



Protective Orders

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Recent Changes

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OPs Now 2 Years; Emergency OPs

- HB 2604
- An order of protection valid for 2 years if served on or after 9-24-22.
- Explain to people that if an OP is served before 9-24 it is valid for 1 year, but if it is served on or after 9-24, it is valid for 2 years.
- (Does not affect Injunctions.)
- An emergency OP will expire 7 calendar days after issuance.
- In counties with a population of less than 150,000 persons, a judge, justice of the peace, magistrate, or commissioner is authorized to issue emergency OPs by telephone only during the hours that the courts are closed.

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Lifetime Injunction v Harassment

- SB 1653
- On the request of the victim or the prosecutor at sentencing, the court is required to issue an injunction that prohibits the defendant from contacting the victim if the defendant is convicted of a dangerous offense, a serious offense or violent or aggravated felony, or a felony offense that is a sexual offense or an offense of sexual exploitation of children.
- The injunction is effective immediately and is valid for the defendant's natural lifetime unless the victim dies, the conviction is dismissed or overturned, or the victim submits a written request to the court for an early expiration.
- A victim is authorized to submit a petition to the court requesting an injunction against a defendant who was sentenced for one of the specified offenses before the effective date of this legislation.

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Lifetime Injunction v Harassment, cont.

- SB 1653
- Previous slide should not affect us much, BUT
- Eliminates the “extra” definition of harassment that was added just last year (for victims of defendants convicted of committing crimes)!

~~(c) Any contact if the person is the victim of a crime that was committed by the defendant. For the purposes of this subdivision, “crime” means a conviction for an offense, whether completed or preparatory, that is a dangerous offense as defined in section 13-105, a serious offense or violent or aggravated felony as defined in section 13-706 or any offense in title 13, chapter 14 or 35.1.~~

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Amendments to Crimes of Harassment

- SB 1633
- Several tweaks to the definition of the crime of harassment in 13-2921, including only 1 false report to law enforcement.
- Does NOT change the definition of harassment for Injunctions.
- So, why discuss? This is one of the qualifying domestic violence offenses, so it does impact Orders of Protection.
- Also amends the felony definition for Aggravated Harassment to include violation of any OP, Injunction, **Emergency OP, or violating a Condition of Release by contacting a harassment victim.**

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Statutory Changes and Clarification

- Emergency Petition R-22-0030 **(Considered Aug 23)**
- Changes definition of “harassment” in Rule 3(e) when applicable to OP or Emergency OP (only): conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated, or ~~harassed~~ mentally distressed, and the conduct in fact seriously alarms, annoys, humiliates or ~~harasses~~ mentally distresses the person.
- Changes to Rules 25 and 26 clarify modified Injunctions (not OPs) take effect upon service but still expire 1 year after original service.

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Definition of Harassment

- R-22-0026 **(to be considered in December meeting)**
- Filed by ASU Professor
- Would “clarify” definition of harassment for Injunctions in Rule 25(e)(1)(A) to require only the most recent act in a series of acts to have occurred within the previous year.

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Arizona Rules of Protective Order Procedure

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ID Not Required for Ex Parte

Plaintiff with no identification will not be turned away because he/she does not have a valid, government issued identification card.

*The Judicial Officer will ascertain identification through sworn testimony

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Rule 5: Parties

- Minors
- If the person in need of protection is a minor, then the parent, legal guardian, or person who has statutorily defined legal custody of the minor must file the petition unless the court determines otherwise. The petition must name the parent, guardian, or custodian as the plaintiff and the minor as a specifically designated person.

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Rule 5: Parties

- Child as a Protected Person:
- A judicial officer cannot include a defendant's child in a protective order unless there is reasonable cause to believe:
 - (A) physical harm may result or has resulted to the child, or
 - (B) the alleged acts of domestic violence involved the child.

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Rule 5: Parties

- 3rd Parties:
- If the person in need of protection is either temporarily or permanently unable to request an order, a third party may request a protective order on the person's behalf. After the request, the judicial officer must determine whether the third party is an appropriate requesting party.

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Rule 5: Parties

- Child and Defendant with No Legal Relationship:
- If the defendant and the child have no legal relationship, the judicial officer, upon request, may prohibit the defendant's contact with the child based on danger to the plaintiff.
- Minor as Defendant:
- Only the juvenile division of the superior court may issue a protective order against a person under 12 years of age.

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Rule 6: Court Availability

- A judicial officer must allow a victim advocate, if identified as such, to accompany the plaintiff during the ex parte hearing
- The presence of children does not constitute grounds to deny a plaintiff access to the court for the purposes of requesting an ex parte protective order.

