

1 the facility medical provider, establishing conditions under
2 which an inmate will be tested for infectious disease,
3 including human immunodeficiency virus pursuant to s.
4 775.0877, which procedure is consistent with guidelines of the
5 Centers for Disease Control and Prevention and recommendations
6 of the Correctional Medical Authority. It is not unlawful for
7 the person receiving the test results to divulge the test
8 results to the sheriff or chief correctional officer.

9 (2)(a) The Department of Health shall designate two
10 counties having a population of 1.2 million or more and five
11 counties having a population of fewer than 1.2 million to
12 participate in the testing program provided in this
13 subsection, if participation in the testing program is
14 authorized by a majority of the county's governing body. Each
15 county detention facility that lies within the authority of
16 any participating county shall, consistent with s. 381.004(3),
17 perform an HIV test as defined in s. 381.004(2) on each
18 sentenced inmate who is to be released from the facility
19 unless the facility knows that the inmate is HIV positive or
20 unless, within 120 days before the release date, the inmate
21 has been tested for HIV and does not request retesting. The
22 required test must be performed not less than 30 days before
23 the release date of the inmate. A test is not required under
24 this paragraph if an inmate is released due to an emergency or
25 a court order and the detention facility receives less than 30
26 days' notice of the release date or if the inmate is
27 transferred to the custody of the Department of Corrections
28 for incarceration in the state correctional system.

29 (b) Each county detention facility in a county that
30 participates in the testing program authorized in paragraph
31 (a) must comply with the requirements of this paragraph. If

1 the county detention facility knows that an inmate who is to
2 be released from the facility is HIV positive or has received
3 a positive HIV test result, that facility shall, before the
4 inmate is released:

5 1. Notify, consistent with s. 381.004(3), the
6 Department of Health and the county health department in the
7 county where the inmate being released plans to reside of the
8 release date and HIV status of the inmate.

9 2. Provide special transitional assistance to the
10 inmate which must include:

11 a. Education on preventing the transmission of HIV to
12 others and on the importance of receiving followup medical
13 care and treatment.

14 b. A written, individualized discharge plan that
15 includes records of all laboratory and diagnostic test
16 results, medication and treatment information, and referrals
17 to and contacts with the county health department and local
18 primary medical care services for the treatment of HIV
19 infection which are available in the area where the inmate
20 plans to reside.

21 ~~(3)(2)~~ Except as otherwise provided in this
22 subsection, serologic blood test results obtained pursuant to
23 subsection (1) or subsection (2) are confidential and exempt
24 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
25 the State Constitution. However, such results may be provided
26 to employees or officers of the sheriff or chief correctional
27 officer who are responsible for the custody and care of the
28 affected inmate and have a need to know such information, and
29 as provided in ss. 381.004(3), 775.0877, and 960.003. In
30 addition, upon request of the victim or the victim's legal
31 guardian, or the parent or legal guardian of the victim if the

1 victim is a minor, the results of any HIV test performed on an
2 inmate who has been arrested for any sexual offense involving
3 oral, anal, or vaginal penetration by, or union with, the
4 sexual organ of another, shall be disclosed to the victim or
5 the victim's legal guardian, or to the parent or legal
6 guardian of the victim if the victim is a minor. In such
7 cases, the county or municipal detention facility shall
8 furnish the test results to the Department of Health, which is
9 responsible for disclosing the results to public health
10 agencies as provided in s. 775.0877 and to the victim or the
11 victim's legal guardian, or the parent or legal guardian of
12 the victim if the victim is a minor, as provided in s.
13 960.003(3).

14 ~~(4)(3)~~ The results of any serologic blood test on an
15 inmate are a part of that inmate's permanent medical file.
16 Upon transfer of the inmate to any other correctional
17 facility, such file is also transferred, and all relevant
18 authorized persons must be notified of positive HIV test
19 results, as required in s. 775.0877.

20 (5) Notwithstanding any statute providing for a waiver
21 of sovereign immunity, the state, its agencies, or
22 subdivisions, and employees of the state, its agencies, or
23 subdivisions, are not liable to any person for negligently
24 causing death or personal injury arising out of complying with
25 this section.

