequence of DV against the applicant.
  - Any inquiries will make clear that applicants have a right to keep any history of DV against them confidential.
  - When inquiries reveal that the negative reporting was the consequence of DV, the applicant will not be denied housing.

San Mateo County, California

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- The housing authority's policy provides:
  - The housing authority acknowledges that a victim of DV may have an "unfavorable history" that would warrant denial.
  - If the housing authority decides to deny admission to an applicant, it will include in its notice of denial a statement regarding VAWA's protections.
  - The housing authority will also offer the applicant an opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is a victim of DV.

San Francisco

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- The City of San Francisco applied a model policy to a local operating subsidy program (LOSP). Language is now included in the LOSP contract.
  - No absolute bar for applicants who have a criminal record
  - Individual circumstances of each applicant must be considered
  - Cannot consider arrests that do not result in conviction
  - Cannot consider juvenile adjudications
  - Can only consider offenses that occurred in the prior 3 years (except in exceptional situations)
  - Always consider mitigating circumstances
  - Always consider impact of DV upon applicant's history

Fair Chance Ordinance

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- San Francisco's Board of Supervisors unanimously voted to pass the Fair Chance Ordinance on February 4, 2014. The Act applies to all city-funded affordable housing providers.
  - A housing provider can only ask about criminal history after it has determined that the applicant is legally eligible and qualified to rent the housing unit.
  - Can only ask about certain criminal history (can never ask about arrests not leading to convictions, juvenile adjudications, others)
  - Must make individual assessments when considering criminal history of applicant (directly-related convictions only)
  - Notice requirements and enforcement

Resources

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- NHLP's guidebook, An Affordable Home on Reentry, http://www.nhlp.org/guidebooks
- NHLP's OVW grantees website, http://nhlp.org/OVWgrantees
- NHLP's Reentry website, http://nhlp.org/resourcecenter?tid=86
- HUD Housing Programs: Tenant Rights (NHLP)

Nuisance Ordinances:

Their Impact On the Housing Security of Domestic Violence Victims and Potential Legal Challenges

Michaela Wallin, Equal Justice Works Fellow
at The ACLU Women's Rights Project

ACLU AMERICAN CIVIL LIBERTIES UNION FOUNDATION WOMEN'S RIGHTS PROJECT

What Are Nuisance Ordinances?

- Also known as crime free ordinances or disorderly house laws
- A growing national trend
- The types and forms of these ordinances vary by community
  - Common thread is they declare a property a "nuisance" where a certain number of calls for police service or alleged criminal activity at the residence
  - Once a property is cited, these ordinances impose penalties that may indirectly or directly require removal of tenant from residence or impose sanctions on the landlord
  - The vast majority do not have carve outs or exceptions for victims of crime or for residents who otherwise require police or emergency services at their home
- Have serious, negative effects on victims of domestic violence, persons with disabilities, and communities of color.

Why Are These Ordinances Harmful to DV Victims…and Communities?

- Force survivors to choose between housing security and immediate physical safety
- Undermine offender accountability
- Can become a powerful tool for abusers
- Chilling effect on enforcement of orders of protection & willingness to call police
- Force landlords to discriminate, running afoul of federal, state, and local anti-discrimination protections
- Harm victim's housing rental history and long-term housing security

Federal Litigation Involving DV Victims & Nuisance Ordinances

- **Briggs v. Borough of Norristown, et al., brought by ACLU Women's Rights Project**
  - Federal and constitutional claims
  - Settled with money damages, repeal of ordinance, and promise not to enact a similar ordinance in the future
  - HUD investigation and conciliation agreement
- **Additional litigation:**
  - Grape v. Town/Village of East Rochester. NY et al.
  - Peeso v. City of Hornell, New York, et al.

Legal Concerns

- FIRST AMENDMENT: RIGHT TO PETITION
- FOURTEENTH AMENDMENT: DUE PROCESS
- FOURTH AMENDMENT: SEARCH AND SEIZURE
- THE FEDERAL FAIR HOUSING ACT
- THE FEDERAL VIOLENCE AGAINST WOMEN ACT

Violations of Constitutional Rights

First Amendment: Right to Petition the Government

- When nuisance ordinances penalize individuals on the basis of calls to the police, they may chill or burden domestic violence survivors' First Amendment Rights.

Fourteenth Amendment: Due Process

- Many nuisance ordinances provide insufficient notice of cited nuisance activity and penalties, as well as insufficient opportunity to challenge a citation.

Fourth Amendment: Search and Seizure

- Ordinances that require condemnation or periodic property inspections may violate the Fourth Amendment if they do not provide adequate notice or process to contest these actions.

Violations of The Federal Fair Housing Act

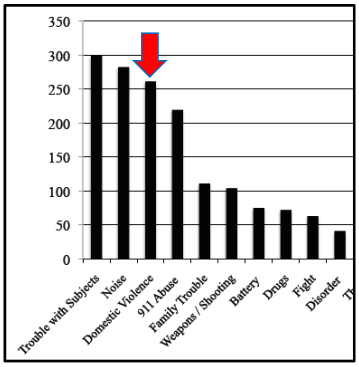
Disparate Treatment

- Intentional discrimination against women, including gender stereotyping

Disparate Impact

- Policies that disproportionately impact women.

Ten Most Documented Nuisance Activities under Milwaukee's Nuisance Ordinance*



* Mathew Desmond and Nicol Valdez, Unpolicing the Urban Poor: Consequences of Third Party Policing for Inner-City Women, 78 Am. Soc. Rev. 117, 131-132 (Feb. 2013).

Violations of the Violence Against Women Act

VAWA's housing protections prohibit covered housing programs from evicting a tenant based on her status as a victim of gender based violence.

Yet many nuisance ordinances can require public housing authorities, Section 8 landlords, and other owners of federally subsidized housing to evict victims based on the violence they have experienced.

Examples of Legislative Advocacy

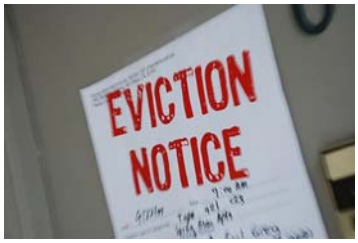
- Pennsylvania, Act 200: Enacted October, 2014
- Additional state-wide legislation

Is a Nuisance Ordinance at the Root of Your Client's Problem?

- COMMONLY ENCOUNTERED SCENARIOS
- CONSIDERATIONS FOR ATTORNEY AND ADVOCATES

Scenarios: Formal and Informal Eviction

- *A survivor receives an eviction notice that cites nuisance ordinance violations.*
- *A landlord asks a tenant to leave or refuses to renew her lease on the basis of her use of police services or violence committed against her.*



Scenarios: Refusal to Call 911

- *A victim of domestic violence or other crime refuses to call 911 for fear of losing her housing.*
- *A landlord instructs a tenant that she must stop calling the police or she may face eviction.*

Considerations for Attorneys and Advocates

- When encountering an individual facing eviction:
  - Was the eviction prompted by an abuser's activities such as violence, property damages, or noise, and/or police response to such activities?
  - Did the eviction notice cite an ordinance, warning, or police report?
- When encountering a domestic violence victim who is required to leave her housing or seeking to relocate:
  - Is this required because of violence or police response?
  - Is this an informal eviction or based on refusal to renew a lease?
- When encountering a domestic violence victim who is afraid to call the police:
  - Was the victim told by police, property owners, or anyone else that calling the police would result in her eviction?

Contact Us!

Please contact Sandra Park at spark@aclu.org and Michaela Wallin at mwallin@aclu.org.

NHLP Contact Information

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