



THE BASICS

Abuse and Neglect Cases
in New York State

This booklet explains:

- What child abuse and child neglect are.
- What happens in a Family Court case where a parent is accused of neglect or abuse.
- What you can do if your child is removed from your home and placed in foster care.

Parents are not the only people who can be accused of child abuse or neglect in Family Court. Other people who are responsible for the care of a child, such as care-givers or guardians, also can be accused of abuse or neglect. In this booklet, however, we usually will refer to the person accused of abuse or neglect as a parent.

Court cases involving child abuse or neglect are both serious and difficult. You should never attempt to represent yourself.

A parent who has been accused of abuse or neglect of a child can, and should, have a lawyer at each and every stage of the Family Court proceeding. **If a parent cannot afford a lawyer, the Judge will appoint one for free.**

The lawyer who represents a child is called a law guardian.

In all cases, the Judge also will appoint a lawyer for the child.

Family Court proceedings are civil cases, not criminal cases. Sometimes a parent who is accused of abuse or neglect in Family Court will have a criminal court case, too. This booklet will only talk about Family Court cases.

WHAT IS CHILD ABUSE?

Abuse happens when a child is seriously injured or harmed and it was not an accident. Also, abuse happens if a parent puts a child in a situation where the child can be seriously harmed.

If your child is injured or hurt, you may have to explain how the injury or harm happened. Your child also may have to explain how the injury or harm happened. The explanation has to satisfy any social worker, doctor or other person investigating the injury to your child. Even if an injury or accident happens when you are not there, you are still responsible for your child's safety.

Abuse means doing something that causes, or is likely to cause, death or serious physical injury or serious emotional damage to a child.

There are too many examples of child abuse to list them all here. Some are:

- Striking or shaking a child so hard that it causes serious harm (for example, bruises, cuts or broken bones).
- Letting a child play with a gun, knife or other dangerous item.
- Sexually abusing a child or allowing a child to be sexually abused by another person.

WHAT IS CHILD NEGLECT?

Neglect happens when a parent fails to care for a child and the child is harmed physically, mentally or emotionally. Neglect also happens when a child is in danger of being harmed because a parent fails to care for the child.

If you do not provide basic necessities for your child, you may be found to have neglected your child.

Neglect means doing something to harm a child, or not doing something for a child which harms the child, or letting someone else to do something which harms or could harm that child.

There are too many examples of neglect to list them all here. Some are:

- Not taking a child to a doctor when needed.
- Not feeding a child properly.
- Not enrolling and sending a child to school.
- Not changing an infant's diapers so the infant gets very serious rashes.
- Leaving a child home alone or with someone too young to supervise a child.
- Leaving a very young child alone in the bathtub.
- Punishing a child in the wrong way, for example, hitting the child with a belt or other object.

Even if you do not harm your child yourself, you can be held responsible if you do not protect your child from being abused or neglected by someone else. In a case like this, you would be charged with "failure to protect" your child.

WHO INVESTIGATES ABUSE AND NEGLECT CASES IN NEW YORK STATE?

In New York City, the **Administration for Children's Services (ACS)** is the agency responsible for protecting children from harm and mistreatment. ACS investigates reports of suspected child abuse or neglect. Outside New York City, the social service agencies that investigate reports of suspected child abuse or neglect are called by other names, such as Child Protective Services (CPS). These agencies are part of the New York State Office of Children and Family Services. In this booklet, we will refer to the agency that investigates abuse and neglect cases as ACS.

WHAT POWERS DOES ACS HAVE?

ACS can remove children from their homes if ACS believes that the children are in immediate and serious danger to their life or their health.

If a child's life is in immediate and serious danger, a Judge or ACS would say the child is at imminent risk.

ACS can go to Court to have a Judge decide whether children should stay at home or be placed in foster care.

HOW DOES ACS FIND OUT ABOUT CHILD ABUSE OR NEGLECT ?