26 Section 2. Subsection (3) of section 381.004, Florida
27 Statutes, is amended to read:

28 381.004 HIV testing.--

29 (3) ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING;~~ INFORMED
30 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

31

1 (a) No person in this state shall order a test
2 designed to identify the human immunodeficiency virus, or its
3 antigen or antibody, without first obtaining the informed
4 consent of the person upon whom the test is being performed,
5 except as specified in paragraph (h). Informed consent shall
6 be preceded by an explanation of the right to confidential
7 treatment of information identifying the subject of the test
8 and the results of the test to the extent provided by law.
9 Information shall also be provided on the fact that a positive
10 HIV test result will be reported to the county health
11 department with sufficient information to identify the test
12 subject and on the availability and location of sites at which
13 anonymous testing is performed. As required in paragraph
14 (4)(c), each county health department shall maintain a list of
15 sites at which anonymous testing is performed, including the
16 locations, phone numbers, and hours of operation of the sites.
17 Consent need not be in writing provided there is documentation
18 in the medical record that the test has been explained and the
19 consent has been obtained.

20 (b) Except as provided in paragraph (h), informed
21 consent must be obtained from a legal guardian or other person
22 authorized by law when the person:

- 23 1. Is not competent, is incapacitated, or is otherwise
24 unable to make an informed judgment; or
25 2. Has not reached the age of majority, except as
26 provided in s. 384.30.

27 (c) The person ordering the test or that person's
28 designee shall ensure that all reasonable efforts are made to
29 notify the test subject of his or her test result.
30 Notification of a person with a positive test result shall
31 include information on the availability of appropriate medical

1 and support services, on the importance of notifying partners
2 who may have been exposed, and on preventing transmission of
3 HIV. Notification of a person with a negative test result
4 shall include, as appropriate, information on preventing the
5 transmission of HIV. When testing occurs in a hospital
6 emergency department, detention facility, or other facility
7 and the test subject has been released before being notified
8 of positive test results, informing the county health
9 department for that department to notify the test subject
10 fulfills this responsibility.

11 (d) A positive preliminary test result may not be
12 revealed to any person except in the following situations:

13 1. Preliminary test results may be released to
14 licensed physicians or the medical or nonmedical personnel
15 subject to the significant exposure for purposes of
16 subparagraphs (h)10., 11., and 12.

17 2. Preliminary test results may be released to health
18 care providers and to the person tested when decisions about
19 medical care or treatment of, or recommendation to, the person
20 tested and, in the case of an intrapartum or postpartum woman,
21 when care, treatment, or recommendations regarding her
22 newborn, cannot await the results of confirmatory testing.
23 Positive preliminary HIV test results may not be characterized
24 to the patient as a diagnosis of HIV infection. Justification
25 for the use of preliminary test results must be documented in
26 the medical record by the health care provider who ordered the
27 test.

28 3. The results of rapid testing technologies shall be
29 considered preliminary and may be released in accordance with
30 the manufacturer's instructions as approved by the federal
31 Food and Drug Administration.

1 4. Corroborating or confirmatory testing must be
2 conducted as followup to a positive preliminary test. Results
3 shall be communicated to the patient according to statute
4 regardless of the outcome. Except as provided in this section,
5 test results are confidential and exempt from the provisions
6 of s. 119.07(1).

7 (e) Except as provided in this section, the identity
8 of any person upon whom a test has been performed and test
9 results are confidential and exempt from the provisions of s.
10 119.07(1). No person who has obtained or has knowledge of a
11 test result pursuant to this section may disclose or be
12 compelled to disclose the identity of any person upon whom a
13 test is performed, or the results of such a test in a manner
14 which permits identification of the subject of the test,
15 except to the following persons:

16 1. The subject of the test or the subject's legally
17 authorized representative.

18 2. Any person, including third-party payors,
19 designated in a legally effective release of the test results
20 executed prior to or after the test by the subject of the test
21 or the subject's legally authorized representative. The test
22 subject may in writing authorize the disclosure of the test
23 subject's HIV test results to third party payors, who need not
24 be specifically identified, and to other persons to whom the
25 test subject subsequently issues a general release of medical
26 information. A general release without such prior written
27 authorization is not sufficient to release HIV test results.

