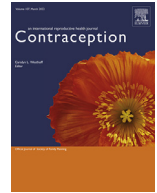




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Original Research Article

An exploratory examination of attitudes toward illegal abortion in the U.S. through endorsement of various punishments☆☆☆

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ABSTRACT

Objectives: We examined people's (1) attitudes about abortion using an item from Pew Research Center (i.e., whether abortion should be legal in all cases, legal in most cases, illegal in most cases, or illegal in all cases) and (2) support for different punishments if abortion were illegal in all cases for different people involved in the abortion—the pregnant person, their partner, an informant and the healthcare provider.

Study design: We administered a web-based survey to 2,204 U.S. adults using quota-based sampling. Post-stratification weights were applied to the data so that the sample was comparable to U.S. benchmarks for gender, race, Hispanic ethnicity, age, education, and political affiliation. We compared endorsement of various punishments for a pregnant person, their partner, informant, and healthcare provider. Additionally, we compared the endorsement of these punishments across response options of Pew's abortion legality item.

Results: Overall, most of our sample indicated that abortion should be legal in most (34%) or legal in all scenarios (21%). However, if abortion were illegal in all circumstances, most of our sample supported some form of punishment for the pregnant person (72%–75%), their partner (65%–68%), and healthcare providers (70%–71%), but not informants (47%–49%). Among the endorsed punishments, therapy/education typically received the most support.

Conclusions: Because of the *Dobbs v. Jackson Women's Health Organization* decision and the subsequent overturning of *Roe v. Wade*, abortion is illegal in a significant number of states and a punishable offense. Our findings suggest that current punishments associated with many of these laws are counter to public sentiment.

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Implications

Despite majority support for some punishment, the categories of "no punishment" or therapy/education had the most support. Given the lack of plurality or majority support for fines

or incarceration, abortion laws including these punishments, including bounty-style laws passed in Texas and Oklahoma, may be out of step with public opinion.

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1. Introduction

Significant changes to the abortion policy landscape in the United States abound since 2010 [1]. In 2017, 2018, and 2020, 3 conservative justices—presumed to favor overturning *Roe v. Wade* (i.e., the Supreme Court decision establishing abortion prior to viability as a constitutionally protected right [2])—were appointed to the Supreme Court of the United States. In 2021, Texas passed a law (SB8) restricting abortion at about 6 weeks and criminalizing

pregnant people, providers, and others who provide support or information. And most notably, in 2022, the Supreme Court upheld a 2018 Mississippi law restricting abortion after 15 weeks (*Dobbs v. Jackson Women's Health Organization* [i.e., *Dobbs v. Jackson*]), and subsequently overturned *Roe v. Wade*. As a result, abortion is or will soon be illegal in many states except in rare circumstances (e.g., life endangerment for the pregnant person [3]). Given this context, we examined public opinion associated with *illegal* abortion by assessing endorsement of various punishments for illegal abortion.

Abortion attitudes are primarily assessed in national polls and surveys using a legality framework, meaning questions assess the extent that people believe abortion should be legal [4–6]. For example, the General Social Survey [6,7]—asks “Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...” followed by 6 specific scenarios and a seventh general circumstance if a woman wants an abortion for any reason. Pew Research Center asks whether abortion should be: *legal in all cases, legal in most cases, illegal in most cases, or illegal in all cases* and Gallup asks whether people believe abortion should be: *legal under all circumstances, legal under certain circumstances, or illegal in all circumstances*. Trend data from these 3 sources show relative consistency in people’s attitudes, with smaller percentages of people supporting extreme positions (e.g., abortion should be *legal in all or illegal in all cases*) and greater percentages of people falling somewhere in the middle—that abortion should be legal in some cases and illegal in others [4,5,8,9].

These findings do not provide a complete understanding of people’s attitudes. Many people indicate abortion should *not be legal* in certain contexts, implying that abortion should be *illegal*. If abortion is illegal, legal sanctions for abortion are required. Survey questions that only assess if abortion should be legal allow respondents to indicate that abortion should be illegal without having to think about the implications of abortion illegality.