People call in reports of suspected child abuse or neglect to a hotline of the New York State Central Register of Child Abuse and Maltreatment (SCR) in Albany. ACS finds out about reports of child abuse or neglect from the SCR.

Doctors, teachers, social workers and police are mandated reporters.

Mandated reporters are people who must report situations where they think a child may be abused or neglected.

Anyone else can report what they believe is abuse or neglect. For example, a parent may report another parent. Another family member or neighbor

may also make a report. Sometimes these reports are made by people who are angry with a parent or want to do something to hurt that parent. And reports can be made by people who do not allow their names to be used (anonymously).

Sometimes reports of abuse or neglect are not true. Calling in a report a person knows is false is a crime. False reports can be investigated by the District Attorney.

WHAT HAPPENS WHEN SOMEONE MAKES A REPORT?

ACS has 24 hours to start an investigation after receiving a report from the State Central Register. Then, they have up to 60 days to investigate and decide if the report is true or false.

An ACS caseworker investigating a report of abuse and neglect will visit the child's home and speak to the parents, the child and anyone else that might have important information. The ACS caseworker will use this information to decide whether the report is true or not.

If ACS believes the report of abuse or neglect is not true, ACS will issue a report to the State Central Register that the report is false.

An unfounded report is a report ACS believes is not true.

An indicated report is a report ACS believes true.

If ACS finds what they believe is abuse or neglect, even if it is different from the abuse or neglect claimed in the report, ACS can:

- Help the parent with social work services and supervision without going to court. But the parent must agree to cooperate.

- Get the parent to agree to put the child with a relative temporarily or into voluntary foster care.
- Get a battered parent to leave home with the child. This can include moving to a domestic violence shelter. ACS or the battered parent can get an order of protection in court against the batterer that covers the battered parent and the child.
- Take the child immediately away from the parent and go to court to accuse the parent of abuse and/or neglect.
- Start a case in Family Court and ask the Judge to decide if the child should stay at home or be taken away.
- Refer the case to the District Attorney for criminal prosecution.

ACS sends the children it takes away from their parents to foster care. Foster care agencies provide services for children, their families and the foster families. Foster care agencies work for ACS and ACS supervises and monitors the foster care agencies. ACS also investigates relatives of children to see if they can care for the children.

Placing children with relatives is called kinship foster care.

A parent needs to stay as informed as possible when dealing with ACS and the foster care system. The operations of the various foster care agencies and ACS can be very different. It is not always clear who makes decisions or why decisions are made about children, their families and foster care placements. The information that these various people have is not always accurate or complete. Sometimes the agencies do not share information. For all these reasons, a parent needs to pay very close attention to the situation.

HOW WOULD A REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT AFFECT ME?

If someone reports you for abusing or neglecting your child and that report is investigated and found to be true, then that report and your name will stay on record at the SCR until your youngest child is 28 years old.

And if a Judge makes a decision after a trial that you abused or neglected your child, the Judge's decision will stay on the record until your youngest child is 28 years old.

Employers and agencies investigating you for employment can see your record at SCR. Agencies investigating whether you can become a foster parent or adopt a child can also see your record.

If SCR shows a report against you, it can seriously affect your chance of getting work around children (for example, as a school crossing guard, teacher or teacher's assistant). You could not work with senior citizens (for example, as a home care attendant). You could not become a foster parent or adopt a child.

Once a case is started against you in Family Court, even if that case is dismissed by the Judge (or withdrawn by ACS), the indicated report to the SCR is still on file. **You will have to ask for the indicated report to be changed to an unfounded report or amended to say that there was no evidence of abuse or neglect.**

To do this, you or your lawyer must request a fair hearing. To make this request, you will need to write or call:

New York State Office of Children and Family Services
State Central Register
P.O. Box 4480
Albany, NY 12204
Phone: (518) 474-5297

WHY ARE SOME CHILDREN REMOVED FROM THEIR HOMES AND OTHER CHILDREN NOT?