28 3. An authorized agent or employee of a health
29 facility or health care provider if the health facility or
30 health care provider itself is authorized to obtain the test
31 results, the agent or employee participates in the

1 administration or provision of patient care or handles or
2 processes specimens of body fluids or tissues, and the agent
3 or employee has a need to know such information. The
4 department shall adopt a rule defining which persons have a
5 need to know pursuant to this subparagraph.

6 4. Health care providers consulting between themselves
7 or with health care facilities to determine diagnosis and
8 treatment. For purposes of this subparagraph, health care
9 providers shall include licensed health care professionals
10 employed by or associated with state, county, or municipal
11 detention facilities when such health care professionals are
12 acting exclusively for the purpose of providing diagnoses or
13 treatment of persons in the custody of such facilities.

14 5. The department, in accordance with rules for
15 reporting and controlling the spread of disease, as otherwise
16 provided by state law.

17 6. A health facility or health care provider which
18 procures, processes, distributes, or uses:

19 a. A human body part from a deceased person, with
20 respect to medical information regarding that person; or

21 b. Semen provided prior to July 6, 1988, for the
22 purpose of artificial insemination.

23 7. Health facility staff committees, for the purposes
24 of conducting program monitoring, program evaluation, or
25 service reviews pursuant to chapters 395 and 766.

26 8. Authorized medical or epidemiological researchers
27 who may not further disclose any identifying characteristics
28 or information.

29 9. A person allowed access by a court order which is
30 issued in compliance with the following provisions:

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1 a. No court of this state shall issue such order
2 unless the court finds that the person seeking the test
3 results has demonstrated a compelling need for the test
4 results which cannot be accommodated by other means. In
5 assessing compelling need, the court shall weigh the need for
6 disclosure against the privacy interest of the test subject
7 and the public interest which may be disserved by disclosure
8 which deters blood, organ, and semen donation and future human
9 immunodeficiency virus-related testing or which may lead to
10 discrimination. This paragraph shall not apply to blood bank
11 donor records.

12 b. Pleadings pertaining to disclosure of test results
13 shall substitute a pseudonym for the true name of the subject
14 of the test. The disclosure to the parties of the subject's
15 true name shall be communicated confidentially in documents
16 not filed with the court.

17 c. Before granting any such order, the court shall
18 provide the individual whose test result is in question with
19 notice and a reasonable opportunity to participate in the
20 proceedings if he or she is not already a party.

21 d. Court proceedings as to disclosure of test results
22 shall be conducted in camera, unless the subject of the test
23 agrees to a hearing in open court or unless the court
24 determines that a public hearing is necessary to the public
25 interest and the proper administration of justice.

26 e. Upon the issuance of an order to disclose test
27 results, the court shall impose appropriate safeguards against
28 unauthorized disclosure which shall specify the persons who
29 may have access to the information, the purposes for which the
30 information shall be used, and appropriate prohibitions on
31 future disclosure.

1 10. A person allowed access by order of a judge of
2 compensation claims of the Division of Administrative
3 Hearings. A judge of compensation claims shall not issue such
4 order unless he or she finds that the person seeking the test
5 results has demonstrated a compelling need for the test
6 results which cannot be accommodated by other means.

7 11. Those employees of the department or of
8 child-placing or child-caring agencies or of family foster
9 homes, licensed pursuant to s. 409.175, who are directly
10 involved in the placement, care, control, or custody of such
11 test subject and who have a need to know such information;
12 adoptive parents of such test subject; or any adult custodian,
13 any adult relative, or any person responsible for the child's
14 welfare, if the test subject was not tested under subparagraph
15 (b)2. and if a reasonable attempt has been made to locate and
16 inform the legal guardian of a test result. The department
17 shall adopt a rule to implement this subparagraph.

18 12. Those employees of residential facilities or of
19 community-based care programs that care for developmentally
20 disabled persons, pursuant to chapter 393, who are directly
21 involved in the care, control, or custody of such test subject
22 and who have a need to know such information.

23 13. A health care provider involved in the delivery of
24 a child can note the mother's HIV test results in the child's
25 medical record.

