RESOLVED, That the American Bar Association urges federal, state, territorial, tribal, and local legislatures, government agencies, and courts to adopt and implement laws, regulations, policies, and court rules that promote the safety, well-being, and permanent placement of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth who are homeless or involved with the foster care system. These efforts should be based on the following guidelines:

1) Agencies providing housing or supportive services for youth who are homeless or in foster care, those placing youth in foster family homes, and courts should prohibit discrimination and be prohibited from discriminating based on a youth’s actual or perceived sexual orientation or gender identity.

2) Agencies providing housing or supportive services for youth who are homeless or in foster care, those placing youth in foster family homes, courts, attorneys, guardians ad litem, and court-appointed special advocates handling dependency or other legal cases involving the custody and care of youth should recognize the actual, and risk of, harm, violence, and harassment LGBTQ youth face in congregate care facilities and in-home placements and take steps to address and prevent this violence.

3) Agencies providing housing or supportive services for youth who are homeless or in foster care, those placing youth in foster family homes, and courts should conduct LGBTQ sensitivity training for all housing and supportive service staff, foster parents, and professionals handling dependency or other legal cases involving the custody and care of youth.

4) Agencies placing youth in foster family homes, courts, attorneys, guardians ad litem, and court-appointed special advocates handling dependency or other legal cases involving the custody and care of youth should take steps to ensure that LGBTQ youth remain safely and with healthy support in their homes of origin, where possible, and where it is not, that they are placed with LGBTQ-friendly foster families.
REPORT

In February 2006 the Youth at Risk Planning Conference held at Hofstra University School of Law identified 20 items as part of an action plan for the American Bar Association (ABA) Youth at Risk Initiative. ABA President Karen Mathis launched the Youth at Risk Initiative in August 2006 with the goal of keeping at-risk youth from entering the juvenile and criminal justice systems. Item 16 of the Hofstra Conference action plan resolved that lawyers and judges should increase their attention on assisting lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in foster and institutional care. Questioning youth are those who are in the process of reassessing or exploring their sexual orientation and/or gender identity. The recommendations of this report are a first step to prevent members of this segment of the youth population from entering the juvenile and criminal justice systems by promoting their safety, permanency, and well-being. A small number of enterprising legislatures, government agencies, and non-governmental social service agencies have already laid the groundwork for these recommendations.

Currently, the foster and homeless youth systems need to do more to serve LGBTQ youth in their care. These systems include courts, foster family homes, foster youth placement agencies, foster care group homes, and homeless youth emergency and transitional housing programs.1 While LGBTQ youth in these systems face the same difficulties as other youth, their experiences are further complicated by the high level of abuse and rejection they experience in their families, placements, peer relationships, schools, communities, and in the legal system.2 Besides contributing to these youths’ increased need for child welfare services and unequal access to these services, the widespread discrimination that LGBTQ youth face can lead to mental health problems that spiral into poor academic performance,3 suicidal ideation, substance abuse, and risky sexual behavior.4 As a disproportionately large segment of the homeless and foster youth populations, LGBTQ youth are also at great risk of entering the juvenile justice system.5 Because of the harm caused by anti-LGBTQ discrimination, comprehensive regulation that addresses the needs of LGBTQ youth is necessary to ensure that they receive safe, permanent homes that promote their well-being. This regulatory scheme should aim to keep LGBTQ youth in their families, when feasible, and to place them in LGBTQ-accepting home settings when it is not.6 It must also prohibit discrimination against LGBTQ youth in out-of-home settings and ensure that all persons working with youth in the family court system and

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2 See id. at xii.


6 Accord AM. BAR ASS’N, FEDERAL AND STATE LAW REFORM (Feb. 1997), in AMERICAN BAR ASSOCIATION POLICIES RELATED TO YOUTH AT RISK: 1990-2006 6 (2006) (supporting legal system reform that ensures that abused, neglected, and abandoned children remain safely with their families of origin, when possible, and that they are placed in safe family settings when it is not).
those caring for youth in either congregate care settings or in-home foster placements are educated on LGBTQ youth issues.