ACS must try everything reasonable to keep a child in his/her home if what they do will keep the child safe. For example, ACS might say a parent must do something such as get an order of protection that keeps her batterer out of the home, so the child can stay safely in the parent's care.

However, if ACS or the Judge believes that a child is at imminent risk of harm if s/he stays in the parent's care, the child will be removed (taken away) from the parent.

ACS and the Judge look at many different things when deciding whether a child can stay in his/her home. They look at the history of the family and whether the child has been abused or neglected in the past.

Sometimes it may seem that a child is removed from his/her home for no good reason. A parent may think that ACS has over-reacted to a report of child abuse or neglect. A parent may think that ACS does not understand what happened to a child and believes that the child was abused or neglected even when the child was not. **A parent has the right to challenge ACS's decision to remove the child from the parent's care.**

CAN ACS REMOVE MY CHILD BEFORE GOING TO COURT?

Yes. ACS can take your child from your home (or from your child's school, a police station, shelter or hospital) before going to court.

If ACS removes your child before going to court, you can immediately go to Family Court in the county where you live or where your child was taken. Without waiting for any other action by ACS, you can ask for a preliminary hearing. **You have a right to a preliminary hearing in front of a Judge within 3 business days of your request for the hearing.**

ACS must go to court to start a child abuse or neglect case against you within 24 hours of removing your child from your care. ACS must give written notice when they are starting a court case against you which tells you that you should come to court on that day (intake day). On the intake day,

ACS will ask the Judge to continue to keep your child in ACS custody (or foster care) temporarily until there is a trial on the charge of abuse or neglect. At this time, you can ask for a preliminary hearing to request that your child be returned to your care, if you have not already done so.

The preliminary hearing is usually called a 1028 hearing.

If ACS does not start a case against you within 24 hours, you can go to court immediately and file for a “writ of habeas corpus” (asking for the immediate return of your child).

WHAT HAPPENS AT THE 1028 HEARING?

To remove your child from your care, or to keep your child in foster care, ACS must convince the Judge that your child is unsafe in your care. ACS will say that your child would be in danger of serious harm (at imminent risk) in your care. You will have the chance to say that this is not true.

After hearing both sides, the Judge will decide whether to temporarily keep your child with ACS, to return your child to you or to temporarily place your child with relatives. A trial will be held later to determine whether you abused or neglected your child.

CAN ACS GO TO COURT FIRST BEFORE REMOVING MY CHILD?

Yes. Sometimes ACS goes to court to start a child abuse or neglect case against a parent without removing the child first. ACS then can ask the Judge’s permission to remove the child and to place him/her in foster care, or to allow the child to stay with a parent under ACS supervision, or to allow the child to be placed with another relative.

In court, you have a right to:

- Ask the Judge to return your child.
- Have a lawyer represent you.
- Have the Judge appoint a lawyer to represent you for free, if you cannot afford a lawyer.
- Ask for a 1028 hearing and to have that hearing started within 3 business days.
- Tell your side of the story and have witnesses testify on your behalf.

Sometimes the Judge will decide by himself/herself that a child should be removed from the home, even if ACS has not asked for it. A parent also has a right to a 1028 hearing if the Judge decides the child should be removed.

If the Judge decides that a child would be at imminent risk if the child stays with or is returned to the parent, the Judge will order the child to stay with ACS until a preliminary hearing or an abuse or neglect trial is held.

If the Judge decides that the child is not in imminent danger, the Judge will send the child home (a parole). The Judge may send the child home but require ACS to supervise and monitor the home. The Judge also can order the parent to do certain things as a condition of keeping the child at home, such as getting counseling.

WHO ARE ALL THE PEOPLE IN THE COURTROOM?

Judge: This person sits at the front of the room and is the one who decides if abuse or neglect really happened. The Judge decides whether a child will stay at home, whether any conditions have to be met for a child to stay at home or whether a child should be put into foster care.

Clerk: This person takes care of administrative duties for the Judge, like writing up orders for the Judge to sign later.