Some states have or will make abortion illegal outright or very early in pregnancy (e.g., after about 6 weeks) and proscribe specific consequences for those seeking, providing, or helping someone obtain an abortion [10]. Given the *Dobbs v. Jackson* decision, states have far more latitude in restricting abortion, resulting in legal consequences for actors involved in abortion. We examined attitudes regarding punishments, specifically the extent that people believe different punishments should be applied to different actors involved in abortion—pregnant people, partners, informants (i.e., people aiding someone seeking abortion), and providers. Such information provides a more comprehensive understanding of people’s attitudes toward abortion legality, informing legislatures about constituents’ opinions on this relevant issue.

Our study was guided by 3 research questions: (1) do people support punishing different actors (i.e., pregnant people, partners, informants, and providers) involved in obtaining an illegal abortion, (2) what punishments do people endorse for different actors involved in obtaining an illegal abortion, and (3) how does the endorsement of different punishments vary across factors such as general views regarding abortion legality, racial and ethnic identity, region, and state abortion landscape.

2. Materials and methods

2.1. Data collection

Between January and August of 2021, adults 18 years of age or older and living in the U.S. were recruited from Qualtrics’ national pool (i.e., an opt-in online panel) and sent incentivized invitations to participate in a web-based survey (Table 1). Eligibility requirements included residing in the U.S. and being able to read in English. We used quota sampling to obtain a diverse sam-

Table 1

Respondent characteristics of a U.S. quota-based sample from 2021 examining attitudes toward illegal abortion and punishments for illegal abortion (n=2,204)

| | N or weighted mean | Weighted % or SD |
|-------------------------------------|--------------------|------------------|
| Gender | | |
| Men | 972 | 45.9 |
| Women | 1,205 | 53.0 |
| Non-binary | 27 | 1.1 |
| Race | | |
| White | 790 | 74.5 |
| Black | 493 | 12.9 |
| Other | 921 | 12.6 |
| Hispanic ethnicity | | |
| Not hispanic | 1,579 | 82.7 |
| Hispanic | 625 | 17.3 |
| Age | 48.6 | 18.1 |
| Education | | |
| HS or less | 557 | 40.4 |
| Some college/jr. college/associates | 744 | 31.7 |
| Bachelor degree | 554 | 17.9 |
| Graduate degree | 349 | 10.0 |
| Region | | |
| West | 519 | 20.2 |
| Northeast | 395 | 17.4 |
| Midwest | 384 | 21.6 |
| South | 905 | 40.8 |
| Political affiliation | | |
| Democrat | 729 | 27.7 |
| Republican | 590 | 23.8 |
| Independent | 707 | 40.1 |
| No affiliation | 178 | 8.4 |
| Abortion legal/illegal | | |
| Illegal in all cases | 261 | 13.6 |
| Illegal in most cases | 691 | 32.2 |
| Legal in most cases | 768 | 33.7 |
| Legal in all cases | 484 | 20.6 |
| State climate | | |
| Restrictive | 1,158 | 57.1 |
| Restrictions & protections | 236 | 9.8 |
| Protective | 809 | 33.1 |

ple based on gender (50% women; 50% men), age (12.8% 18–24; 17.7% 25–34; 16.7% 35–44; 17.7% 45–54; 16.4% 55–64; and 18.8% 65+), race/ethnicity (25% Black/African American; 25% Hispanic; 25% other; 25% White), and political affiliation (30% Democrat; 30% Republican; 30% Independent; 10% Other). Because some of our quotas were disproportionate compared with the U.S. population, we used the *ipfweight* command in Stata to generate weights so that our sample was comparable to population estimates across several benchmarks [11]. Data were weighted on gender, race, Hispanic ethnicity, age, education, and political affiliation. With the exception of political affiliation, all benchmarks were based on the 2018 American Community Survey [12]. For political affiliation, we obtained benchmarks from the General Social Survey [6]. This study was approved by the Institutional Review Board at Indiana University.

2.2. Measures

Respondents first completed a series of questions assessing demographic characteristics and whether abortion should be *legal in all cases, legal in some cases, illegal in some cases, or illegal in all cases* (i.e., Pew’s item). Next, respondents were asked a series of questions assessing perceptions of potential punishments they would support “if abortion were illegal in all cases” for: the pregnant person, their partner, informants, and providers. The punishments ranged from no punishment to the death penalty (see Tables 2 and 3 for response options). Respondents could select all that apply.