Prevalence of LGBTQ Youth in the Homeless and Foster Youth Systems

While authoritative statistics on the number of LGBTQ youth in foster care are not available, it is generally accepted that these youth are overrepresented in foster care. The proportion of foster youth who are LGBTQ is estimated to be between 20 and 60 percent. Studies show that they are disproportionately represented in the homeless youth population, as well. According to the National Network of Runaway and Youth Services, between 25 and 35 percent of homeless youth in Los Angeles and 40 percent of homeless youth in Seattle are LGBTQ.

Consequences of Violence and Harassment

An estimated one third of LGBTQ youth are physically abused by a family member because of their sexual orientation or gender expression. Many more are emotionally abused. Approximately 25 percent of LGBTQ youth run away from or are thrown out of their homes. Those youth who enter the foster care system typically face the same abuse that caused them to leave their homes of origin. This often results in frequent changes in foster family and group home placements. One study found that among LGBTQ youth placed in group homes, 100 percent were verbally harassed and 70 percent were physically assaulted because of their sexual orientation or gender identity while living at the group home.

One such youth in New York City was placed in foster care by her mother who had difficulty accepting that she was a lesbian. At the group home she was placed in she was regularly harassed by residents and staff because of her sexual orientation. She frequently ran away from this group home and after being raped there was removed to another group home. At the new group home she was a constant object of physical assault and harassment by staff and residents. During one assault she was struck over the head with a dumbbell. As a result, she now suffers from seizures. At the age of 15, she was picked up for shoplifting. Because of her history of running away from her group home, the judge decided to place her in a juvenile detention facility.

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7 See Out of the Margins, supra note 1, at 5.
12 ADMINISTRATION FOR CHILDREN’S SERVICES, PROPOSED STRATEGIC PLAN TO IMPROVE SERVICES TO LGBTQQ YOUTH AT THE NEW YORK CITY ADMINISTRATION FOR CHILDREN’S SERVICES 9 (May 2006) [hereinafter PROPOSED STRATEGIC PLAN] (on file with Ernst Hunter).
In a recent study, 56 percent of LGBTQ foster youth in New York City spent time on the streets because it felt “safer” than life in their group home.\(^3\) One youth stated, “I left in the morning for school. When I came back to go to my room, somebody had spray painted the word faggot on the door...The staff didn't do nothing much but laugh when I told them.” This youth later ran away and was homeless for a year.\(^4\) Similar stories help explain that 60 percent of homeless LGBTQ youth were previously in foster care.\(^5\)

Homeless LGBTQ youth must often choose between living on the streets, exchanging sex for shelter, or rooming at homeless youth emergency shelters or transitional living facilities. In these settings, they are, again, often victims of violence and harassment. One prominent advocate for homeless LGBTQ youth estimates that 50 percent of LGBTQ youth in homeless youth emergency housing facilities are physically abused.\(^6\) Many more are threatened or harassed by other shelter occupants or staff. At one housing facility in Michigan, staff required all shelter occupants known or suspected to be LGBTQ to wear orange jumpsuits to segregate them. At another facility, staff removed the door from the bedroom of an openly gay youth and threatened to punish other occupants by forcing them to room with the “gay kid.”\(^7\) Such degrading treatment of LGBTQ youth by housing facility staff occurs nationwide. It also happens in courtrooms. In one instance, a girl in foster care who had just recently come out as a lesbian was asked by her dependency judge, “Oh, so you’re gay now?,” in a tone suggesting he viewed her sexual orientation as a fad.\(^8\)

The violence and harassment LGBTQ youth face in the homeless youth and foster care systems often leads to mental health problems. These problems lower their prospects of attaining safe, permanent living arrangements. LGBTQ youth who are assaulted are more likely to attempt suicide.\(^9\) They also perform more poorly in school and are less likely to pursue a college education than LGBTQ youth who are not assaulted.\(^10\) LGBTQ youth who are harassed are more likely to abuse drugs and alcohol\(^11\) and are more likely to engage in high-risk sexual activity, increasing the likelihood that they will contract HIV or other sexually transmitted diseases.\(^12\) Abused LGBTQ youth often develop patterns of self-destructive behavior that lead to depression, anxiety, and low-self-esteem. To better serve LGBTQ youth in the foster and homeless youth systems, regulations must go beyond prohibiting discrimination against them. They must require social service providers to address not only their material needs, but also their unique emotional needs.