26 14. Medical personnel or nonmedical personnel who have
27 been subject to a significant exposure during the course of
28 medical practice or in the performance of professional duties,
29 or individuals who are the subject of the significant exposure
30 as provided in subparagraphs (h)10.-12.

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1 15. The medical examiner shall disclose positive HIV
2 test results to the department in accordance with rules for
3 reporting and controlling the spread of disease.

4 (f) Except as provided in this section, the identity
5 of a person upon whom a test has been performed is
6 confidential and exempt from the provisions of s. 119.07(1).
7 No person to whom the results of a test have been disclosed
8 may disclose the test results to another person except as
9 authorized by this subsection and by ss. 951.27 and 960.003.
10 Whenever disclosure is made pursuant to this subsection, it
11 shall be accompanied by a statement in writing which includes
12 the following or substantially similar language: "This
13 information has been disclosed to you from records whose
14 confidentiality is protected by state law. State law
15 prohibits you from making any further disclosure of such
16 information without the specific written consent of the person
17 to whom such information pertains, or as otherwise permitted
18 by state law. A general authorization for the release of
19 medical or other information is NOT sufficient for this
20 purpose." An oral disclosure shall be accompanied by oral
21 notice and followed by a written notice within 10 days, except
22 that this notice shall not be required for disclosures made
23 pursuant to subparagraphs (e)3. and 4.

24 (g) Human immunodeficiency virus test results
25 contained in the medical records of a hospital licensed under
26 chapter 395 may be released in accordance with s. 395.3025
27 without being subject to the requirements of subparagraph
28 (e)2., subparagraph (e)9., or paragraph (f); provided the
29 hospital has obtained written informed consent for the HIV
30 test in accordance with provisions of this section.
31

1 (h) Notwithstanding the provisions of paragraph (a),
2 informed consent is not required:

3 1. When testing for sexually transmissible diseases is
4 required by state or federal law, or by rule including the
5 following situations:

6 a. HIV testing pursuant to s. 796.08 of persons
7 convicted of prostitution or of procuring another to commit
8 prostitution.

9 b. HIV testing of inmates pursuant to s. 945.355 prior
10 to their release from prison by reason of parole, accumulation
11 of gain-time credits, or expiration of sentence.

12 c. Testing for HIV by a medical examiner in accordance
13 with s. 406.11.

14 d. HIV testing of pregnant women pursuant to s.
15 384.31.

16 e. HIV testing of inmates pursuant to s. 951.27 before
17 their release from a county or municipal detention facility.

18 2. Those exceptions provided for blood, plasma,
19 organs, skin, semen, or other human tissue pursuant to s.
20 381.0041.

21 3. For the performance of an HIV-related test by
22 licensed medical personnel in bona fide medical emergencies
23 when the test results are necessary for medical diagnostic
24 purposes to provide appropriate emergency care or treatment to
25 the person being tested and the patient is unable to consent,
26 as supported by documentation in the medical record.
27 Notification of test results in accordance with paragraph (c)
28 is required.

29 4. For the performance of an HIV-related test by
30 licensed medical personnel for medical diagnosis of acute
31 illness where, in the opinion of the attending physician,

1 obtaining informed consent would be detrimental to the
2 patient, as supported by documentation in the medical record,
3 and the test results are necessary for medical diagnostic
4 purposes to provide appropriate care or treatment to the
5 person being tested. Notification of test results in
6 accordance with paragraph (c) is required if it would not be
7 detrimental to the patient. This subparagraph does not
8 authorize the routine testing of patients for HIV infection
9 without informed consent.

10 5. When HIV testing is performed as part of an autopsy
11 for which consent was obtained pursuant to s. 872.04.

12 6. For the performance of an HIV test upon a defendant
13 pursuant to the victim's request in a prosecution for any type
14 of sexual battery where a blood sample is taken from the
15 defendant voluntarily, pursuant to court order for any
16 purpose, or pursuant to the provisions of s. 775.0877, s.
17 951.27, or s. 960.003; however, the results of any HIV test
18 performed shall be disclosed solely to the victim and the
19 defendant, except as provided in ss. 775.0877, 951.27, and
20 960.003.

21 7. When an HIV test is mandated by court order.