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Rule 7: Public Access

- The court must not make publicly available any information regarding the filing for, contents of a petition for, or issuance of a protective order until proof of service of the protective order has been filed with the court. The court may share information about the protective order with the plaintiff, prosecutors, or law enforcement.

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Rule 10: No Limits

- No Limit on Requests
- No Limit on Orders Granted
- A plaintiff may file a petition for another protective order if the plaintiff believes protection is still needed pending expiration of the current protective order.

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Rule 17: Priority

- A judicial officer must expeditiously schedule an ex parte hearing for a protective order involving a threat to personal safety even if previously scheduled matters are interrupted.

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Rule 18: Record

- A judicial officer must cause all contested protective order hearings and, where practicable, all ex parte hearings, to be recorded electronically or by a court reporter.
- An appeal from a contested hearing that was not electronically recorded or otherwise reported results automatically in a new hearing in the original trial court.

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Rule 19: Prior Records

- A judicial officer must not consider the number of times a protective order has been dismissed as a basis for denying a request for protective relief.
- Each time a plaintiff petitions for protective relief, the judicial officer must make an independent determination whether there is reasonable cause to issue a protective order.

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Rule 20: Protected Address *Relatively New*

- A judicial officer must verify that plaintiff's residential address and contact information **do not appear** on the petition and the protective order and **must avoid stating the address on the record.**

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Rule 21: Other Existing Orders

- Must ask plaintiff and examine all available records
- Set pre-issuance hearing unless imminent danger

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Rule 22: No Mutual Orders

- No mutual protective orders
- Petitions of opposing parties can be consolidated for hearing
- The Court may not issue a protective Order against Plaintiff based on Plaintiff's own petition
- Do not order plaintiff to do anything

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Rule 23: Orders of Protection

- Must hold ex parte hearing
- **Each element to be relied on at hearing must be specifically alleged (but petition may be amended)**
- Must find reasonable cause to believe that the defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year or within a longer period if the court finds good cause exists to consider a longer period.

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Rule 23(f)(2): DV Relationship

- Spouse or former spouse
- Children in common with defendant
- Parent
- Grandparent
- Child
- Grandchild
- Brother or sister
- Romantic or sexual relationship with Defendant (now or in past)
- Roommates

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Acts of Domestic Violence A.R.S. § 13-3601

- | | | | |
|--|-----------------------------------|-------------------------------|---|
| • §13-705 | Dangerous Crimes Against Children | • § 13-1602 | Criminal damage |
| • 13-1102, 1103, 1104, 1105 | Neg.Homicide/ Manslaughter, | • § 13-2810 | Disobeying a court order |
| 2 nd or 1 st Degree Murder | | • § 13-2904 | Disorderly Conduct |
| • § 13-1201 | Endangerment | • § 13-2910 (A)(8) and (A)(9) | Cruelty to Animals |
| • § 13-1202 | Threatening or intimidating | • § 13-2915(A) | Prevention of Use of Telephone
in an Emergency |
| • § 13-1203 | Assault | • § 13-2916 | Use of Telephone to harass |
| • § 13-1204 | Aggravated assault | • § 13-2921 | Harassment & 13-2901.01
Aggravated Harassment |
| • § 13-1302 | Custodial interference | • § 13-2923 | Stalking |
| • § 13-1303 | Unlawful imprisonment | • § 13-3019 | Surreptitious videotaping or
filming |
| • § 13-1304 | Kidnapping | • § 13-3601.02 | Aggravated Domestic Violence |
| • § 13-1406 | Sexual Assault | • § 13-3623 | Child or vulnerable adult abuse |
| • § 13-1502 | Criminal trespass, third degree | | |
| • § 13-1503 | Criminal trespass, second degree | | |
| • § 13-1504 | Criminal trespass, first degree | | |

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Crime of Harassment (for DV Act)

- 13-2921 (effective 9/24/22)
- The person “knowingly and **repeatedly** commits an act **or** acts that harass another person or the person knowingly commits any **one** of the following acts in a manner that harasses:”
 - 1 Contacts another person
 - 2 Follows a person in public after being asked to desist
 - 3 Surveils or causes another person to surveil
 - 4 Makes a false report to law enforcement or credit or social service agency
 - 5 Interferes with delivery of utility
- Aggravated Harassment (felony) includes violation of any OP, Injunction, **Emergency OP, or violating a Condition of Release by contacting a harassment victim.**

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Rule 23g: Orders of Protection

- Additional Review for Limited Jurisdiction Courts.
- A court must ask the plaintiff whether a family law action is pending in the superior court and determine whether the court has jurisdiction pursuant to Rule 34.