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\(^1\) See id.\(^3\)
\(^2\) Id.\(^4\)
\(^3\) See Symposium, supra note 10, at 232.\(^5\)
\(^4\) See Ray, supra note 4, at 87.\(^6\)
\(^5\) Id. at 84.\(^7\)
\(^6\) Youth participant, ABA listening forum in Jacksonville, Florida, October, 12, 2006.\(^8\)
\(^7\) See Tracie L. Hammelman, Gay and Lesbian Youth: Contributing Factors to Serious Attempts or Considerations of Suicide, Vol. 2(1) J. OF GAY AND LESBIAN PSYCHOTHERAPY 77-89 (1993).\(^9\)
\(^8\) See GLSEN Survey, supra note 3.\(^10\)
LGBTQ Youth Entering the Juvenile Justice System

In addition to the other problems faced by LGBTQ youth who are homeless or in foster care, these youth are at great risk of entering the juvenile23 and criminal justice systems. It is well documented that homeless youth are more likely to enter the juvenile justice system than are youth generally.24 For example, the executive director of the Manhattan-based Hetrick Martin Institute, an agency that serves LGBTQ youth, estimates that 60 percent of the agency’s homeless youth clients have been involved with the juvenile justice system, compared to three to four percent of all the agency’s clients.25 This is probably largely attributable to the great number of homeless LGBTQ youth who engage in “survival crimes” such as prostitution and theft to support themselves.26 Additionally, foster youth charged with misdemeanors and petty felonies are at greater risk of being sentenced to juvenile detention than are youth generally.27 For more serious crimes, foster youth who have run away from their foster families or group homes at least once are more likely than those who have not to be sentenced to juvenile detention.28 Because LGBTQ youth are overrepresented in both the foster care and homeless youth populations and they are particularly likely to commit survival crimes and run away from foster care placements, it follows that these youth are at great risk of entering the juvenile justice system and being sentenced to juvenile detention. In order to reduce this risk, lawmakers, courts, attorneys, and social service agencies must take measures to ensure that these youth have safe living environments that provide for their basic living needs.

Questioning Youth

For questioning youth, an LGBTQ-affirming living environment in which no one is assumed not to be LGBTQ is particularly critical. It is important that homeless youth housing programs, foster care group homes, and foster families create an environment in which these youth feel comfortable either discussing these issues or exploring them privately. This gives these youth the breathing space they need to develop positive self-identities unencumbered by assumptions about their sexual orientation or gender identity or stereotypes about LGBTQ persons.

Unique Needs of Transgender Youth

Transgender youth are those who identify and/or express their gender differently from the societal norm. For example, these individuals may express a gender that differs from their birth sex by dressing in clothing typical of the opposite sex. They may physically alter their biological sex through sex reassignment therapy. This may include hormone replacement therapy, electrolysis (for those transitioning from male to female), and sex reassignment surgery. The problems transgender youth face are unique and often severe. For example, one transgender youth placed in a co-ed group home was forced to sleep on the landing in between the male floor and female floor because the staff could not decide where to place the youth.29

\[\text{See And Justice For All?, supra note 5, at 1.}\]
\[\text{Id. at 6.}\]
\[\text{Id. at 18.}\]
\[\text{Id.}\]
\[\text{See Reducing the Foster Care Bias, supra note 5, at 3.}\]
\[\text{Id. at 28.}\]
\[\text{See Out of the Margins, supra note 1, at 23.}\]
orientation and gender expression/identity are unique concepts that often do not receive the same legal protections. Thus, discriminating based on sexual orientation may be prohibited while discriminating based on gender expression/identity is legal. Transgender youth must be considered individually and the discrimination they face must be addressed separately from lesbian, gay, bisexual, and questioning youth. Sensitivity training must emphasize the importance of referring to transgender youth by their preferred gender pronoun and name. Transgender youth should be housed according to the gender with which they identify. Privacy should be maintained when bathing or changing clothes. Youth should be able to dress according to their gender identity and transgender youth must have access to medical and mental health professionals who can serve the medical and mental health needs of transgender youth. New York City’s Department of Homeless Services recently adopted a policy that includes most of these requirements and applies to all homeless housing programs in the city’s five boroughs.