22 8. For epidemiological research pursuant to s.
23 381.0032, for research consistent with institutional review
24 boards created by 45 C.F.R. part 46, or for the performance of
25 an HIV-related test for the purpose of research, if the
26 testing is performed in a manner by which the identity of the
27 test subject is not known and may not be retrieved by the
28 researcher.

29 9. When human tissue is collected lawfully without the
30 consent of the donor for corneal removal as authorized by s.
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1 765.5185 or enucleation of the eyes as authorized by s.
2 765.519.

3 10. For the performance of an HIV test upon an
4 individual who comes into contact with medical personnel in
5 such a way that a significant exposure has occurred during the
6 course of employment or within the scope of practice and where
7 a blood sample is available that was taken from that
8 individual voluntarily by medical personnel for other
9 purposes. The term "medical personnel" includes a licensed or
10 certified health care professional; an employee of a health
11 care professional or health care facility; employees of a
12 laboratory licensed under chapter 483; personnel of a blood
13 bank or plasma center; a medical student or other student who
14 is receiving training as a health care professional at a
15 health care facility; and a paramedic or emergency medical
16 technician certified by the department to perform life-support
17 procedures under s. 401.23.

18 a. Prior to performance of an HIV test on a
19 voluntarily obtained blood sample, the individual from whom
20 the blood was obtained shall be requested to consent to the
21 performance of the test and to the release of the results.
22 The individual's refusal to consent and all information
23 concerning the performance of an HIV test and any HIV test
24 result shall be documented only in the medical personnel's
25 record unless the individual gives written consent to entering
26 this information on the individual's medical record.

27 b. Reasonable attempts to locate the individual and to
28 obtain consent shall be made, and all attempts must be
29 documented. If the individual cannot be found, an HIV test may
30 be conducted on the available blood sample. If the individual
31 does not voluntarily consent to the performance of an HIV

1 | test, the individual shall be informed that an HIV test will
2 | be performed, and counseling shall be furnished as provided in
3 | this section. However, HIV testing shall be conducted only
4 | after a licensed physician documents, in the medical record of
5 | the medical personnel, that there has been a significant
6 | exposure and that, in the physician's medical judgment, the
7 | information is medically necessary to determine the course of
8 | treatment for the medical personnel.

9 | c. Costs of any HIV test of a blood sample performed
10 | with or without the consent of the individual, as provided in
11 | this subparagraph, shall be borne by the medical personnel or
12 | the employer of the medical personnel. However, costs of
13 | testing or treatment not directly related to the initial HIV
14 | tests or costs of subsequent testing or treatment may not be
15 | borne by the medical personnel or the employer of the medical
16 | personnel.

17 | d. In order to utilize the provisions of this
18 | subparagraph, the medical personnel must either be tested for
19 | HIV pursuant to this section or provide the results of an HIV
20 | test taken within 6 months prior to the significant exposure
21 | if such test results are negative.

22 | e. A person who receives the results of an HIV test
23 | pursuant to this subparagraph shall maintain the
24 | confidentiality of the information received and of the persons
25 | tested. Such confidential information is exempt from s.
26 | 119.07(1).

27 | f. If the source of the exposure will not voluntarily
28 | submit to HIV testing and a blood sample is not available, the
29 | medical personnel or the employer of such person acting on
30 | behalf of the employee may seek a court order directing the
31 | source of the exposure to submit to HIV testing. A sworn

1 | statement by a physician licensed under chapter 458 or chapter
2 | 459 that a significant exposure has occurred and that, in the
3 | physician's medical judgment, testing is medically necessary
4 | to determine the course of treatment constitutes probable
5 | cause for the issuance of an order by the court. The results
6 | of the test shall be released to the source of the exposure
7 | and to the person who experienced the exposure.

8 | 11. For the performance of an HIV test upon an
9 | individual who comes into contact with medical personnel in
10 | such a way that a significant exposure has occurred during the
11 | course of employment or within the scope of practice of the
12 | medical personnel while the medical personnel provides
13 | emergency medical treatment to the individual; or who comes
14 | into contact with nonmedical personnel in such a way that a
15 | significant exposure has occurred while the nonmedical
16 | personnel provides emergency medical assistance during a
17 | medical emergency. For the purposes of this subparagraph, a
18 | medical emergency means an emergency medical condition outside
19 | of a hospital or health care facility that provides physician
20 | care. The test may be performed only during the course of
21 | treatment for the medical emergency.