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Rule 23: Orders of Protection—Exclusive Use

- May grant the plaintiff exclusive use of the parties' residence if there is reasonable cause to believe that physical harm otherwise may result.
- A plaintiff who is not the owner of the residence may be granted exclusive use for a limited time.
- The defendant may be permitted to return one time, accompanied by law enforcement, to pick up personal belongings.
- At a contested hearing, a judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use.

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Rule 23(h)(2): OP-Exclusive Use *Relatively New*

- If the plaintiff moves out of the residence while the order is in effect, the plaintiff must file a written notice with the court within five days after moving. Upon receipt, the court must provide a copy of the notice to the defendant and advise of the right to request a hearing pursuant to A.R.S. § 13-3602(L).

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Rule 23i: OP Firearms

- Must ask plaintiff about defendant's use of or access to firearms to determine whether defendant poses a credible threat to physical safety of plaintiff or other protected persons
- Can prohibit (under AZ law, not Brady) and order transfer
- Brady automatic after contested hearing with intimate relationship and finding

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Rule 25: Injunctions Against Harassment

- Must allege specific series (at least 2*) events, with dates, to be relied on at hearing
- To grant ex parte, must find that good cause exists to believe great or irreparable harm would result to plaintiff if IAH is not granted before defendant can be heard in opposition and specific facts attesting to plaintiff's efforts to give notice to defendant or reasons supporting plaintiff's claim that notice should not be given

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Injunctions Against Harassment

A.R.S. § 12-1809(T): “Harassment:

--a series of acts over any period of time

--directed at a specific person

--would cause a reasonable person to be seriously alarmed, annoyed, or harassed,

and the conduct in fact seriously alarms, annoys, or harasses the person

and serves no legitimate purpose.

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Injunctions Against Harassment *Relatively New*

- 12-1809(T)(1)(b) added
- Instead of a series of acts, now 1 act of sexual violence will qualify
- Those acts identified at ARS § 23-371

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12-1809: Surprise!

- Harassment Includes unlawful picketing, trespassory assembly, unlawful mass assembly, concerted interference with lawful exercise of business activity and engaging in a secondary boycott as defined in section 23-1321 and defamation in violation of section 23-1325.

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Rule 4d: IAWH

- An Injunction Against Workplace Harassment, governed by A.R.S. § 12-1810, authorizes an employer to seek a court order preventing a person from being on the employer's premises
- and from committing acts of harassment against the employer, the workplace, employees, or any other person who is on the employer's property or at the place of business or who is performing official work duties.

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R 26: Injunctions Against Workplace Harassment

- May allege only 1 specific event, with date, to be relied on at hearing
- To grant ex parte, must find that good cause exists to believe great or irreparable harm would result to plaintiff if IAH is not granted before defendant can be heard in opposition and specific facts attesting to plaintiff's efforts to give notice to defendant or reasons supporting plaintiff's claim that notice should not be given

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Rules: 27-28 No Cross or Conflicting Orders

- No cross, but separate petitions
- Can hold hearings together
- Conflicting orders must be set for hearing within 5 biz days
- Between two limited jurisdiction orders, it is presumed that the court where the first petition was filed will conduct the hearings to resolve the conflicting orders.

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Rule 30: Counseling

- Can order only after hearing
- Don't bother; no enforcement

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Crafting Orders

- Avoid distance restrictions
- NEVER order the plaintiff to do anything
- Do not schedule law enforcement standby

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Rule 31: Service

- A protective order can be served only by a person authorized by Rule 4(d), Arizona Rules of Civil Procedure
- Can be served in court or at the scene
- Attorney CANNOT accept service
- Expires if not served w/i 1 year

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Rule 31: Service ***Relatively New***

- Service of process for Orders of Protection or Injunctions with dating or sexual violence issued by Justice Court will be the responsibility of the County Sheriff's Office or Constables
- The Supreme Court, through AOC, will electronically transmit the Order of Protection to law enforcement for service
- All you can do is delay up to 72 hours
- So ASK at beginning if they are ready to have it served or if they want to come back later

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Serving Order of Protection--Delay

- The petitioning party may request, or the issuing judge (in his or her discretion) may decide, to delay service for up to 72 hours. The issuing court must make a finding as to why the delay is being ordered. In that event, the Order of Protection will be held by the Central Repository from initiating service of process for the delay time ordered by the Court

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Serving Order of Protection

- Maricopa JPs have a box at the bottom of the computer screen to delay the service.

