

Your guide to getting charged with a crime in New Jersey.

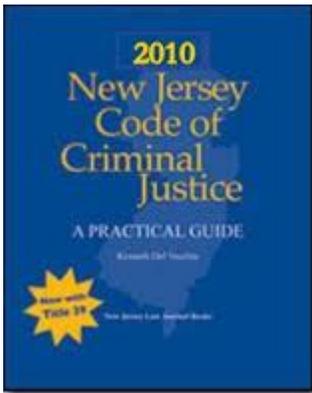
By the Law Offices of Jef Henninger, Esq.

With 11 offices in New Jersey, we are always close by for all of your criminal defense needs. We practice in every court in New Jersey. Call us 24/7 at 732-773-2768.

Disclaimer

We hope you enjoy this guide and that it provides you with this firm's opinion as to how our system works in New Jersey. It is our opinion only and it should not be used as legal advice.

New Jersey's Criminal Code



Almost all of New Jersey's crimes are found in Title 2C. So, if you are charged with something that starts with 2C, you are facing a crime. We technically don't have misdemeanors and felonies in New Jersey. Instead, we have disorderly person's offenses and crimes. The concept is the same, we just use different terminology.

Disorderly person's offense or DPs are punishable by jail time up to 6 months. However, some DP's are labeled as petty disorderly person's offenses, in which case, the jail time is up to 30 days. Crimes come in four categories: first, second, third and fourth degree felonies. The maximum punishment is 20 years, 10 years, 5 years and 18 months respectively.

Of course, there are a number of crimes that have a wide range of sentencing enhancements either as to the maximum time of punishment, the ability to released early, or other issues such as Megan's law. Regardless of the ultimate punishment, a conviction of any offense will result in a criminal record.

Elements of crimes

All crimes have “elements”. Think of elements as ingredients in a recipe. If you miss one, the final result is off. Same with elements, if you miss one, that crime is not completed. On the very basic level, almost all crimes have a Mens Rea and Actus Reus or Guilty Mind and Guilty Act. If you are

missing either, there is no crime. This will be one of key issues your lawyer will focus on because while the State has to prove each and every element, your defense lawyer only has to focus in on one of them.

Before you are charged

Most arrests for “street crimes” (crimes of violence, drugs, etc) happen soon after the crime is discovered. For example, someone calls the police to report an incident. The police come and someone is arrested. Another common example is the motor vehicle stop where evidence of a crime, such as drugs, is discovered. Thus, by the time you know that you or your loved one is in trouble, it is too late to do anything about it. In fact, if you or your loved one have already been arrested, you can skip to the next section.

However, if you haven't been arrested or charged with a crime yet, you may want to hire a lawyer immediately. In an effort to either save money or not appear guilty, people often put off hiring a lawyer at this stage. Others may not even think they need a lawyer since there is no charge yet. However, any time someone accuses you of committing a crime or threatens to call the police, you should hire a lawyer right away. We have represented many clients that have avoided serious charges because they called us first. In fact, we even had one case where the police literally tore up the charges after drafting the complaint! Of course, most people will not have the luxury of such foresight for the reasons described in the preceding paragraph.