### Recommendations

To better serve LGBTQ youth in the foster and homeless youth systems, legislatures, regulatory agencies, and courts should mandate LGBTQ-specific family counseling to encourage families to stay together, develop foster parent screening and recruitment policies to ensure that LGBTQ youth placed in foster care are placed with LGBTQ-friendly foster parents, adopt nondiscrimination and sensitivity training policies, and promote social service organizations that serve the needs of LGBTQ foster and homeless youth. Discussion of many of these policies, which goes into greater detail than this report, can be found in the Child Welfare League of America’s report *Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care.*

#### LGBTQ-Specific Family Counseling

In order to keep LGBTQ youth with their families, where possible, social service agencies should provide families having difficulty accepting the sexual orientation or gender identity of a child with family counseling that addresses these issues. Because many parents and guardians react negatively out of genuine concern for their child when they discover that she/he is LGBTQ, family counseling will help to stabilize some families and reduce negative outcomes for the LGBTQ child. Counseling should be aimed at helping parents and guardians to overcome their feelings of remorse while emphasizing the negative impact that their behavior can have on their child’s well-being. Counseling for the child should focus on helping the child to accept his/her sexual orientation or gender identity and to communicate with his/her parents or guardians about these issues. Family members should be counseled both individually, to facilitate full disclosure, and as a group, to facilitate dialogue.

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Government social service agencies should mandate this type of counseling as part of a family reunification plan, where they have identified a child’s sexual orientation or gender identity as an issue that contributed to his/her removal from the home. In order to ensure that this counseling is available, government social service agencies should require that their social workers be trained on resolving family conflict arising out of a child’s gender identity or sexual orientation and should also subcontract the counseling of these families to agencies that focus on this sort of counseling. The Family Outreach Program is one such agency, which currently provides counseling for families in the New York City area to help them accept an LGBTQ member’s sexual orientation or gender identity.\(^{34}\)

**Placing Youth with LGBTQ-Friendly Foster Families**

In order to reduce the frequent foster family placement changes LGBTQ youth often endure, agencies placing youth in foster family homes should actively recruit LGBTQ-friendly foster parents and screen foster parents for anti-LGBTQ bias before placing a youth known to be LGBTQ in their care. By increasing the pool of LGBTQ-friendly foster parents, actively recruiting such foster parents will increase the ability of agencies to place known LGBTQ youth with LGBTQ-friendly foster parents while increasing the likelihood that LGBTQ youth not known to be LGBTQ will be placed with such foster parents. Methods of recruiting LGBTQ-friendly foster parents include:

- Partnering with LGBTQ organizations to outreach to LGBTQ-friendly potential foster parents
- Conducting advertising campaigns informing the public of the need for LGBTQ-friendly foster parents
- Holding public forums on LGBTQ youth and providing information on becoming a foster parent\(^{35}\)

In addition to actively recruiting LGBTQ-friendly foster parents, agencies placing youth with foster families should screen foster parents and only place foster youth known to be LGBTQ with foster parents who demonstrate LGBTQ-friendly attitudes.

**Nondiscrimination**

Laws and policies to improve the treatment of LGBTQ youth in the foster care and homeless youth systems must prohibit anti-LGBTQ discrimination in the provision of services. This applies to all foster youth placement agencies, foster care group homes, homeless youth housing programs, and courts. Discrimination should be defined broadly and include willfully disregarding sensitivity training (e.g., refusing to refer to a transgender occupant by his or her preferred name) and omitting to intervene on behalf of a youth who is being assaulted when such omission is motivated in part by bias against that youth’s sexual orientation or gender identity. Further, foster care group homes and homeless youth housing programs must be required to adopt and enforce nondiscrimination policies that prohibit other youth from harassing LGBTQ

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\(^{35}\) Accord PROPOSED STRATEGIC PLAN, supra note 12, at 10.
youth. In California discrimination against LGBTQ youth in foster care is explicitly prohibited.36

Role of Lawyers and Judges

All youth in foster care are provided lawyers to represent them and give them a voice in the proceedings. Every youth in foster care has a judge or master who regularly reviews the youth’s case, decides what permanency plan is appropriate, decides whether reasonable efforts were made to achieve that permanency plan, and ultimately decides the youth’s placement. They should consider the youth’s sexual orientation and gender identity when making these important permanency and placement decisions. Advocates should use legal tools, such as the appellate process and arguments for the judge making a no reasonable efforts finding, when agencies are unwilling to or inappropriately address LGBTQ issues.

