

Expungements with a little help from our friends.



Tennessee
Bureau of Investigation

Clarksville Police Dept.

Expungements & criminal courts

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Expungements historically had been the exclusive domain of the criminal court systems.

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Traditional city courts do not handle criminal cases, so no expungements.

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Only the municipal courts exercising concurrent general sessions jurisdiction would handle expugements.

What are expungements?

Judicial process to remove someone's conviction or arrest from defendant's criminal history record.

However, not every arrest or conviction is eligible.



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Felonies vs. Misdemeanors

General Rule – Felonies are not expungable, except when they are.

TCA 40-32-107 has a list of specific felonies that are allowed to be expunged.

If it's on the list, it can be expunged.



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Felonies vs. Misdemeanors

General Rule – All misdemeanors can be expunged, except for when they can't.

TCA 40-32-107(a)(1)(D) has a list of specific misdemeanors that are not allowed to be expunged.

If that misdemeanor on the list, it cannot be expunged.

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Criminal Expungement Processes

Petitioner must meet eligibility requirements

Criminal courts can charge up to \$100 expungement fee.

No fee if charges dismissed or Nollied, No True Bill, or verdict of not guilty

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Petition to criminal court

Criminal expungements cover eligible convictions and arrest records.

Can be complete or partial expungements

If completed, this affects court records and police records



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Records are now confidential

Once receive an executed order from the judge, these records must remain confidential.

Confidential = not available to the public (open records request, court files, police files available to public)

Confidential does not mean you destroy all tangible or digital copy. They just get stored somewhere safe.



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Benefits of expungements

Improve a person's chance of future employment & background checks.

Improve housing chances if landlord runs a criminal history report.

Restore ability to purchase firearms.

Restore some felons' voting rights.

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Criminal History vs. Motor Vehicle Records

