



CITY OF MADISON POLICE DEPARTMENT  
STANDARD OPERATING PROCEDURE



**Domestic Abuse**

Eff. Date 01/31/2023

**Purpose**

This outlines procedures to be used for conducting investigations of domestic abuse pursuant to Wisconsin State Statute 968.075(1)(a).

**Procedure**

**MANDATORY ARREST (WI STATE STATUTE 968.075)**

The officer shall arrest and take a person into custody if ALL of the following apply:

1. The officer, after investigating the incident, has **probable cause\*** to believe that the person's actions constitute the commission of a crime, and
2. The relationship is considered domestic under the law:
  - Spouse
  - Former spouse
  - Adults residing together
  - Any adults who have EVER lived together
  - Adults with children in common; and
3. The suspect's acts constitute **DOMESTIC ABUSE**:
  - Intentional infliction of physical pain, physical injury, or illness **OR**
  - Intentional impairment of physical condition **OR**
  - 1st, 2<sup>nd</sup>, or 3rd Degree Sexual Assault **OR**
  - A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subs 1, 2, or 3.
4. The officer has evidence of **PHYSICAL INJURY** to a victim or reasonably believes there is a likelihood of continued abuse.
5. Crime was reported within 28 days of its occurrence.

\*Probable Cause can be used interchangeably with "reasonable grounds" and justify an arrest without a warrant when an officer in good faith believes that a crime has been committed and that the person in question committed it; and when the officer's belief is based on grounds which would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. Mere "suspicion" alone is never sufficient to authorize an arrest without a warrant

***In circumstances meeting the mandatory arrest requirements, the suspect SHALL be taken to the Dane County Jail (DCJ) for booking if the suspect is placed under arrest. Citations shall NOT be issued in these cases. If officers have a question about whether an arrest is mandatory, they shall contact a supervisor.***

**AT LARGE SUSPECTS**

1. Officers should attempt to locate and take domestic abuse suspects into custody.
2. When probable cause exists to arrest a domestic abuse suspect who is at large, and could not be located, the reporting officer will:
  - a. Enter suspect information and charges into SharePoint.
  - b. Complete a probable cause (PC) affidavit and if practical, have a sergeant or commander review the probable cause affidavit. Contact the Officer in Charge (OIC) to review the charging decision. The OIC will post the incident in the OIC Notes if the suspect remains at large.

- c. Complete the 72 Hour No-Contact paperwork. The date and time of arrest should be left blank on the 72-Hour No Contact Provision if the suspect is not in custody.
  - d. Complete a Dane County Booking form.
  - e. Complete the required Law Enforcement Advocate Program (LEAP) Referral Form and Danger Assessment Form in instances of Intimate Partner Violence (IPV) (See below).
  - f. Forward the Booking form, 72 Hour No Contact paperwork, and Probable Cause Affidavit to the OIC.
3. When the suspect is taken into custody, the arresting officer will read the probable cause affidavit and attempt to interview the suspect regarding the incident. If probable cause still exists after this interview, the suspect shall be taken to the Dane County Jail (DCJ) and booked into jail.
4. Once the suspect is taken into custody, the date and time of arrest should be completed on the 72-Hour No Contact Provision. The victim should be notified of the date and time of arrest and this notification should be documented on the 72-Hour No Contact Provision. If unable to contact victim to make this notification, then the officer shall document the attempt to contact the victim in the officer's police report.

### **ARREST FACTORS**

1. An officer's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.
2. Additionally, the victim's consent, willingness to engage in prosecution, or relationship with the suspect are NOT factors in the arrest decision.

### **DISCRETIONARY ARREST (INTIMATE PARTNER VIOLENCE)**

1. Madison Police Department (MPD) officers are encouraged to take a pro-arrest approach when officers are investigating Intimate Partner Violence between adults, but have not met the State of Wisconsin's statutory mandatory arrest requirements, as outlined above.
2. The following factors should be considered when making this decision:
  - a. Probable Cause exists that a crime of violence has occurred,
  - b. Physical injury exists, or
  - c. The officer reasonably believes there is a likelihood of continued abuse.
3. In cases of Intimate Partner Violence (IPV) when a physical arrest is made, officers shall also complete the Danger Assessment form and LEAP Referral form.