Table 2
US adults overall endorsement of most severe punishments and % selecting a less severe punishment if abortion were illegal in all circumstances in 2021: pregnant person and partner (n=2,204)

| | Most severe | | Also endorsed less severe punishment |
|--------------------------------|-------------|------|--------------------------------------|
| | n | % | % |
| Pregnant person | | | 16.4 |
| No punishment | 543 | 25.4 | |
| Therapy/education | 702 | 30.6 | |
| Fine | 444 | 20.1 | 29.7 |
| Fine: \$1,000 | 184 | 8.2 | |
| Fine: \$5,000 | 143 | 7.0 | |
| Fine: \$25,000 | 117 | 5.0 | |
| Jail or prison | 347 | 15.9 | 51.9 |
| Jail: 1 Y | 234 | 10.7 | |
| Prison: 10 Y | 113 | 5.2 | |
| Life sentence or death penalty | 72 | 3.0 | 42.7 |
| Prison: life | 36 | 1.6 | |
| Death penalty | 36 | 1.4 | |
| Other | 96 | 5.1 | 19.1 |
| Partner | | | 14.9 |
| No punishment | 697 | 32.3 | |
| Therapy/education | 507 | 22.8 | |
| Fine | 488 | 20.9 | 26.0 |
| Fine: \$1,000 | 192 | 8.6 | |
| Fine: \$5,000 | 164 | 6.9 | |
| Fine: \$25,000 | 132 | 5.5 | |
| Jail or prison | 315 | 13.9 | 52.3 |
| Jail: 1 Y | 209 | 10.1 | |
| Prison: 10 Y | 106 | 3.8 | |
| Life sentence or death penalty | 75 | 3.3 | 31.1 |
| Prison: life | 36 | 1.7 | |
| Death penalty | 39 | 1.6 | |
| Other | 122 | 6.8 | 17.4 |

Bolded % represent total selecting multiple punishments for each actor

Table 3
US Adults overall endorsement of most severe punishments and % selecting a less severe punishment if abortion were illegal in all circumstances in 2021: informant and Provider (n=2,204)

| | Most severe | | Also endorsed less severe punishment |
|--------------------------------|-------------|------|--------------------------------------|
| | n | % | % |
| Informant | | | 7.6 |
| No punishment | 1,130 | 50.7 | |
| Therapy/education | 326 | 16.6 | |
| Fine | 454 | 20.0 | 14.3 |
| Fine: \$1,000 | 233 | 9.8 | |
| Fine: \$5,000 | 130 | 5.9 | |
| Fine: \$25,000 | 91 | 4.3 | |
| Jail or prison | 185 | 7.3 | 53.5 |
| Jail: 1 Y | 127 | 5.1 | |
| Prison: 10 Y | 58 | 2.2 | |
| Life sentence or death penalty | 37 | 1.8 | 35.1 |
| Prison: life | 20 | 1.0 | |
| Death penalty | 17 | 0.8 | |
| Other | 72 | 3.6 | 6.2 |
| Provider | | | 20.2 |
| No punishment | 611 | 28.7 | |
| Therapy/education | 205 | 8.5 | |
| Loss of license | 312 | 14.3 | 4.2 |
| Fine | 516 | 22.8 | 21.7 |
| Fine: \$1,000 | 187 | 8.2 | |
| Fine: \$5,000 | 148 | 6.1 | |
| Fine: \$25,000 | 181 | 8.5 | |
| Jail or prison | 380 | 17.0 | 65.7 |
| Jail: 1 Y | 196 | 9.6 | |
| Prison: 10 Y | 184 | 7.4 | |
| Life sentence or death penalty | 90 | 3.9 | 54.7 |
| Prison: life | 50 | 2.6 | |
| Death penalty | 40 | 1.3 | |
| Other | 90 | 4.8 | 29 |

Bolded % represent total selecting multiple punishments for each actor

We created 3 aggregate-level variables for selecting any fine amount (*Any Fine*), a time-limited jail or prison sentence, (*Jail or Prison*), and either life in prison or the death penalty (*Life in Prison or Death Penalty*). Some respondents selected multiple punishments ranging in severity. To account for this, in addition to identifying the most severe punishment selected by respondents, we identified respondents that also selected additional less severe punishments. For example, if a participant endorsed therapy/education, fines, and prison, they were counted as also endorsing prison for their *most* severe punishment and coded as also selecting a less severe punishment.