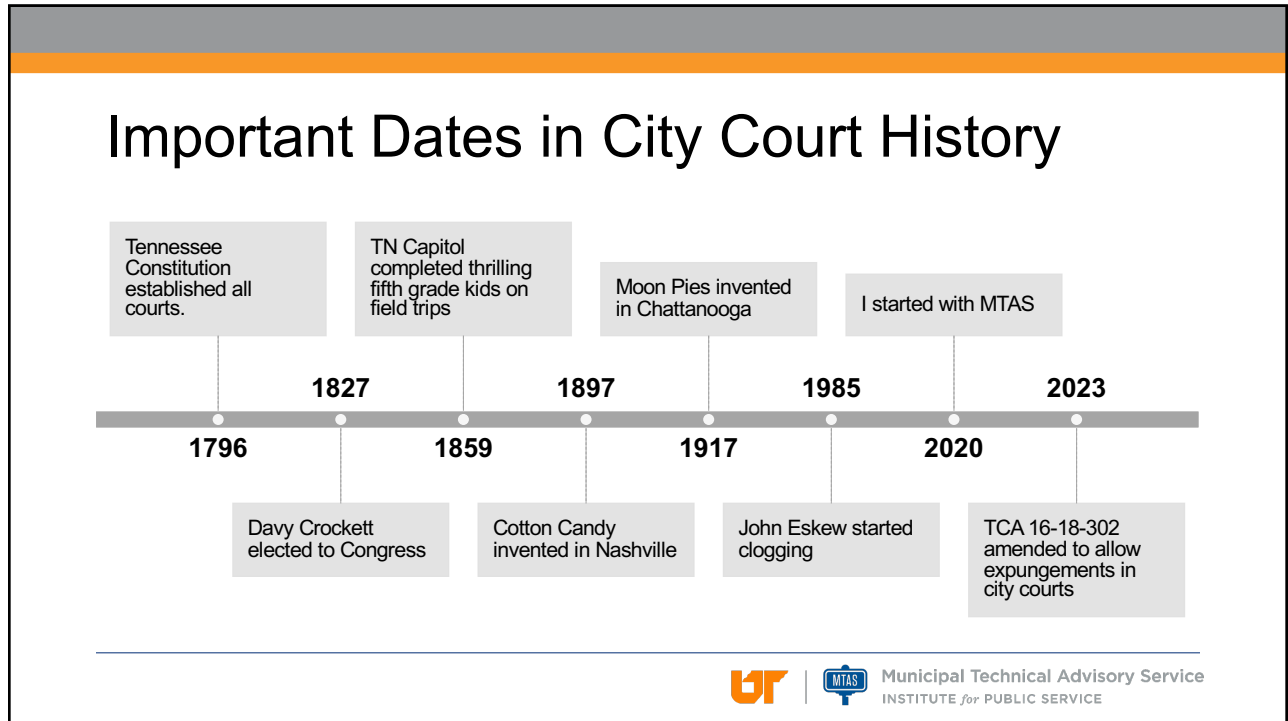
TBI Criminal History Report

- TBI is the repository for criminal history information.
- Criminal expungement requests must be submitted to TBI.
- Some offenses need a special certificate.

DOSHS Motor Vehicle Record




- Traffic cases (*generally*) are not considered criminal.
- Traffic cases typically do not go to TBI.
- Traffic cases are reported to the Department of Safety.
- But if TBI has a traffic case on their record, they'll expunge it.

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Municipal Court Expungements - 2023

-  Municipal Court Reform Act was amended in 2023.
-  TCA 16-18-302(a)(3) was added.
-  Applies to traditional courts and GS courts hearing traditional cases.

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Headline Up Front – Municipal Courts



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Now to the 2023 expungement law

New section to Municipal Court Reform Act - TCA 16-18-302(a)(3)

302(a)(3)(A) - A municipal court has jurisdiction over the expunction of a conviction for a violation of a municipal ordinance from a person's public record in the municipal court upon the person's petition requesting removal of a public record of a violation of a municipal ordinance.

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TCA 16-18-302(a)(3) - Expungements

302(a)(3)(B) The court **may grant** the petition if:

- (i) The petition satisfactorily demonstrates to the court that the petitioner merits such relief;
- (ii) At the time of the filing of the petition, **at least one hundred eighty (180) days have elapsed since the completion of the penalty imposed for the ordinance violation; and**
- (iii) **The person has fulfilled all requirements of the judgment imposed by the court for the conviction, including payment of all fines, court costs, and other assessments.**



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TCA 16-18-302(a)(3) - Expungements

302(a)(3)(C) and (D)

(C) As used in this subdivision (a)(3), "public record" has the same meaning as in § 40-32-101(b).

(D) The municipal court clerk may charge a fee for the expunction of public records pursuant to this subdivision (a)(3). **The fee for expunction of a public record in municipal court must be set by municipal law or ordinance.**



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“Public Record” definition

Definition of “Public Record” in the MCRA is the same definition in the criminal expungement statute TCA 40-32-101.

Statute lists a series of exclusions from being a public record.

If a name is on a record, and it’s not listed as an exclusion to expungement, the city will need to make it inaccessible to the public.



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TCA 16-18-302(a)(3) - Expungements

302(a)(3)(E) A municipal court's jurisdiction under this subdivision (a)(3):

- (i) Is limited to the records in that municipal court; and
- (ii) **Does not include records of the department of safety relating to driver records or the driver improvement program established in § 55- 50-505.**



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Major Note! – Does not apply to traffic cases!



Proposed new TCA 16-18-302(a)(3)(E) only applies to municipal code violations....



But **does not apply** to motor vehicle violations that your report to the Department of Safety for convictions or traffic school.



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Why not traffic cases?

Whenever a city court turns in a Court Action Report to the Department of Safety...

That city record ultimately “relates to” the Department of Safety’s driving records.



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But there is a counter argument

One could make the counter argument that the statute says you cannot expunge the Department of Safety's records, but...

You could expunge the city's own individual traffic records.

However, this would create a conflict where the city records show no traffic convictions, but the state records do.

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City records vs. DOSHS records

- If you could expunge city traffic records, but not Department of Safety records, that would create a discrepancy between the city and the Department of Safety's records system.
 - Background check would show no city violation, but would show a violation on State records.
 - Therefore, an expungement would not result in a true confidentiality of public records.
-

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So what types of offense are covered?

Practically, anything not traffic.

Expungements may include convictions for:

- Building a building without a permit
- Failing to comply with plumbing, electrical, fire codes
- Overgrown vegetation / Slum Clearance Act violations
- Junk cars
- Open container of alcohol on public sidewalk



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Who may seek an expungement?