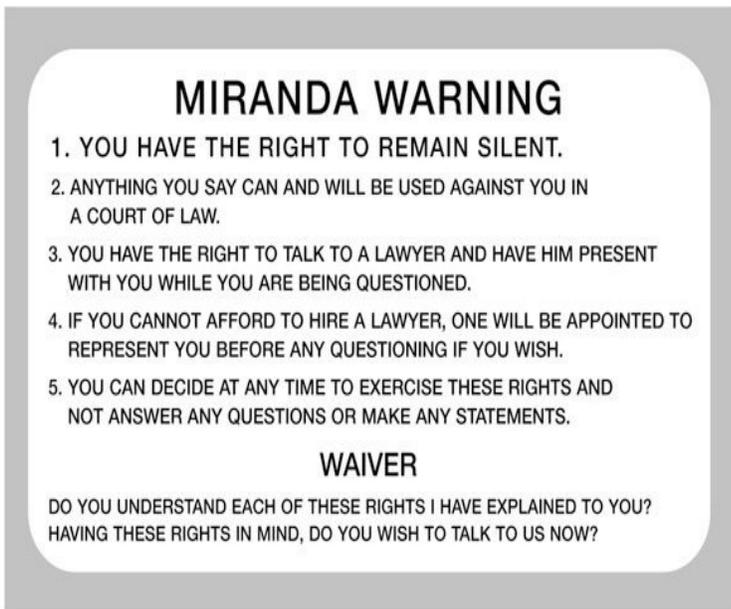
Getting charged

There is a lot of confusion with regard to getting arrested in New Jersey. The term arrest is sometimes used interchangeably with the term charged. Regardless, getting charged with a crime is done by either a private citizen or a police officer (which is the case most often) issuing a summons or a complaint-warrant, otherwise just known as a complaint. A summons is used when the defendant is released on their own recognizance. A complaint is used where the person will have to post a bail to be released. Either way, both documents are the initial step in the process. They advised the defendant as

to what the charge is, who pressed the charge, when the allegation occurred and when the next court appearance is. A complaint also lists the bail that needs to be posted (see bail section below).

For minor charges, the police will just hand you a summons and you will be on your way. For more serious charges, you will be processed even if you are being released. Getting processed will require some time and will involve fingerprints and photos.

Speaking to the police and getting read your rights



**ENGLISH
(FRONT)**

At least once a day I hear: “but they didn't read me my rights”. This has to be the most misunderstood concept in our justice system. The police only have to read you Miranda rights if you are under arrest and they are questioning you about the incident and they wish to use that testimony against you. If you are not under arrest or they don't want to question you, you will not be read your rights. Don't worry about the actual process here to see if they did everything right or not.

Leave all of the legal issues for your lawyer. He or she will review all of the evidence and determine the appropriate legal strategies in your case.

Selecting a lawyer

This is the toughest job facing any defendant or loved one of a defendant. How do you know

who to pick? Should you go with your “family lawyer” that did your will? What about your personal injury lawyer? What about the guy on the billboard or the one on the back of the phone book? You could be bombarded with suggestions from a variety of sources. In the end, its a personal decision that will likely have a dramatic impact on the result of the case. In other words, it really does matter who you choose! While its impossible to give you a perfect guide to selecting a lawyer, I'll give you a few issues to consider.

-What's not important

Race, height, religion, proximity to the courthouse and gender should not have any impact on your decision making because none of these issues bear upon the lawyer's ability. Any decision based upon these criteria are built upon stereotypes, prejudices and/or assumptions. In fact, you should abandon all assumptions about the lawyer. Don't assume that someone will do a better job because they are in county, out of county, may know the judge, may know the prosecutor, etc. We've worked with just about every single prosecutor's office in New Jersey at one point or another. Some of them we deal with on a regular basis. Others, only once in a while. Does this ever impact our results? Never. Some of the best deals that we've worked out came from prosecutors that we just met.

-How many to interview

At some point, society decided that you had to interview three people in the service industry you were selecting in order to make an informed choice. Maybe this made sense before the Internet, but I don't see what this solves now. In fact, we prefer not to represent people that are attorney shopping. Don't get me wrong, this guide is to help inform you so thus, we encourage you to do your home work. Most of our client have researched our firm and are prepared to hire us when calling us.

We believe that our brand of law practice is so unique that there is really no comparison between us and everyone else. Does that mean that we are right for everyone? Of course not. Just like we all like different music, cars, movies, etc, some people are attracted to our unique style of practice while other people prefer a more traditional approach. Research as many lawyers as you want, but I

suggest settling on one, interviewing him or her and then deciding if that lawyer is right for you. If not, move onto the next one.

-The truth about awards, lists and rankings

There really isn't a company or other entity that sits in judgment of lawyers and then ranks them. Some of the best lawyers in New Jersey are lawyers you may not have heard of while other lawyers that are in a number of rankings, are really not that great. I know because I've gone up against some of the "best" and I was not impressed at all. The criteria for a lot of these rankings, lists or other awards can be quite sketchy and putting much stock into them could be a bad idea.

-Firm size

There are some great lawyers in big firms but I think most lawyers will tell you that the only difference between a big firm and a smaller firm, is the size of the bill. Big firms get a lot of their money from corporate and government clients. In order for your little criminal case to matter, the bill might have to be sizable. I can tell you that the prosecutor's office doesn't give you extra credit if you work for a big firm.