### **REPORT REQUIRED WHERE NO ARREST**

1. Officers shall complete a report on all domestic abuse calls for service. The report shall be completed prior to the end of their shift unless a supervisor approves for the report to be held. Calls for service dispatched as a domestic abuse incident shall not be changed to a call type that requires no report without the authorization of a supervisor.
2. The domestic abuse arrest law requires a law enforcement officer who does not make an arrest in a domestic abuse incident, but has probable cause to make an arrest, to prepare a written report prior to the end of the officer's tour of duty stating why the person was not able to be taken into custody.
3. The District Detective Lieutenant will review the case and, if necessary, request that the Criminal Intake Unit (CIU) send the officer's report to the Dane County District Attorney's Office for review to determine whether the person involved in the incident should be charged with the commission of a crime.
4. While Wisconsin State Statute 968.075 (Domestic Abuse Incidents) compels reasonable efforts to locate and arrest suspects who have committed acts of domestic abuse, there will be limited instances when this is not possible (hence, the need to forward a copy of the officer's incident report to the Dane County District Attorney's Office). Examples where an arrest may not be immediately plausible include the following:
  - a. Reasonable efforts to locate and arrest the suspect are unsuccessful.
  - b. The suspect is located, but due to incapacitation from alcohol and/or drug use, the suspect is placed under protective custody and is conveyed to Detox.

- c. The suspect has been committed under the standard for an emergency detention.
  - d. The suspect has received injuries necessitating an overnight admission to a hospital. Consult with the Officer-in-Charge (OIC) to determine whether a guard should be posted.
5. Please refer to the "AT LARGE SUSPECTS" portion for procedure.

## MUTUAL DOMESTIC ABUSE

When the officer has **probable cause** to believe that persons in a domestic relationship are committing or have committed domestic abuse against each other, the officer should not arrest both persons, but should only arrest the predominant aggressor.

**Predominant Aggressor** means the most significant, but not necessarily the first, aggressor in a domestic abuse incident. In determining who the predominant aggressor is, an officer should consider the following:

1. The intent of the law to protect victims of domestic violence;
2. The relative degree of injury or fear inflicted on the persons involved;
3. Any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer;
4. Statements of witnesses; and
5. Whether either party acted in self-defense or in defense of any other person.

**Self-defense:** A person may use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person.

## PAPERWORK

When a DOMESTIC ABUSE arrest occurs, officers shall complete a 72-Hour No Contact Provision and provide the victim with a Victim Rights Information (VRI) Form. In cases of Intimate Partner Violence (IPV), officers shall also complete the Danger Assessment and Law Enforcement Advocate Program (LEAP) Referral.

## 72-HOUR NO CONTACT PROVISION

1. Unless there is a waiver by the domestic abuse victim, during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person is required to:
  - a. Avoid the residence of the domestic abuse victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the domestic abuse victim; and
  - b. Avoid contacting or causing any person, other than law enforcement officers and either party's attorney to contact the domestic abuse victim.
2. At any time during the 72-hour period specified above, the domestic abuse victim may sign a written waiver of the 72-hour No Contact Provision. The Madison Police Department (MPD) will have Change of Status forms available for this purpose. Copies of the 72-hour No Contact Provision and the Change of Status forms shall be provided to the suspect, Dane County Communication Center, Dane County Jail, and MPD Records.
3. The officer responsible for the arrest of a person for a domestic abuse incident will ensure that the domestic abuse victim is notified of the No Contact Provision.
4. A 72-hour No Contact Provision form should be completed even if the domestic abuse crime occurred outside of the 28-day mandatory arrest timeframe.

## VIOLATION OF 72-HOUR NO CONTACT PROVISION

1. Violation of the 72-Hour No Contact Provision is a new crime. If an officer has probable cause to believe the 72-Hour No Contact Provision has been violated (968.075(5)(a)1), the offender shall be arrested and taken to the Dane County Jail.
2. A new case number is required for the new violation.