Anyone convicted of a municipal code offense can seek an expungement.

However, because municipal codes convictions are civil in nature, not criminal, these convictions typically do not show up in a pre-employment background check.

There may not be much demand for these expungement since most likely these convictions will not impair someone's ability to get a job (unlike criminal convictions).



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Who may seek an expungement?

Building Contractors perhaps. Insurance companies typically do not want to insure contractors who frequently build without permits or fail to comply with fire, electrical, plumbing codes.

People seeking government security clearances (Military, Federal/State/Local Law Enforcement) may want these removed because the background check covers all courts.



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Steps going forward



Generate an expungement request form.



Create a short checklist reflecting the requirements of the statute for your staff to follow.



Training on this new topic, including how to actually remove records from public access whether the records are in paper or electronic format.



Hopefully though, this will not have a significant impact on your daily court operations because traffic convictions are not expunged.



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MTAS Sample Ordinances and Forms

Municipal Courts Useful Links and Information

Home > Resources & References > Useful Links and Resources > Municipal Courts Useful Links and Information

[Payment Plans for Citations](#) (for traditional city courts with no General Sessions jurisdictions; includes timeline and sample application form for payment plan)

[Rules of the Road Ordinance 2023](#) (long and short forms)

[Sample Municipal Court Expungement Ordinance, Petition, and Order](#) 

[Seatbelt Law: Flowchart of Fine and Adults and Children](#)



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Keep records confidential, but don't destroy

TCA 40-32-102(e)(1) – “The clerk of the court maintaining records expunged pursuant to this chapter shall keep such records confidential.”

The rest of the section discusses the prohibition from releasing records to the public but does permit releasing records to law enforcement and the Comptroller's office and the petitioner requesting the expunction.



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So how do we do make them confidential?

Let's ask our friends Wendy Holliday and Sgt. Patrick Adams about that for:

1. Paper Records
2. Digital Records



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Three Part Process – all possible data is addressed

1. Staff will print and process any expungements that belong to our agency.
2. After the first steps are completed, the order is given to a QC person to verify information and to add the expungement to our excel spreadsheet.
3. Lastly, another clerk will check for any digitally uploaded body/dash cam footage or case files in Evidence.com and Laserfiche. After all possible data points are addressed, we shred the order.

We realized that expunging a record was not just a cut and dry process and we had many places to check to ensure all records are addressed.



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Our agency's Data Storage Solutions



RMS (Records Management System)



Old field-based reporting system that is still used in a limited capacity. (Ex. WATSON)



Hard drive folders that all expungements were scanned into, including some old case files.



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Our Agency's Data Storage Solutions (cont.)

Laserfiche (digitized case files)

Evidence.com (for any digital evidence and BWC/Dash cam videos)

Standing cabinets filled with expunged paper files that are not entered digitally into our RMS



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8 Step Process – So much fun!

1. We monitor the expungement inbox, print out the ones for us to process, and process them.
2. If the case is before Oct. 30, 2024, add verbiage and expunge the case in WATSON.
3. In RMS, add our expungement verbiage to the proper place and check if there is any associated evidence. If so, we notify evidence.
4. If it is a partial expungement (only some charges or one suspect if there are more than one), we only make note of in the verbiage in the notes section, but they are treated the same way as a full one.

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8 Step Process – Still having fun.

5. Since we have so many places to look at, we also have a spreadsheet as a central place to look if we have inquiries.
 - a) Why is this necessary?
Expunged records, while confidential, can be released to other law enforcement agencies.



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8 Step Process – almost there!

6. The next step is to QC the expungement.
 - (a) Why do we do this? QC process is an important part of ensuring the quality of our work, and the quality of the data we retain. The system is set up that it shouldn't matter if we go through any further software/personnel changes.
 - Confirm that this is the correct case to expunge.
 - Confirm the arrest dates/charges match, verbiage is completed where it is needed, that the order is attached, etc.
 - Enter information onto the spreadsheet.
 - Stamp with EXPUNGED at this point. That way, the person doing the last, final step knows all previous steps have been performed and it can finally be shredded.

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8 Step Process – Whew! We're done.



7. Last step is to check Laserfiche and Evidence.com.
8. The "Completed" checkbox on the spreadsheet that will be marked when everything is done and the order is shredded.