-Guarantees

There are no guarantees in this business. None at all. Any lawyer that guarantees you a result, is flat out lying to you. Now a lawyer can say in some minor cases that based upon experience, there is an almost certain chance of one result over another, but it can never be absolute. The more serious the case, the more difficult it will be to predict the outcome of the case.

-Specialty

This is a big one. There are many lawyers out there that will take an "easy criminal case". Would you want a knee surgeon doing an "easy brain surgery"? Of course not and yet every day someone hires a general practice lawyer or real estate lawyer who they know or somehow just come across who figures that they can just plea the client out and be done with the case. When I ask clients about why they would hire such a lawyer, most explain that they figured the lawyer would not take the

case if they didn't know what they were doing. Wrong! This can be a cut throat business and the opportunity to make a quick buck can be very tempting to a lawyer whose phone isn't ringing off the hook. In our firm, we refer out a lot of work when a potential client calls us who has a matter that it outside our specialty areas.

-Price

This is another big one. The lowest price car that you can get will probably not take you anywhere but its still a car right? Same thing with a lawyer. Prices are all over the map. While an expensive lawyer doesn't always equate to a good lawyer, good lawyers do cost money. As previously mentioned, this causes a big problem with clients facing criminal charges because the average criminal defendant doesn't have the money to adequately defend themselves. Thus, its a race to the bottom when it comes to prices as lawyers compete for business.

Our firm is in demand and while we think our rates are reasonable given the service, we are far from cheap. As a result, we turn down a lot of business by quoting fees higher than what many clients can pay. However, this allows us to focus on a more limited number of clients who are serious about obtaining quality representation and our results show it!

-Hiring a lawyer

Once you have decided who to hire, you need to call that lawyer and work out the payment. For our firm, we do not need to meet with most clients. While we are always available to meet with new clients, modern technology has allowed us to make an in-person meeting the client's choice instead of our requirement. For us, we need to know the charge, the date of arrest, the bail (if any), the criminal history of the defendant (if any) and a short description of the allegations. We can then set a fee.

As discussed above, the fees for lawyers varies widely. Lawyers can either charge hourly fees or flat fees. We prefer hourly fees for many cases because this provides of flexibility for both the firm and the client. Many people are afraid of hourly fees because they want some type of certainty with the total price. Of course, it is impossible to predict what will need to be done in all but the most minor of

cases so thus, flat fees can be difficult to set. Either the client will pay too much or the firm will get paid too little. When firms are paid too little, there is an incentive not to work hard. In fact, I think flat fees encourage lawyers to do as little work as possible since that will increase their profit margins. Of course, we do not allow this to occur in our firm and thus, we will provide a flat fee when possible. However, even with our hourly fees, we work with the client to come up with a plan that focuses on all of the options along with the approximate costs for each option.

-Payments

Our firm accepts all methods of payments including all major credit cards. Credit cards can be taken right over the phone which obviates the need for an in-person meeting. Not all firms take credit cards. Payment plans are available at some firms. For most cases, we require the fee up front. However, we do offer payment plans for the right cases.

-Fee agreement

Once you paid the lawyer, the lawyer should provide you with a fee agreement. If this didn't happen, it is not only illegal but you are likely in for some big problems at some point. If the lawyer asks you for more money, you will have no contract to enforce. How do you even know what you paid for? Read the fee agreement, sign it and retain a copy.

Bail



Bail is usually money (or some other property) that is used to secure the defendant's purpose at trial. The more serious the charge, the higher the bail will be. The background and character of the defendant will also impact on the amount of bail. An initial bail amount is usually set by calling a judge and explaining the basic facts of the case. It could be low, high or just right.

While there are bail guidelines, they are just guidelines and judges can and often do, go beyond them.

If the bail is too high, the lawyer could file a bail motion. See the bail review section below.

If bail is posted immediately, the defendant may not have to get booked into jail. Otherwise, the defendant will get booked into the county jail. There is one jail per county in New Jersey. They are often located right near or within a few minutes of the county courthouse. Because each jail is locally run, all of their policies are different. Most jails will have a lockdown period that will prevent inmates from receiving visitors for a period of time. After that, you'll have to check the visiting hours for when you see your loved one. Most defendants will be allowed to use the phone so be sure that your phone number can receive collect calls. Keep in mind that inmates often have a limited amount of time to use the phone so calm your loved one down and get the information you need from them.