2.3. Analysis

We reported the frequency of endorsement for each punishment as the most severe punishment in the overall sample. We also reported the percentage for the collapsed categories of *Any Fine*, *Jail or Prison*, and *Life in Prison or Death Penalty* and the percentage of respondents who also selected a less severe punishment. We then compared endorsement of the different punishments across responses to a question frequently used by Pew: “Do you think abortion should be: legal in all cases, legal in most cases, illegal in most cases, and illegal in all cases?” for all 4 actors. In our online supplemental material we also provide tables of respondents’ endorsement of all selected punishments—not just the *most* severe punishments— and tables for comparisons across race/ethnicity, political affiliation, and Guttmacher’s state abortion landscape [13].

3. Results

Table 1 provides raw frequencies and weighted percentages for the sample demographics. Our sample distribution across all 4 le-

gality categories was generally similar to that of Pew’s from 2021 [5]. However, the proportion selecting *Legal in all cases* was 4 percentage points lower than Pew’s sample and the proportion selecting *Illegal in all cases* was 6 percentage points higher than Pew’s.

3.1. Overall endorsement of punishments

Tables 2 and 3 show the raw frequencies and weighted percentages for overall endorsement of the *most* severe punishments for the pregnant person, partner, informant, and provider. Most respondents endorsed at least 1 punishment for 3 of the 4 actors—75% for pregnant person, 68% for partner, and 71% for healthcare provider. Approximately 49% of the sample endorsed a punishment for the informant.

When examining specific punishment categories, the plurality of the sample endorsed therapy/education for the pregnant person (31%). The plurality of respondents also endorsed no punishment for the partner (32%), informants (51%), and provider (29%). Overall, there was relatively low endorsement for jail or prison for any of the actors. And for all of the actors, the majority of respondents who did endorse jail or prison also endorsed a less severe punishment.

3.2. Endorsement of punishments across legality

Table 4 provides raw frequencies and weighted percentages for the *most* severe punishment endorsed and the percent who endorsed a less severe punishment broken down across the 4 legality responses. Except for the pregnant person, no punishment had plurality or majority support for all of the actors in the *legal in most* and *legal in all* groups. For the pregnant person and their

Table 4

US adults endorsement of most severe punishments and % selecting a less severe punishment if abortion were illegal in all cases across the four general legality response groups in 2021 (n=2,204)