Court Attorney or Law Secretary: This person is a lawyer who works for the Judge. This person may meet with the lawyers for the parents, the lawyer for ACS and the child's law guardian before everyone sees the Judge.

Court Officers: These people wear uniforms and help keep order in the courtroom and the courthouse. They have a copy of the Judge's calendar for the day and keep track of who is present in court for each case.

Witnesses: Witnesses can be people who saw abuse or neglect happen or not happen. They can have other information about the case. They might be doctors who treated the child or police who came to help the child. Teachers or social workers at the child's school also can be witnesses.

ACS Caseworker: This is the person ACS assigns from its staff to work on the case. The ACS caseworker is very involved in the case and tells the Judge all the details ACS has found out about the case. The ACS caseworker also may be one of the people who testifies against a parent in court (a witness).

Private Agency Caseworkers: There may be people who work at private agencies present in court to testify about the family or the child. This could be someone in charge of supervised visitation or foster care placement.

Special Assistant Corporation Counsel: This person is ACS's lawyer in charge of the case. This lawyer works for the City of New York. Outside of New York City, this lawyer may be called by a different name. This lawyer's job is to try to prove that the parent abused or neglected the child. S/he might

ask the Judge to order things which may help ACS win the case (for example, a parent to submit to drug testing). These lawyers are not supposed to speak to parents, if the parents have lawyers.

Law Guardian: This person is the lawyer the Judge has assigned to represent the child. **The law guardian represents only the child.** The law guardian may or may not want the child to remain in, or return to, the home. Law guardians are not supposed to speak to parents, if the parents have lawyers.

Respondent: This is the parent accused of abuse or neglect.

18-b Attorney or Court-Appointed Lawyer: This is a free lawyer the Judge assigns to represent a parent who cannot afford to hire a lawyer.

WHAT CAN HAPPEN AFTER THE 1028 HEARING?

Admission (guilty plea): After speaking with your lawyer, you may decide to admit to the Judge that you abused or neglected your child. The Judge then will make an order that there was abuse or neglect without having a trial, and the case will go directly to the dispositional hearing (this hearing is described later in this booklet).

When you ask a higher court to make a different decision, this is called making an appeal.

Be very careful before making an admission, because if you admit to abuse or neglect, you will not be able to appeal this part of your case.

Adjournment in Contemplation of Dismissal (ACD): Either instead of a trial, or after a trial is over, you, ACS, the law guardian for your child and the Judge may agree to an ACD. This means that everyone agrees that if you do what the Judge orders you to do (for example, attend counseling or drug rehabilitation), your case will be dismissed after a certain time period is up. That time period can be no more than one year. If there is an ACD, your child will be returned to you.

ACS often supervises you and your child during this time. If you don't do everything ordered in the ACD, you will be in violation of the ACD. ACS will file a violation of ACD petition in court. You will have a hearing to decide if you violated the ACD. If you did, then your case will go to trial on the original charge of abuse and/or neglect. Your child can be placed in foster care if you violate the ACD.

Trial (or fact-finding hearing): If you do not make an admission and, instead, say that the charges are not true, there will be a trial. The Judge will hear the evidence and decide whether abuse or neglect happened. ACS must prove to the Judge that you abused or neglected your child.

ACS presents its evidence first. You can then present evidence to defend yourself. The law guardian also can present evidence. At trial, you can testify under oath and tell your side of the story. You can give documents and other evidence to the Judge and have your witnesses tell the Judge what they know. At the end of the trial, the Judge will either dismiss the case or decide that you did abuse or neglect your child.

Because these cases are civil, not criminal, cases, you have no right to plead the 5th Amendment and refuse to testify. In fact, if you do not testify at trial, a Judge can hold this against you.

Dispositional Hearing (or planning hearing): After an admission or a trial, if the Judge decides there is abuse or neglect, there will be a dispositional hearing. At this hearing, the Judge will decide what plan is best for your child and you. The Judge can choose to do a number of things, such as:

- Return your child to you under ACS supervision and order you to do things the Judge believes will protect your child. Some examples are:
 - Attend counseling or a drug or alcohol treatment program.
 - Attend parenting skills classes or school.
 - Allow a homemaker to come into your home.
 - Enroll your child in day care or send your child to school.