Deciding to bail out

No one wants to sit in jail. However, the very nature of jail is that it is a short term facility. Everyone there is either waiting to have their case disposed of, waiting to be sent to prison or is serving a sentence of six months or less. The ability to bail out of jail is very tempting. For those with serious charges, spending a fortune to bail out of jail is ridiculous. If your charge is that serious, you will likely

need a fortune for your legal bills. Most people do not have the ability to pay two fortunes and thus, by bailing out of jail, they have no money for quality legal representation. As a result most of these people wind up going to prison for a longer period of time than what they would have faced if they had quality legal representation.

The process of bailing out

If a bail has a 10% option, you can post 10% of the bail with the court directly and this money will be returned at the completion of the case, regardless of the result. Most serious crimes do not have a 10% option so thus, you can either post the full bail, property or 10% through a bail bondsman. Posting property is difficult and rarely used, but it is an option to explore. If you post the full bail amount, you will get this full amount back at the end of the case. If you post 10% with a bail bondsman, you will never get this money back. This is how the bail bondsman makes money. Some bail bonds companies will allow you to post less than 10% and put the rest on a payment plan. This is a better option to explore so that you still have money for a lawyer. However, keep in mind that you still have to pay that 10% and again, we have seen too many people pay to get out of jail quick, only to go to prison quicker and for a longer period of time.

The process of bailing someone out can be made quite simple by using a good bail bonds company. The bail bondsman will take care of everything for you. Find out what you need from them and see if you will need multiple co-signors for the bail. If the defendant fails to show to court, the bail may be forfeited. Thus, if you post the money with the court, you may lose it all. If you post it with the bail bondsman, they will have to look for the defendant and bring him or her to court.

Bail review

Defendant may get multiple bail reviews. A superior court judge will review the first appearances for everyone that has been arrested within the last few days. The process is quick and most bails do not change. However, lawyers can do a lot with a little at these first appearances. At one first appearance, we were able to shave \$250,000 off of a client's bail! Depending on the county, the

defendant may get another bail review in about a month. Some people think that filing multiple bail motions yields results. Often, this is not the case. However, there are instances where this does work. Only your lawyer can best advise you on how to handle this issue.

Bail motions

One sign of a great lawyer is when he or she files a quality bail motion with the court with exhibits attached. Some lawyers just file a basic motion asking for the bail to be reduced without any real substance. This is because some lawyers are lazy while others are not paid enough to put the time into the case. There is a huge market for low cost representation even though that representation is almost always low quality. In fact, there was such a large practice of lawyers taking a few hundred dollars just to do a quick bail motion and then get out of the case, that some judges have put a stop to such “cameo appearances”. I question the seriousness of anyone who ever calls me about this type of arrangement. Your lawyer is either in the case or isn't. You don't need a lawyer for a day; you need one for the entire case!

Depending on the county, it could take about 4 to 10 days on average to have a bail motion heard. Character letters and other information about the defendant's background is very important for the lawyer to include in the bail motion. It really helps to have local friends and family in the courtroom when the judge is deciding a bail motion. Its one thing to say that the defendant has a support system; its another thing to point to the specific people that help make up the defendant's support system. If the bail motion is successful, the defendant can be bailed out shortly using one of the methods described above. The person(s) posting the bail should be ready to demonstrate where the money is coming from in the event that the prosecutor requests a bail source hearing.

Dropping charges

A common question in domestic violence cases and some other cases, is whether the alleged victim can drop the charges. Quite often, they cannot because it is not their charge to drop. If a police officer signed the charges (which is most often the case in a domestic violence charge) then the charges

belong to that police officer, not the alleged victim. It is very dangerous to assume that the alleged victim can simply tell the prosecutor that they don't want to go forward or just not show up to court. Prosecutors have ways of making people talk. Instead, hire a lawyer and let him or her handle the entire process. In some extreme cases, the alleged victim will get a lawyer to represent his or her interests.