| | Illegal in all (n=261) | | | Illegal in most (n=691) | | | Legal in most (n=768) | | | Legal in all (n=484) | | |
|------------------------|------------------------|--------------------------------------|------|-------------------------|--------------------------------------|------|-----------------------|--------------------------------------|------|----------------------|--------------------------------------|------|
| | Most severe | Also endorsed less severe punishment | | Most severe | Also endorsed less severe punishment | | Most severe | Also endorsed less severe punishment | | Most severe | Also endorsed less severe punishment | |
| | | n | % | | % | n | | % | % | | n | % |
| Pregnant person | | | | | | | | | | | | |
| No punishment | 17 | 5.8 | | 61 | 11.5 | | 207 | 29.1 | | 258 | 54.2 | |
| Therapy/education | 51 | 19.2 | | 205 | 30.4 | | 313 | 39.4 | | 133 | 23.8 | |
| Fine | 62 | 26.9 | 37.6 | 168 | 21.8 | 38.3 | 154 | 19.5 | 23.9 | 60 | 13.7 | 11.2 |
| Jail or prison | 83 | 29.8 | 47.0 | 183 | 26.4 | 52.2 | 62 | 6.4 | 65.4 | 19 | 5.8 | 41.8 |
| Death Penalty/life | 34 | 11.2 | 23.1 | 26 | 3.0 | 55.3 | 7 | 0.7 | 56.5 | 5 | 1.4 | 94.1 |
| Other | 14 | 7.0 | 11.1 | 48 | 6.9 | 24.7 | 25 | 4.9 | 14.0 | 9 | 1.1 | 34.4 |
| Partner | | | | | | | | | | | | |
| No punishment | 27 | 12.4 | | 111 | 16.4 | | 282 | 38.5 | | 277 | 60.3 | |
| Therapy/education | 43 | 18.9 | | 165 | 25.8 | | 215 | 27.3 | | 84 | 13.6 | |
| Fine | 77 | 27.8 | 36.6 | 176 | 21.2 | 32.2 | 158 | 20.0 | 18.9 | 77 | 17.4 | 16.4 |
| Jail or prison | 68 | 22.2 | 47.4 | 156 | 23.5 | 55.7 | 68 | 7.3 | 51.5 | 23 | 3.9 | 40.8 |
| Death Penalty/life | 27 | 11.0 | 35.9 | 24 | 2.8 | 17.5 | 12 | 1.6 | 37.0 | 12 | 1.7 | 36.1 |
| Other | 19 | 7.7 | 5.3 | 59 | 10.4 | 12.5 | 33 | 5.3 | 25.8 | 11 | 3.1 | 39.6 |
| Informant | | | | | | | | | | | | |
| No punishment | 45 | 16.8 | | 246 | 37.8 | | 479 | 62.1 | | 360 | 74.6 | |
| Therapy/education | 57 | 25.7 | | 121 | 20.6 | | 103 | 13.9 | | 45 | 8.7 | |
| Fine | 83 | 32.0 | 12.3 | 193 | 23.8 | 20.1 | 120 | 15.8 | 10.8 | 58 | 13.0 | 8.1 |
| Jail or prison | 51 | 15.3 | 56.7 | 79 | 9.9 | 60.8 | 45 | 4.9 | 41.0 | 10 | 2.0 | 31.7 |
| Death Penalty/life | 12 | 4.8 | 1.3 | 13 | 2.6 | 43.4 | 9 | 0.8 | 88.9 | 3 | 0.2 | 63.9 |
| Other | 13 | 5.3 | 0.0 | 39 | 5.4 | 9.1 | 12 | 2.4 | 0.0 | 8 | 1.4 | 21.5 |
| Provider | | | | | | | | | | | | |
| No punishment | 13 | 6.1 | | 69 | 13.7 | | 240 | 32.6 | | 289 | 61.0 | |
| Therapy/education | 16 | 4.9 | | 45 | 6.7 | | 96 | 11.2 | | 48 | 9.3 | |
| Loss of license | 30 | 11.2 | 2.0 | 129 | 17.0 | 6.2 | 126 | 18.1 | 1.5 | 27 | 5.8 | 10.8 |
| Fine | 67 | 27.0 | 34.0 | 179 | 24.6 | 23.3 | 190 | 23.6 | 17.1 | 80 | 15.9 | 15.1 |
| Jail or prison | 88 | 32.5 | 68.5 | 194 | 27.5 | 66.7 | 76 | 8.9 | 59.9 | 22 | 3.5 | 58.9 |
| Death Penalty/life | 40 | 13.3 | 29.6 | 34 | 4.0 | 73.2 | 10 | 0.9 | 69.2 | 6 | 2.2 | 91.6 |
| Other | 7 | 5.0 | 0.0 | 41 | 6.4 | 38.0 | 30 | 4.7 | 33.7 | 12 | 2.3 | 16.3 |

partner, fines had plurality support in the *illegal in all groups* and therapy/education in the *illegal in most group*. For informants, fines also received plurality endorsement for the *illegal in all group*, but no punishment had plurality support in the *illegal in most group*. For providers, a jail or prison sentence had plurality endorsement in both the *illegal in all* and *illegal in most groups*. For every actor and across the 4 legality groups, the majority of respondents who endorsed jail or prison also endorsed a less severe punishment. The only exceptions were for the pregnant person and their partner in the *illegal in all group*.

4. Discussion

For 5 decades, public opinion research on abortion attitudes has focused primarily on assessing whether people think abortion should be legal [14]. With the *Dobbs v. Jackson* decision, abortion is or will be illegal in several states across the U.S. and the power of state governments to restrict abortion and punish those involved in abortion has increased. As such, we examined attitudes regarding *illegal* abortion and supported punishments to inform legislatures of the extent voters may, or in many cases may not, support different punishments.