3. Do not complete a new 72-Hour No Contact Provision if the no contact provision is the only violation (i.e. no new additional domestic abuse crimes).
4. If the Danger Assessment and LEAP were completed following the initial arrest, those forms do not need to be completed again.
5. If there is a new domestic abuse crime (see definition above on page 1) within the 72 hours, that new crime has a felony enhancer of 939.621. Furthermore, a new domestic abuse crime requires a NEW 72-hour No Contact Provision form should be completed. This felony enhancer applies even if there is a *different* domestic abuse victim of the new domestic abuse crime and not just for new domestic abuse crimes against the original victim.

Arrest for a Violation of 72-Hour No Contact is mandated by Wisconsin State Statute 968.075.

### **NOTIFICATION TO VICTIMS-VICTIM RIGHTS' INFORMATION FORM**

These requirements are mandated by Chapter 950 of the Wisconsin State Statutes.

If law enforcement has reasonable grounds to believe that a person is committing or has committed domestic abuse, they must inform the victim of the following:

1. The availability of all shelters and services dealing with domestic violence and sexual assault issues in the victim's community.
2. Providing the victim with a statement that reads substantially as follows: "If you are the victim of domestic abuse, you may contact a domestic violence victim service provider to plan for your safety and to take steps to protect yourself, including filing a petition under 813.12 of the Wisconsin Statutes (domestic abuse or harassment injunction)."
3. Provide victims with written notice of their Chapter 950 rights within 24 hours of contact.
4. Chapter 950 of the Wisconsin State Statutes also allows law enforcement to share information with victim service organizations.

***These mandated requirements are met by providing victims with a Victim Rights Information (VRI) Sheet. Notification to victims shall be documented in the report.***

### **LEAP REFERRAL**

Law Enforcement Advocate Program (LEAP) referrals should be made for victims of Intimate Partner Violence (IPV). IPV can be physical, sexual, or psychological harm involving current or former spouses/significant others, individuals who have a child in common, and/or stalking victims. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy.

1. If there is probable cause to make an arrest for an intimate partner domestic violence incident, the LEAP Referral Form should be completed.
2. At the end of the arresting officer's shift, the LEAP referral form should be placed in the LEAP mailbox in the arresting officer's respective district. A Domestic Abuse Intervention Services (DAIS) advocate will contact the victim as soon as possible after DAIS receives the referral.
3. The district Police Report Typist (PRT) will scan the LEAP form to the LEAP folder on the O:\network drive. The scanned LEAP form will be forwarded by the Executive Section PRT to the DAIS Crisis Response Advocate and to the Crisis Intervention Services Manager.
  - a. A District Detective Lieutenant will retain possession of the LEAP referral form for 30 days, or until acknowledgement from a DAIS advocate that the referral form has been received. Once acknowledgement is received, the LEAP referral form will be destroyed.

### **DANGER ASSESSMENT**

A Danger Assessment Form should be completed for victims of Intimate Partner Violence (IPV). IPV can be physical, sexual, or psychological harm involving current or former spouses/significant others, individuals who

have a child in common, and/or stalking victims. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy.

The Danger Assessment is a predictor of lethality for the victim and the relationship. The more behaviors noted by the victim, the higher the danger is for the victim. The five questions at the top of the Danger Assessment Form are the highest predictors of lethality.

1. The completed Danger Assessment Form will be included with the arresting officer's original report as an attachment.
2. The Danger Assessment Form will be forwarded to the Dane County District Attorney's Office along with the case intake.
3. The responses on the Danger Assessment should be taken into consideration by detective lieutenants reviewing the case to determine appropriateness of case assignment.

### **INCREASED PENALTY FOR CERTAIN DOMESTIC ABUSE OFFENSES 939.621**

If a person commits an act of domestic abuse as defined in Wisconsin State Statute 968.075(1)(a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than two years if the crime was committed during the 72 hours immediately following an arrest for a domestic abuse incident as set forth in Wisconsin State Statute 968.075(5)(c). As stated previously, the victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the arrested person's original arrest. The penalty increase under this section changes the status from a misdemeanor to a felony (Wisconsin State Statute 939.621).