- Find housing or income.
- Place your child with relatives for up to 14 months (kinship foster care).
- Place your child in foster care for up to 14 months (non-kinship foster care).
- Order visits between your child and you to be supervised visits.
- Order things for your child, such as counseling or medical treatment.
- Order ACS to start a case in court immediately to terminate (end) your rights as a parent. If your parental rights are terminated, your child can be put up for adoption by someone else.

WHAT IS A MENTAL HEALTH EXAMINATION?

Before the Judge decides what is best, the Judge may order you and your child to be evaluated by a psychologist, psychiatrist or counselor. The Judge may want you to see a court-appointed evaluator, but you have the right to ask for an independent evaluator if you do not want to see the evaluator the Judge appoints or if you do not agree with that person's report.

Psychologists, psychiatrists and counselors do mental health evaluations by meeting with parents and children and then reporting to the Judge about the meetings.

SHOULD YOU BRING YOUR CHILD TO COURT?

No. You should not bring your child to court unless the Judge tells you, or the law guardian asks you, to bring him/her. It is always better to leave your child at home or with a trusted and responsible family member, friend or babysitter.

If you must bring your child to court, there is a playroom in each Family Court building where the child can stay. However, most of these playrooms have limited hours and are closed during lunch. And they cannot easily take care of infants.

WHAT ARE SOME TIPS ON GOING TO COURT?

Be on time. When you enter the courthouse, you will have to go through security and metal detectors. This will take extra time. If you are late, the Judge may begin the case before you get there and make decisions before you have a chance to say anything.

Dress neatly. Your clothes should be clean, but not fancy. Your hair should be neat.

Be prepared to wait. The Judge usually has many cases in a day in addition to yours. Be patient. Bring something to do while waiting, like a book or magazine.

Let the court officer outside the courtroom know you are there. When you do, the court officer will check your name off the list of cases for that day.

Do not leave the waiting room area. If you need to leave for any reason (for example, to use the phone or bathroom), make sure you tell the court officer you will be right back.

Do not talk about your case with the lawyer for ACS, the ACS caseworker or the law guardian without asking your own lawyer first. You might say the wrong thing and your lawyer should be present during the conversations.

Be polite to everyone, especially court officers, judges, lawyers and social workers.

Know your rights. Be clear about what you want. Be firm.

Ask for written copies of all court papers, petitions and orders.

WHAT ARE MY RIGHTS IF THE JUDGE ORDERS FOSTER CARE?

At the end of your case, the Judge will make a decision and issue an order. If the Judge decides to put your child into foster care, the first thing you should do is get a copy of the Judge's order.

The Judge's order will tell you how long your child will be placed in foster care and what you have to do to get your child back.

The written summary of what you have to do to get your child back is sometimes called the plan.

You can ask for your child to stay with a relative. This is called kinship foster care. A Judge will try to place the child with relatives, if possible.

If you have more than one child and there are no relatives that can care for the children, you can ask the Judge to place all the children together in the same foster home, if possible.

You have a right to have a higher court review the order of the Family Court (an appeal). But you have to appeal the order within 30 days, so you must act quickly.

WHAT CAN I DO TO GET MY CHILD BACK?

After you get the Judge's order, you will need to make sure you do everything that the Judge orders you to do. For example, the Judge might order you to attend a drug treatment program.

The foster care agency should give you a written copy of the plan. The plan should list services that the foster care agency will give to you and your child. And the plan should list the steps you must take so that you can get your child back. For example, they may ask you to attend parenting skills classes.

It is important to cooperate with the foster care agency since they write reports to the Judge. Their reports will tell the Judge how you and your child are doing and will recommend whether your child should be returned to you.