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And now a word from the TBI CJIS Division



Criminal Justice
Information Division

Caitlyn Thompson
Presenting

Holly Folsom
Darin Richardson
CJIS Support Services



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Eligibility of Expunction Certificate




Caitlyn A. Thompson

CJIS Support Specialist, Criminal Record Expungements

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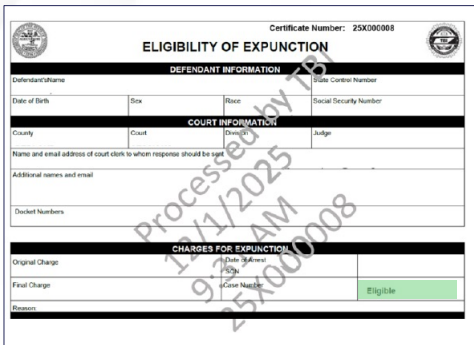
T.C.A. § 40-32-102



Eligibility of Expunction - Certificates

Convictions, Pardons, Human Trafficking, Judicial and Pretrial Diversions


- TBI shall develop a request for certification form to be completed by the court and submitted to the TBI prior to entering an order of expunction.
- An order of expunction must not be entered by the court unless a certificate, as required by this subsection (c), is attached to the order of expunction.
- Only a certification as to whether the submitted offense is eligible for expunction. (Informational for the Judge)
- Certificate may also be disseminated to the District Attorney, Defendant, and/or the Defendant's Attorney.



Eligible
 Not Eligible
 See Comments Box

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T.C.A. § 40-32-102



Eligibility of Expunction - Certificates

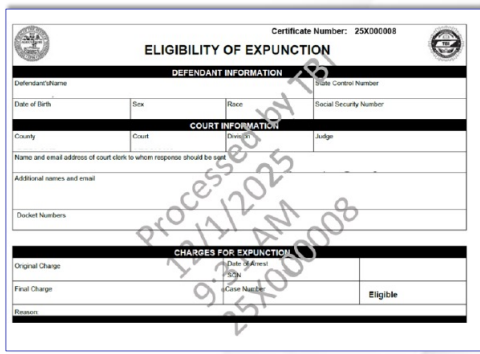
Application for Certification of Eligibility For Diversion

\$100 Fee

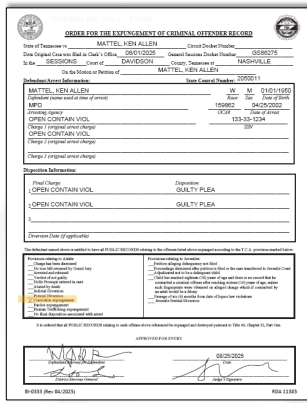


Eligibility of Expunction Certificate

No TBI Fee




Expungement Order



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T.C.A. § 40-32-102



Eligibility of Expunction - Certificates



Defendant and their Attorney petition for Expungement

Given to Court Clerk



Court Clerk reviews the Expungement Order for:

- Conviction
- Pardon
- Human Trafficking
- Judicial Diversion
- Pretrial Diversion

Requests an **Eligibility of Expunction Certificate** from the TBI



TBI receives the request in FlexCheck

Examiner reviews the current T.C.A. for eligible/ineligible offenses

A certificate is sent back to Court Clerk



Judge reviews the certificate prior to signing the Expungement Order

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T.C.A. § 40-32-102



Eligibility of Expunction - Certificates

Frequently Asked Questions - Trifold

WHO

Anyone applying for the following types of expungements needs a certification of eligibility:

- Conviction
- Pardon
- Human Trafficking
- Judicial or Pretrial Diversion

WHAT

This is a certification of offense eligibility only. The certification is not a certification that the defendant is eligible for expunction, and the court continues to have the duty to determine eligibility.

WHERE

Eligibility of Expunction Certificates are completed and submitted by the Court Clerk in the FlexCheck Web Portal.

WHEN

Certificates are to be completed by the Court Clerk and submitted to the TBI. Then, the order of expunction should be signed with the certificate attached.

WHY

To ensure that the Court is aware of the eligibility of an offense prior to entering an order of expunction.