22 | a. An individual who is capable of providing consent
23 | shall be requested to consent to an HIV test prior to the
24 | testing. The individual's refusal to consent, and all
25 | information concerning the performance of an HIV test and its
26 | result, shall be documented only in the medical personnel's
27 | record unless the individual gives written consent to entering
28 | this information on the individual's medical record.

29 | b. HIV testing shall be conducted only after a
30 | licensed physician documents, in the medical record of the
31 | medical personnel or nonmedical personnel, that there has been

1 a significant exposure and that, in the physician's medical
2 judgment, the information is medically necessary to determine
3 the course of treatment for the medical personnel or
4 nonmedical personnel.

5 c. Costs of any HIV test performed with or without the
6 consent of the individual, as provided in this subparagraph,
7 shall be borne by the medical personnel or the employer of the
8 medical personnel or nonmedical personnel. However, costs of
9 testing or treatment not directly related to the initial HIV
10 tests or costs of subsequent testing or treatment may not be
11 borne by the medical personnel or the employer of the medical
12 personnel or nonmedical personnel.

13 d. In order to utilize the provisions of this
14 subparagraph, the medical personnel or nonmedical personnel
15 shall be tested for HIV pursuant to this section or shall
16 provide the results of an HIV test taken within 6 months prior
17 to the significant exposure if such test results are negative.

18 e. A person who receives the results of an HIV test
19 pursuant to this subparagraph shall maintain the
20 confidentiality of the information received and of the persons
21 tested. Such confidential information is exempt from s.
22 119.07(1).

23 f. If the source of the exposure will not voluntarily
24 submit to HIV testing and a blood sample was not obtained
25 during treatment for the medical emergency, the medical
26 personnel, the employer of the medical personnel acting on
27 behalf of the employee, or the nonmedical personnel may seek a
28 court order directing the source of the exposure to submit to
29 HIV testing. A sworn statement by a physician licensed under
30 chapter 458 or chapter 459 that a significant exposure has
31 occurred and that, in the physician's medical judgment,

1 testing is medically necessary to determine the course of
2 treatment constitutes probable cause for the issuance of an
3 order by the court. The results of the test shall be released
4 to the source of the exposure and to the person who
5 experienced the exposure.

6 12. For the performance of an HIV test by the medical
7 examiner or attending physician upon an individual who expired
8 or could not be resuscitated while receiving emergency medical
9 assistance or care and who was the source of a significant
10 exposure to medical or nonmedical personnel providing such
11 assistance or care.

12 a. HIV testing may be conducted only after a licensed
13 physician documents in the medical record of the medical
14 personnel or nonmedical personnel that there has been a
15 significant exposure and that, in the physician's medical
16 judgment, the information is medically necessary to determine
17 the course of treatment for the medical personnel or
18 nonmedical personnel.

19 b. Costs of any HIV test performed under this
20 subparagraph may not be charged to the deceased or to the
21 family of the deceased person.

22 c. For the provisions of this subparagraph to be
23 applicable, the medical personnel or nonmedical personnel must
24 be tested for HIV under this section or must provide the
25 results of an HIV test taken within 6 months before the
26 significant exposure if such test results are negative.

27 d. A person who receives the results of an HIV test
28 pursuant to this subparagraph shall comply with paragraph (e).

29 13. For the performance of an HIV-related test
30 medically indicated by licensed medical personnel for medical
31 diagnosis of a hospitalized infant as necessary to provide

1 appropriate care and treatment of the infant when, after a
2 reasonable attempt, a parent cannot be contacted to provide
3 consent. The medical records of the infant shall reflect the
4 reason consent of the parent was not initially obtained. Test
5 results shall be provided to the parent when the parent is
6 located.

7 14. For the performance of HIV testing conducted to
8 monitor the clinical progress of a patient previously
9 diagnosed to be HIV positive.

10 15. For the performance of repeated HIV testing
11 conducted to monitor possible conversion from a significant
12 exposure.

13 Section 3. This act shall take effect July 1, 2007.

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SENATE SUMMARY

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