### **CHILDREN PRESENT DURING DOMESTIC ABUSE CRIMES**

If children are present during domestic abuse crimes, officers shall:

1. Note the names, ages, custodial parents, and addresses of all children and whether they were present when the domestic incident occurred.
2. Interview children as potential witnesses and ask the children about the current incident, history of abuse, and abuse toward any other members of the household.
3. If the disposition of a domestic abuse incident leaves minors in the home without a responsible adult, the officers are to contact the Dane County Department of Human Services for temporary child placement arrangements.
4. Due to the high correlation between domestic violence and child abuse, officers should check the children for signs of child neglect or abuse. In the event that a minor child appears to be the victim of physical and/or sexual abuse, it is the responsibility of the officer to take immediate action, including notifying the Dane County Department of Human Services (261-KIDS) within 12 hours of report of the incident per Wisconsin State Statute 48.981(3).

### **WEAPONS SEIZURE**

1. Weapons used in the commission of a crime shall always be seized as evidence.
2. Weapons shall be seized from any individuals prohibited from possessing a firearm.
3. Possession of a firearm by a convicted felon is prohibited by Wisconsin State Statute 941.29 and Federal Regulation 18USC 922(g).
4. Possession of a firearm by a domestic abuse or child abuse respondent is prohibited for the duration of a granted injunction. If a respondent is in possession of a firearm, this is a felony offense. The respondent should be arrested for Possession of a Firearm (941.29(1m)(f)) and the weapon should be seized and photographed.
5. Safekeeping: If the officer is on the scene of a domestic and no weapons were used in the commission of a crime the officer should still ask about access to weapons. If the victim is a spouse of the suspect, the officer should ask if they would like officers to take the weapons (marital property) for safekeeping while the case is pending.

6. Possession of a firearm OR ammunition by a person prohibited from possession by federal regulations. (See below)

### **FEDERAL GUN VIOLATIONS**

It is a federal offense for a person, **convicted** of a crime classified as a crime of domestic violence, to possess a firearm; Federal Regulations 18USC911 (g)(9).

Under this law, qualifying domestic violence crimes are those where:

- There was use or attempted use of physical force
- There was threatened use of a deadly weapon
- It is a crime against a partner in a domestic relationship
- It is a child abuse crime

The law was effective September 30, 1996 and convictions are retroactive from that date.

Mandatory arrest does not apply to violations of the federal gun regulation. If the officer has information that the subject has been arrested for a crime prohibiting possession of a firearm and is in possession of or owns a firearm, the officer should:

1. Document evidence of the previous domestic violence conviction in their report.
2. Seize the weapon IF the officer has legal access to the weapon.
3. Document evidence that the subject knowingly possessed the firearm.
4. Photograph the firearm that was seized.

A copy of the report should be forwarded to the appropriate federal agency.

### **LAW ENFORCEMENT INVOLVED DOMESTIC VIOLENCE**

The following procedure shall be adhered to when investigating domestic abuse that involves law enforcement personnel.

Responding to domestic abuse incidents involving law enforcement personnel poses increased dangers to responding officers due to the involved personnel's potential access to firearms, as well as knowledge by the potentially involved law enforcement personnel regarding police tactics and the law.

When responding to domestic abuse incidents involving law enforcement, the following procedures shall be followed:

1. Once officers arrive on scene of a domestic abuse incident involving law enforcement, the officer should contact dispatch and request a supervisor, regardless of the involved officer's jurisdiction.
2. A supervisor of higher rank than the involved officer(s) should respond to the scene.
3. When an officer is arrested, the supervisor shall attempt to seize firearms.
4. If the incident involves the chief of police, an outside agency should be contacted to take lead on the investigation.
5. In responding to domestic violence incidents where the victim is a law enforcement officer, standard domestic violence response and investigation procedures should be followed.

### **TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS (WI STATE STATUTE 813.12)**

There are four different types of injunctions that can be granted in Dane County: Domestic Abuse, Harassment, Child Abuse, and Individuals at Risk.