Contact Us

TBI.Expungement@tbi.tn.gov



Eligibility of Expunction Certificate

Effective April 21, 2023

Frequently Asked Questions

2025 CJIS Conference

FAQ

Q: What is an Eligibility of Expunction Certificate?
A: The Tennessee Bureau of Investigation (TBI) shall develop a request for certification form to be completed by the court and submitted to the TBI prior to entering an order of expunction. The court is not required to submit a certificate to the TBI if the expungement is pursuant to § 40-32-104 or § 40-32-105, unless the expunction was the result of the successful completion of a pretrial diversion program, pursuant to § 40-16-102-§ 40-16-107 or a judicial diversion program pursuant to § 40-35-313.

After receiving a request for certification, the TBI shall determine if the submitted offense is eligible for expunction pursuant to § 40-32-107 or § 40-32-108 and note the determination on the certificate.

An order of expunction must not be entered by the court unless a certificate, as required by this subsection (c), is attached to the order of expunction.

Ref. T. C. A. § 40-32-102 (c)

Q: What must the certificate include?
A: The certificate must contain the name of the person seeking expunction, the person's date of birth and social security number, the offense that the person is seeking to have expunged, the date of arrest, and the appropriate state control number as referenced in § 8-4-105.

Ref. T. C. A. § 40-32-102 (c)

Q: Does the certificate have an expiration date?
A: No.

Q: Who retains a copy of the processed certificate?
A: The TBI shall provide the court (each clerk that accepts petitions for expunction) with a copy of the certificate containing the determination of Eligible or Not Eligible, or an explanation why a determination cannot be reached. The certificate may also be distributed to the district attorney and the defendant or the defendant's attorney.

Q: I don't have FlexCheck. How do I obtain access?
A: Email your request to TBI.Expungement@tbi.tn.gov to receive instructions for creating and using an account in FlexCheck. Once you have an account, you can also submit expungements through the FlexCheck Web Portal.

Q: We submitted a request for a fee offense that was paid under diversion and the certificate was returned with the charge received "Not Eligible for expungement." Are all offenses eligible for expungement?
A: No, listed offenses that require the defendant to register on the Sex Offender Registry are not eligible for expungement. A disposition can be entered showing the diversion was completed and dismissed, but the charge is not eligible for expungement.

Ref. T. C. A. § 40-32-106 (c)

Q: Can I make, fax, or email the request?
A: All certificate requests must be submitted through TBI's FlexCheck system, which is a secure web portal.

Q: Who can request an expunction certificate?
A: The request must be made by the court clerk's office through the FlexCheck web portal. The defendant, the defendant's attorney, and the District Attorney may receive a copy of the certificate, but they cannot submit the request.

Ref. T. C. A. § 40-32-102 (c)

Q: Do juvenile adjudications or diversions need a certificate?
A: No. If the charges remained in Juvenile Court.

Q: If I have an expungement for charges that were on diversion, but there were also charges on that case of arrest that are classified (do include) of them on the certificate request?
A: No. Dismissed charges should not be included on the certificate request. Dismissed charges will be included on the expungement order, and in the FlexCheck expungement transaction.

Q: What's the difference between the Application for Certification of Eligibility for Diversion and the Application Eligibility Certificate?
A: The diversion certification application is requested by the defendant or the defendant's attorney prior to an order being entered, deferring further proceedings and placing the defendant on probation. The expungement certificate is requested by the clerk after the conclusion of a sentence, and prior to an expungement being entered. A diversion certificate should not be requested after a sentence has been completed.

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CONTACT INFO



CJIS Supervisors

Holly Folsom (Dispositions and Expungements) Holly.Folsom@tbi.tn.gov (615) 744 – 4280	Heather Hurley (Diversions and Expungements) Heather.Hurley@tbi.tn.gov (615) 744 – 4025
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Expungement Leads

Julie Barr Julie.Barr@tbi.tn.gov (615) 744 – 4385	Haylee Tilley Haylee.Tilley@tbi.tn.gov (615) 744 – 4254
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CJIS Support Specialist

Caitlyn Thompson (Expungements)
Caitlyn.Thompson@tbi.tn.gov
(615) 347 – 6964

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Questions?





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John Eskew – Municipal Court Specialist

john.eskew@tennessee.edu

615-733-0604 (Office)

931-551-6796 (Mobile)



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