Now that you're out (or you're in for the duration)

At this point, you've hopefully hired a lawyer and either the defendant is out of jail or it is clear that the he or she will be in for the duration. Now that all of the initial excitement has worn off, it is time to calm down. Constantly being upset about the situation will solve nothing. Relax, breathe and put your faith in your lawyer. If the defendant is out of jail, they should lay low. Don't hang out with the wrong people, don't discuss the case with anyone, stay away from trouble and listen to the lawyer's advice. Most defendants facing serious charges could probably use some therapy to process the anxiety of the pending charge but almost none will ever utilize this option. Instead, too many will drive themselves crazy thinking about the case non-stop. This is not healthy and in some cases, has even led to death. Face the fact that there are some things in life that you just can't change. You are powerless over the past but you are powerful over your current state of mind. No matter what the end result of your case may be, make the most of each day and stay in the best mental health possible. You'll be happier and you will be able to think more clearer. As a result, you will help your lawyer help you.

Understanding the criminal justice process in New Jersey

There are three stages of the New Jersey criminal justice process. Pre-indictment, post-indictment and trial. The pre-indictment stage starts with the issuance of a summons or complaint. It is important to understand our process because there are different strategies that can be employed for each part of the case.

Pre-indictment strategy

If your case is being reviewed by the county prosecutor's office, they are deciding to dismiss

your case, remand it to municipal court (for lesser offenses) or to present it to the grand jury. During this time, your lawyer could attempt to resolve the case before it goes any further. While not every case can be resolved at this time, aggressive criminal defense lawyers work hard at this stage to get a great result. When it pays off, it can pay off handsomely. There are a number of reasons why this happens but the most important thing you can do is hire a lawyer immediately. Too many people wait to hire a lawyer.

The Grand Jury

The grand jury is a group of 23 people that get called for jury duty except these jurors do not sit in a courtroom with a judge. Instead, they sit in a room with a prosecutor. They hear a small part of the case and a majority of them have to decide if there is enough probable cause to issue an indictment. There is an old saying that you can indict a ham sandwich. This emphasizes that while this is a measure of protection against the police, it is not much of one. If the grand jury indicts you, an arraignment will be scheduled.

Post-indictment

Unless your lawyer was able to get discovery pre-indictment (which is rare) this will be your first opportunity to obtain discovery. Discovery is the legal term for all of the evidence that the State has against you. Your lawyer will review the discovery with you and discuss the legal strategy that can be employed. At the arraignment, your lawyer will enter a not-guilty plea and will advise the judge as to where the case is going. Subsequent court appearances will be labeled as status conferences. Just like the name implies, the judge is again updated as to the status of the case. If the case is not resolved, eventually the case will be put through plea cut off in which the defendant rejects the final plea offer and the case is set up for trial. The vast majority of cases are resolved before trial.

Crafting a defense

Your lawyer should start crafting a defense from day one. I often say that trial prep starts the day I'm hired. Although most cases don't go to trial, I start working on a trial right away. It is through

this trial prep that we can achieve the best results including dismissals. I think too many lawyers work to plea a case out and as a result, we achieve great results by actually testing the State's evidence.

Possible defenses are endless and as a lay person, you probably don't know that most are even possible.

Cases are built upon evidence. Thus, whether you are actually innocent or guilty is largely irrelevant. Guilty people go free and there are many innocent people in prison (google the Innocence Project). Some defenses attack the entire case while other defenses are designed to lessen or avoid prison time. There are no cookie-cutter defenses and what makes this job exciting is that every single case is different. Regardless of what the defense is, it is important that your lawyer has what it takes to fight for you.

Motions

A motion is legal request for the court to do something. In criminal defense, the most common motion is a motion to suppress evidence. Regardless of how guilty you may be, if the police violate your constitutional rights, the evidence they seize will be suppressed. Although the guilty may go free, it will punish the police and keep them from violating people's rights. Although the case isn't automatically dismissed if the motion to suppress is granted, the State may have little choice but to dismiss the case afterward if they have no evidence to move forward.

Other motions may attack the indictment or may seek to limit the evidence that the State can bring in. Our system has rules of evidence which can take years to master. Both sides will seek to use these rules to their advantage and motions are one way that they ask the judge to make advance rulings on evidence issues. This is important because both sides need to know how the case will unfold at trial. Regardless of what motion is filed, an aggressive attorney is never scared to file motions. In fact, some of our greatest victories came as a result of us bombarding the State with endless motions.