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Edit Petition

Deny/Quash Order

Reprint Petition

Print Declaration of Service

Delay of Service Needed? (up to 72 hrs)

Grant and Review Order of Protection

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Service: ARCP Superior 4.1(e-g)

- Minors under 16—serve minor AND parent or guardian
- If minor or adjudicated incompetent has guardian or conservator, serve person and latter

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Rule 34: Family Court

- A limited jurisdiction court cannot issue a protective order if plaintiff's petition or other evidence reveal that an action for maternity, paternity, annulment, legal decision- making and parenting time, dissolution of marriage, or legal separation is **pending** in an **Arizona** superior court.
- Must promptly transfer if one issued

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Rule 35: Parenting Time

- Provisions for Parenting Time and Child Exchanges:
- A limited jurisdiction court that issues an order prohibiting contact with the plaintiff **cannot** include exceptions that allow the defendant to come near or contact the plaintiff in person for legal decision-making or parenting time with a child...
- ... A limited jurisdiction court **may** allow contact by mail or e-mail to arrange parenting time and may provide for child exchanges under circumstances not involving contact with the plaintiff in person.

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At Ex Parte Hearing

- Questions to ask:
- Petition verified?
- Existing orders?
- Firearms access/concerns?
- Family Court action pending?
- Any other specific allegations you want to use at a contested hearing?
- State the specific acts relying upon for granting

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Rule 36: Relevant Evidence

- **Must** limit scope of hearing to allegations of the petition (but—can now amend the petition).
- Relevant evidence is admissible provided, however, that court must exclude evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

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Rule 38: Contested Hearings

- Must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.
- Should explain the hearing process to the parties and should determine, by questioning the parties, what issues the JO will decide at the hearing

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Rule 38: Contested Hearings

- Starting over: plaintiff must establish BOP by POE
- **Must** state the basis for continuing, modifying, or revoking PO
- Preferably state specific DV statute for OP
- Modified PO must be served

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Rule 38: Contested Hearings ***Relatively New***

- Rule 38(b)(1) If exclusive use of a residence is awarded to the plaintiff, the court, on written request of a party, may hold additional hearings at any time if there is a change in circumstances related to the primary residence. *See A.R.S. § 13-3602(L).*
- Rule 38(a) Defendant entitled to only 1 hearing which must be requested in writing (so pre-issuance hearing does not qualify) and can be waived if defendant FTA at requested hearing.
- Rule 38(e)
 - 1. Plain present, Def FTA and had actual notice: Leave in place
 - 2. Plain FTA and had actual notice, Def present: Dismiss
 - 3. Both FTA and had actual notice: Vacate hearing and Leave in place

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Amended Petitions-- *Relatively New*

- New Rule 38(d):
- **(d) Amended Petition.** At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:
- (1) allow the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and

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Amended Petitions, continued

- (2) offer the defendant each of the following options:
- (A) a continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or
- (B) a brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or
- (C) an explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed with the contested hearing on the amended petition that includes the additional allegations.

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Form

Directive 2021-19

All Courts in Arizona/NCIC#/DPS#	Address	City, AZ	Zip Code	Telephone No.
Plaintiff _____ v. _____ Defendant _____	Case No. _____	SUPPLEMENT TO PETITION (Rule 38(d), ARPOP)		

Rule 38(d), Rules of Protective Order Procedure, allows a plaintiff to file an amended petition at a contested hearing. If you file an amended petition and add more allegations here, the judge must allow the defendant an opportunity to ask for the hearing to be continued to another day or grant a brief recess so the defendant can review and prepare for these additional allegations. The defendant may also choose to waive a continuance or a recess, and the contested hearing will proceed as scheduled.

Tell the judge additional information that you did not include on your original petition. Any events you add must have occurred before you applied for the protective order. Print both the dates and a brief description of what happened.

Approx. Date	(Do not write on back or in the margin. Attach additional paper if necessary.)
required	
required	
required	

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Rule 39: Costs and Attorney Fees

- Can award costs and attorney fees
- Should you?

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Rule 40: Motion to Modify

- Only plaintiff can request
- Prior to contested hearing: can be done with interview of plaintiff
- If a contested hearing has been requested or has occurred, the motion to modify must be set for hearing with notice to the defendant

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Rule 41: Motion to Dismiss

- Plaintiff only
- Check ID
- Ensure no coercion
- If defendant present, interview separately
- Dismiss and invite to re-file if necessary

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Rule 42: Appeals

- Appealed to Superior Court
- No stay!
- Based upon transcript of hearing
- An ex parte denial may be appealed, but better to encourage plaintiff to return if additional incidents or proof

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Safety Plans

- You can have plaintiffs fill out safety plans online here: www.myplanapp.org It is also available to download on Apple and Android as "myPlan."
- Could not find it in app store but it is online
- Icon looks like this:



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Questions?

Attachments

- 1 Benchcard
- 2 Sexual Violence
- 3 Form to Amend



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