Lawyers and judges should adopt nondiscrimination policies in their workplace and talk with peers about LGBTQ issues. They should create courtroom and interview environments in which youth feel comfortable disclosing LGBTQ status and related issues. They can do this by:

- Using gender-neutral language in interviews and discussions with youth
- Having hate-free zone stickers in their offices
- Requesting services by LGBTQ-friendly providers
- Knowing about LGBTQ outreach services and local LGBTQ-friendly providers (especially for transgender youth who may need additional medical or mental healthcare providers)
- Having file folders of resources and services ready to hand out to youth who they feel might benefit from the information

Sensitivity Training

Foster and homeless youth programs and courts must train all staff and legal professionals handling dependency or other legal cases involving the custody and care of youth about nondiscrimination law and educate them on LGBTQ youth issues and sensitivity to LGBTQ youth. New York City’s Administration for Children’s Services currently requires that all foster care staff be given training on sensitivity to LGBTQ youth.37 Training ensures compliance with the prohibition against anti-LGBTQ discrimination in foster care group homes, placement agencies, homeless youth housing programs, and courts. It also ensures that these institutions are affirming environments for LGBTQ youth. Agencies placing youth in foster family homes must also conduct LGBTQ sensitivity training for all foster parents, regardless of whether youth placed in their care are known by the agency to be LGBTQ. Creating an inclusive environment is crucial to the well-being of known LGBTQ youth and encourages those who are not open about their sexual orientation or gender identity to develop positive self-identities. It is also important to ensure that youth questioning their sexual orientation or gender identity are


37 See Youth in the Margins, supra note 8, at 129-130.
able to explore these issues uninfluenced by hetero-normative assumptions and traditional notions of sex roles. The following quote from one gay youth in foster care underscores the importance of sensitivity toward LGBTQ youth by staff and foster parents. This is true whenever any youth in care are present, regardless of whether any are known to be LGBTQ.

It became real clear to me that my caseworker wouldn’t be able to handle it if I came out and told her I was gay. A couple of times I tried to hint around about it, but she just wasn’t hearing any of it. And she was always asking me about my “girlfriends.” So when she found me a foster home, I knew I couldn’t count on her to have made sure they’d be cool with my being gay. I was afraid to tell my foster family too.38

Sensitivity training for staff, foster parents, attorneys, and judges should cover topics, such as:

- The importance of using inclusive language that does not assume a client’s sexual orientation or gender identity
- The mental health consequences to LGBTQ youth of LGBTQ discrimination and how to support LGBTQ youth who are coming out or questioning their sexual orientation or gender identity
- The medical and mental health needs of transgender youth
- Avoiding humor, slurs, and expression of views that are anti-LGBTQ or reinforce traditional sex roles
- Using youths’ preferred pronoun when referring to the youth and supporting the youth in choosing a style of dress
- Including information relevant to LGBTQ youth in discussions on relationships and sexual health
- The importance of keeping confidential all client information, including that relating to sexual orientation and gender identity, so youth are not discouraged from disclosing information

**LGBTQ-Specific Facilities**

Regulatory agencies and state, local, and municipal governments should support group homes and housing programs that serve the needs of LGBTQ youth.39 These programs need not serve LGBTQ youth exclusively, but should have, as part of their stated mission, the goal of addressing the needs of LGBTQ foster or homeless youth. While these programs will appropriately address the problems faced by many LGBTQ foster and homeless youth, making a placement decision must be based on the needs of each individual child. LGBTQ-specific programs must not be viewed as a substitute for making all foster care group homes and homeless youth housing facilities safe for LGBTQ youth or for placing LGBTQ youth in appropriate in-home care. Placing LGBTQ youth in appropriate in-home setting should be the ultimate goal of regulation. Nonetheless, LGBTQ-specific programs will likely promote the