Domestic Abuse injunctions are typically granted for four years, but can be granted for up to 10 years. Ten-year injunctions are granted where the petitioner has presented a preponderance of evidence that there is a

substantial risk that the respondent may commit 1<sup>st</sup> or 2<sup>nd</sup> Degree Homicide, 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Degree Sexual Assault, or 1<sup>st</sup> Degree or 2<sup>nd</sup> Degree Sexual Assault of a Child against the petitioner.

Knowingly violating a Temporary Restraining Order (TRO) or Injunction is a misdemeanor under Wisconsin law and the police officer should:

1. Verify that the TRO/injunction exists, either through the Dane County Public Safety Communications (PSC) Data Operator or Dane County Jail (DCJ) records.
2. Determine whether the TRO/injunction has been served. This information can be obtained through the PSC Data Operator or DCJ records.
3. Determine the specific restriction(s) granted in the TRO/injunction.
4. Serve the TRO/injunction to the suspect if it has not been served, noting date, time of service, and officer name on the back of the TRO copy. Additionally, notify dispatch of the date and time of service. Attach a copy of this form to your report. The victim's copy of the TRO/Injunction can be used to serve notice to the suspect.
5. **CONSTRUCTIVE KNOWLEDGE:** In cases where the suspect was served with the TRO and failed to show for the injunction hearing, the injunction is automatically granted. If the suspect had been served with the TRO, then the suspect has constructive knowledge that an injunction was granted. Therefore, the suspect should be considered on notice of the injunction and shall be arrested for any violations.
6. The officer will make an arrest for a violation of the order when there is an order in existence, when the order has been served, and when there is probable cause to believe that it was knowingly violated.
7. A Violation of a TRO or injunction may or may not constitute a new domestic abuse crime under Wisconsin State Statute 968.075. If the nature of the contact is benign, then it might result in only a charge for the violation of the injunction or TRO. If the nature of the contact involves additional crimes, then the Mandatory Arrest procedures shall be followed.
  - a. Knowingly Violate Domestic Abuse Injunction, 813.12(8)(a).
  - b. Officers may also review 813.12(7)(am) regarding mandatory arrests specifically for Domestic Abuse Injunction violations.
8. If the officer is arresting a suspect for the violation of a Domestic Abuse Injunction AND additional domestic abuse crimes have occurred, a 72-Hour No Contact Provision shall be completed.
9. If an officer has probable cause to believe the injunction has been violated more than once, then a charge of stalking should be considered. The officer should obtain a new case number and offer the Danger Assessment and LEAP forms.

### **STALKING (WI STATE STATUTE 940.32(2))**

If an officer develops probable cause that a stalking has occurred and mandatory arrest requirements are met, then an arrest shall be made in accordance with Wisconsin State Statute 968.075. Stalking behaviors are an indication of high lethality of the relationship and should be taken seriously.

### **STALKING WARNING LETTER**

In cases where mandatory arrest does not apply, a Stalking Warning Letter may be issued to the suspect. The Stalking Warning Letter can be issued by other jurisdictions or by telephone. Officers shall document in the report that the Stalking Warning Letter was issued and a copy should be attached to the officer's report.

It is **NOT** necessary that the Stalking Warning Letter be issued prior to an arrest for Stalking.

The safety of the victim should be considered when determining to make an arrest or not for an offense of Stalking.

Officers shall document and collect any and all evidence related to the stalking behavior, including but not limited to, text messages, emails, voicemails, social media posts, letters, cards, gifts, and video.

Other offenses related to, or potentially involved in Stalking, include, but are not limited to, Criminal Damage to Property, Unlawful Use of the Telephone or Computerized System, Intimidation of a Victim, Harassment, Representations Depicting Nudity, Invasion of Privacy, and Violation of a Domestic Abuse Injunction.

### **STRANGULATION/SUFFOCATION (WI STATE STATUTE 940.235)**

In cases of Strangulation that meet the mandatory arrest criteria, officers shall make an arrest. Officers should consider that consent is not a criminal element of Strangulation.