Overall, most respondents indicated abortion should be legal in *most* or *all* cases however, the majority also supported some form of punishment for the pregnant person, partner, and provider if abortion were illegal in all circumstances. Among punishments, there was majority or plurality support for therapy/education. Additionally, our findings suggests that there is little support for incarceration as a punishment, and even among those who do support incarceration, most would also seemingly support a less severe punishment. Respondents endorsed more severe punishments for the pregnant person than partner which could be a function of agency—that the pregnant person is the 1 getting the abortion—or a relic of gender norms, where people may hold women more responsible for experiencing pregnancy than men.

Our sample was slightly more anti-abortion compared with Pew [5]. It is unclear if these differences are due to factors such as randomness, the nonprobability makeup of our sample, or the specific focus on abortion in our survey compared with Pew. If our sample was less supportive of abortion than nationally representative samples, our findings may be overestimating support for various punishments. To account for this, we also stratified the endorsement of punishments across the 4 legality response options from Pew's abortion legality item. That is, we accounted for some potential bias by presenting endorsed punishment by Pew subgroups who are both supportive and not supportive of legal abortion.

Across the Pew legality subgroups, we found that most respondents who indicated abortion should be *legal in all cases*, endorsed no punishment. In contrast, most respondents who indicated abortion should be *legal in most*, *illegal in most*, and *illegal in all cases* endorsed some form of punishment. The only instances of plurality support for a punishment type beyond therapy/education (i.e., limited jail or prison sentences) were in some of the *illegal in all* and *illegal in most* subgroups for the pregnant person or provider. A higher proportion of respondents in the *legal in all group* endorsed some form of punishment compared with the proportion of respondents in the *illegal in all group* that endorsed no punishment. Previous research indicates that people who are less supportive of abortion tend to hold more monolithic attitudes that vary less across differences in knowledge and context [15–17]. Our findings may echo this work by demonstrating more nuance or complexity in abortion attitudes among respondents who hold more supportive abortion attitudes. It is also possible respondents who support legal abortion felt compelled to select a punishment because they were directed to think about abortion being *illegal in all cases*. Thus, their endorsement of punishment may be an artifact of ques-

tion design rather than a strong belief in punishing those involved in abortion. By asking about punishments though, we pushed respondents to contemplate the counterfactual to abortion being legal. That is, respondents had to consider some form of punishment for actors involved in illegal abortion, which may provide a more comprehensive understanding of people's abortion attitudes.

Our findings are consistent with research examining the criminalization of addiction, substance use [18,19], and mental illness healthcare [20], gender-affirming care for transgender youth [21,22], and health mandates [23]. For example, in line with some of our findings, people indicated both support for and opposition to criminalization of providers of gender-affirming care [24, 25]. Additionally, research examining criminalization of behaviors engaged in during pregnancy that may lead to fetal endangerment such as substance use [26,27] suggests that people are more supportive of testing all pregnant people for drug use during pregnancy rather than targeted testing at the discretion of a third party such as a physician for example [28]. Compared with abortion attitudes, public opinion on criminalization of fetal endangerment is far more limited, but both are increasingly relevant.

Despite weighting our data, quota-based sampling limits the generalizability of our findings. Our sample was also limited to web-responders. As such, those demographic groups that are less likely to use a computer and/or the internet are under-represented in our sample.

Several states either have or plan to enact legislation that includes incarceration as a penalty for abortion [3], most often for “abortion providers”. We found mixed support for these policies. Although people viewed healthcare providers as 1 of the more culpable actors in an abortion, endorsement for incarceration as a punishment across all actors, including providers, was very low. And when states use vague language to define “abortion providers,” it is unclear if other actors beyond healthcare providers may be subject to these punishments, which would not be consistent with our findings. Additionally, we found limited support for bounty-style laws such as those passed in Texas (SB 8) and Oklahoma (HB 4327). As states continue to increase restrictions and punishments for illegal abortion, researchers should consider expanding the context of survey questions to include the presentation of the 2 proposed realities: a) legal abortion or b) illegal abortion **and** punishments for various actors involved in an abortion.

Supplementary materials

Supplementary material associated with this article can be found, in the online version, at doi:10.1016/j.contraception.2023.109952.

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