38 See Out of the Margins, supra note 1, at 2.
39 Accord Youth in the Margins, supra note 8, at 26.
safety, well-being, and permanent, stable living arrangements of many LGBTQ youth in ways that other congregate care programs cannot, including:

- Adopting zero-tolerance policies for anti-LGBTQ violence and harassment
- Attracting LGBTQ community leaders with extensive knowledge about LGBTQ issues to their staff and boards of directors
- Attracting LGBTQ staff who will act as positive role models for LGBTQ youth
- Discouraging anti-LGBTQ staff from seeking employment and anti-LGBTQ youth from seeking services at them merely by their status as LGBTQ-affirming programs

A handful of LGBTQ-focused programs serve LGBTQ youth nationwide. These include:

- The Gay and Lesbian Adolescent Social Services which founded the first group home for LGBTQ youth in 1984 in Los Angeles, California.
- Larkin Street Youth Services in San Francisco which operates a group home and several emergency and transitional housing programs for homeless youth that primarily serve LGBTQ youth.
- Green Chimneys Children’s Services which established a group home for LGBTQ youth in New York City in 1987. Since then, it has expanded its services to include a homeless youth transitional housing program for LGBTQ youth and two other homeless youth housing programs for LGBTQ youth have been founded in New York City. This year the City designated almost half of the $2.6 million in its budget for homeless youth housing to these programs.40

These programs show promising results in reducing violence and helping youth transition into stable living arrangements. Since 2003, at least 20 percent of youth participating in the Green Chimneys transitional living program moved into independent living arrangements and at least 47 percent moved into stable shared living arrangements.41 The group home that Larkin Street Youth Services operates for LGBTQ youth has had no violent incidents between residents in the past several years.42 This organization has also had impressive success with its transitional living programs for homeless youth. By investing in LGBTQ-specific foster and homeless youth housing programs legislatures and government agencies can increase the effectiveness of foster and homeless youth housing programs merely by shifting funding to LGBTQ-supportive programs. In cities without LGBTQ-specific group homes or homeless youth housing programs, governments and regulatory agencies should support other programs that offer LGBTQ youth supportive environments, such as drop-in centers where they can obtain counseling, medical care, and other social services.

41 See Ray, supra note 4, at 113.
42 E-mail from Eliza Gibson, Chief of Programs, Larkin Street Youth Services, to Ernst Hunter, J.D. 2008 Candidate, Hofstra University School of Law (Oct. 24, 2006, 14:29 EST) (on file with Ernst Hunter).
Conclusion

Youth who leave or are thrown out of their homes because of conflict arising out of their sexual orientation or gender identity need more than a healthy meal and a place to sleep. They need accepting environments in which they can grow into stable, mature adults. Unfortunately, for many LGBTQ youth, the systems that serve them -- homeless youth, foster care, and legal -- are no more hospitable than their homes of origin. To better serve this population, legislatures, regulatory agencies, and courts must follow the example of the minority of agencies and jurisdictions that have taken promising measures toward remedying the problems faced by LGBTQ youth in the homeless and foster care systems. To promote the best outcome for these youth, these institutions must strive to better advocate for LGBTQ youth and to place LGBTQ foster youth in appropriate, permanent in-home care by providing LGBTQ-focused family reunification counseling, recruiting LGBTQ-friendly foster families, and mandating that all foster parents be screened and administered LGBTQ sensitivity training. To ensure that congregate care facilities are safe and affirming for LGBTQ youth, facility staff and other youth must be prohibited from discriminating against LGBTQ youth and facility staff must be given LGBTQ sensitivity training. Additionally, courts should implement LGBTQ nondiscrimination policies and administer sensitivity training for all staff and professionals handling dependency or other legal cases involving the custody and care of youth. Further, legislatures and regulatory agencies should promote the growth of LGBTQ-affirming programs by shifting funding to these programs. These policies are an important step in promoting the safety and well-being of LGBTQ homeless and foster youth and increasing their prospects of finding permanent living arrangements.

Respectfully Submitted,

Dwight Smith, Chair
Commission on Youth at Risk
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