#### **Procedure**

1. Victims of strangulation should be encouraged to respond to Meriter Hospital Emergency Room (ER) for medical assistance and for a Forensic Nurse Exam (FNE). Strangulation injuries are often not visible, so medical care is important for the victim's well-being. The forensic exam is important for prosecution of offenders. Officers shall assist transporting victims to Meriter Hospital ER if needed.
2. Visible injuries should be documented and photographed. Ligatures, or any other type of physical evidence used in the commission of a Strangulation or Suffocation, should be collected.
3. Documentation of all signs and symptoms of strangulation is critical due to the lack of visible injuries in the majority of strangulation cases. A list of signs and symptoms of strangulation can be found on the back of the Danger Assessment Form. This guide can be used to facilitate a detailed interview of the victim.
4. If the suspect is present on scene and willing, a buccal standard should be obtained from the suspect when it is known that the victim will be responding to Meriter Hospital ER for an FNE.
5. Officers sent to Meriter Hospital to collect a strangulation FNE kit shall place the kit into MPD property according to the MPD property room guidelines.

### **MANDATORY DOMESTIC ARREST AND EMERGENCY DETENTION**

#### ***Responsibilities of the Investigating officer/detective:***

When officers are investigating crimes of domestic abuse and mental health appears to be a contributing factor to the crimes alleged, officers should:

1. Determine if the probable cause exists for a crime of domestic abuse as outlined above.
2. Evaluate/Assess the potential for an Emergency Detention (see Mental Health Incidents/Crises SOP).
3. If the underlying offense for which probable cause exists is a mandatory arrest under Wis. Stat. 968.075, the disposition of the subject must be an emergency detention, protective custody, or arrest (voluntary admissions are not an option).
4. If probable cause exists for an otherwise mandatory arrest for a crime of domestic abuse and Journey Mental Health supports an Emergency Detention (ED) for the suspect/patient, officers shall:
  - a. Process the Emergency Detention and transport the suspect/patient to the appropriate medical facility.
  - b. Complete the required domestic paper work to include the Probable Cause affidavit, the 72-hour No Contact Provision (time enforced begins at the time of detention for the ED), the Domestic Violence Danger Assessment Form, and the LEAP referral.
  - c. Complete the necessary paperwork and police report before the end of the officer's tour of duty, unless an MPD commander approves the reports being held.
  - d. Request that the destination facility where the subject is conveyed contact MPD when the subject is released to facilitate conveyance/booking.

#### ***Responsibilities of the Criminal Intake Unit:***

When officers or detectives working within the Madison Police Department Criminal Intake Unit (CIU) are made aware of a mandatory arrest under Wis. Stat. 968.075 which resulted in an Emergency Detention, the following shall occur:



1. Complete the electronic criminal intake referral and note that the suspect is located at a secured mental health medical detention facility.
2. Monitor/Review the Dane County District Attorney's criminal intake return for a charging decision.
3. Communicate with the Office of the Dane County District Attorney and MPD Mental Health Unit. The Mental Health Unit will work with the "hospital discharge planner" for Journey Mental Health regarding the criminal intake referral and the potential transport of the suspect/patient to the Dane County Jail for a booking.
4. If the Office of the Dane County District Attorney issues criminal charges for crimes of Domestic Abuse as outlined under Wis. Stat. 968.075 and requests a booking into the Dane County Jail, then arrangements shall be made for transport of the suspect to the Dane County Jail by the Madison Police Department.
5. If the Office of the Dane County District Attorney issues criminal charges and chooses to summons the offender/patient to Court, then transport to the Dane County Jail is not required.
6. If the Office of the Dane County District Attorney declines criminal charges, then the Madison Police Department should remove the Probable Cause Affidavit from the OIC's office.

***Responsibilities of the Officer-In-Charge:***

When notified by the MPD Criminal Intake Unit, Journey Mental Health, or any secure mental health facility such as Winnebago Mental Health Institute (WMHI) that a patient is to be released and outstanding criminal charges exist that necessitate transport to the Dane County Jail, the Officer-in-Charge shall assist in coordinating MPD's transportation response plan.

When notified by an investigating officer that probable cause exists for a crime of domestic abuse and the suspect/patient is being medically admitted to a hospital, the Officer-in-Charge shall determine if MPD will continue to guard the suspect/patient until the suspect's/patient's release from the hospital (see Guard Duty SOP).

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