Plea bargaining

The vast majority of criminal cases end with some type of plea. Its just the way our system works. Whether the plea is a bargain or not is up for your lawyer to decide. This will depend on the

exposure you have and the evidence you are facing. The most important thing is to have a lawyer that will fight to get the best possible deal for you. In addition, you need a lawyer that will not try to sell you out. Too many lawyers want to just shove a plea deal down the throats of their clients for various reasons. We will never do that. Regardless of how bad the evidence is, if our client wants to go to trial, we will take the case to trial.

Trials

While some lawyers fear trials, we absolutely love trials. Our lawyers are battle tested and we have achieved some great victories for our clients. Nevertheless, trials are never without risk and as a result, the decision to go to trial should not be taken lightly. This may be the biggest decision of your life and you need to have complete trust and faith in your lawyer. That person is all that stands between you and doom.



Some trials may only last a week while others can go on for over a month. Much like the trials you see in TV and in movies, there is a judge that presides over the trial and jury that will decide the outcome of the case. Unfortunately, not all lawyers are as polished as the ones on TV. For any number of reasons, lawyers just don't work on their advocacy skill. Another fun aspect of this job is that no matter how many trials you have completed or how long you have been practicing, you can never stop learning. Maybe that's why it's called practicing law because it is impossible to perfect. Of course, not all trials are meant to be won completely. Some trials are only aimed at knocking out certain charges. The benchmark for victory is the last plea offer. If the sentence will come below that, victory is achieved.

Sentencing

If you entered in a plea agreement or trial didn't end in a total victory, you will have to face

sentencing. For crimes in New Jersey, your options are either probation, jail time or prison time. A sentence to community service is not really an option and is rarely given unless mandated by statute. Likewise, most judges will not let you just pay a fine. Again, most fines are mandated by statute and are generally not much of a factor in New Jersey.

If you are placed on probation, you will have a probation officer who you will have to check in with. If you do not follow the guidelines of probation, you will be violated and then resentenced to either more probation, jail or prison. Jail and prison are often confused but they are separate concepts. Each county has a jail while the State of New Jersey runs the prison system. Jail houses people awaiting trial or final disposition of their matter. It also houses people serving sentences less than one year (i.e. 6 months). Prison is only for people that have been sentenced for a felony conviction. Clearly, the goal of an aggressive criminal defense attorney is to make sure that the client receives no incarceration regardless of whether it is jail or prison.

Diversion programs

There are two diversion programs in New Jersey: a conditional discharge and PTI. A conditional discharge is for first time offenders charged with a drug offense in municipal court. If you are found eligible, your charges will be put on hold for a period of time. If you stay off drugs and out of trouble (i.e. no new arrests) during that time period, your charges will be dismissed just as if you were found not guilty at trial. PTI (Pre-Trial Intervention) is for minor felony cases only. PTI is more difficult to get into than a conditional discharge but the concept is the same. Your charges are put on hold and if you follow all of the rules and you don't pick up any new offenses, your charges will be dismissed. Your lawyer should fight hard to help you get into either program if you are eligible. Remember, a win is a win regardless of how you get there.

Post sentencing issues

Although your case is over, there is still a lot your attorney can do. If you are placed on PTI or probation, your lawyer can file a motion to terminate PTI/probation early. For most people, this isn't

necessary for some, it helps them get a job, move or restore some other rights. If you want to attack your conviction, your lawyer can file an appeal which is a review by a higher court. Its not a “do over” but is instead a review to see if there were any errors in your case that warrant a reversal of your conviction. We have been successful with a number of appeals.

If you want to attack your lawyer's performance because they failed to do something or did not advise you properly, you can file for post-conviction relief otherwise known as a PCR. This is more limited than an appeal but we have also been successful in overturning convictions using a PCR. Finally, if you want to remove a record of an arrest (even if the charges were dropped) or your conviction, you can hire an attorney to file an expungement. An expungement erases your criminal record so that it legally no longer exists. This helps many restore important rights and obtain employment.

Conclusion

We understand that you have a vast selection of lawyers to choose from in New Jersey. However, we'd be honored to represent you or your loved one and guide you through this time of crisis. We have helped a countless number of clients and they refer their friends and family to us for their legal needs. That's how we've been able to build a state-wide practice in New Jersey. That's what we refer to as a “client for life”. We hope that you become one too. Finally, we hope that this guide has been some help to you. Please do not hesitate to call us anytime.

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