The foster care agency will ask you to attend case planning conferences. This is where they will talk about how your child is doing. **Make sure you attend all case planning conferences at the foster care agency.**

You have the right to have a family member, friend, counselor, social worker, lawyer or someone else come with you to all meetings and conferences. During case planning conferences, make sure you understand what you have to do. If anything is not clear to you, ask questions to clarify so that you do understand.

You can ask the Judge to look at the plan the foster care agency makes for you and your child. If you do not agree with what the plan says you must do, you do not have to wait until the foster care agency brings you back to court. You can go to court on your own and ask for the Judge's help.

WHEN WILL I GET TO SEE MY CHILD?

If the Judge's order allows you to have visitation, the foster care agency will set a visitation schedule for when you will see your child.

Usually, visits are scheduled for twice a month. The Judge may order the visitation to be supervised.

Supervised visitation means someone else will be with you and your child during your visits

So long as you are cooperating with the plan and the visits go well, you can ask the Judge for more visitation and you can ask for unsupervised visitation with your child.

Make sure to see your child during all scheduled visits.

HOW CAN I END FOSTER CARE QUICKLY?

You will have to work hard to follow the Judge's order and the plan to get your child back. Here are some of the things you will need to do:

- Ask for the help you need. The foster care agency caseworker and the ACS caseworker are supposed to work with you. It is their job to get you the services you need so that you can get your child back. All caseworkers (for ACS and private agencies) have supervisors. **If you have a problem with your caseworker, ask to speak with the supervisor.** You can ask for any of these services, if you need them:
 - Alcohol or drug treatment
 - Counseling
 - Help with housing
 - Homemaker assistance

- Childcare
- Work or job placement programs.
- Medical care
- Visit your child regularly and ask for increased visitation, if possible.
- Ask the foster care agency for information about how your child is doing. **You should know that your child is in good health and well taken care of. It is also important to show the agency that you care how your child is doing.**

Some of the things you can do are:

- Ask to have a say about your child's medical care.
- Ask for information about your child's education.
- Ask to be present at case meetings about your child.
- Keep in constant contact with the foster care agency.
- Keep all appointments and show up at every court date.
- Keep a personal notebook with the names and phone numbers of your social worker, case worker, counselor and lawyer, and the dates of all your meetings and appointments with anyone involved in your case.
- Tell the foster care agency and your lawyer if you change your address or phone number. Tell them as soon as it happens.
- Ask for referrals, if you need help. Follow up on these referrals and keep a record of them in your personal notebook.

- Get a friend, counselor, parole officer, minister or other religious leader, or social worker (not one who works for ACS or the foster care agency) to help and support you. They can go to agency meetings and to court with you.
- Get a copy of the “Parents’ Handbook, A Guide for Parents with Children in Foster Care,” from the Parents’ Rights Unit, ACS, 150 Williams Street, 1st Floor, New York, NY (212-676-9421).

HOW LONG COULD MY CHILD STAY IN FOSTER CARE?

A Judge can order your child to stay in foster care for up to 14 months from the date your child is removed from your care.

After 12 months of foster care, a Judge can order foster care to be extended for up to 12 more months (called an extension of placement).

Foster care can last until your child is 18 years old. If your child is over 18, your child could agree to stay in foster care until s/he is 21 years old.

WHAT HAPPENS IF A CHILD STAYS IN FOSTER CARE FOR A LONG TIME?

The **Adoption and Safe Families Act (ASFA)** is a new law (since 1997). This law requires foster care agencies to return children to their parents or relatives quickly and safely, if possible. If this is not possible, ASFA requires foster care agencies to terminate parental rights so that children can be adopted.

If your parental rights are terminated, you cannot see or contact your child ever again.

If your child is in foster care, ASFA puts serious pressure on you. You must start right away to get your child back home. If your child is placed in foster care, you cannot just sit back and wait.

If you do not do the things included in the plan to have your child returned, your parental rights can be taken away and your child can be placed up for adoption.

If your child is in non-kinship foster care for 15 of the last 22 months and you have not followed through with the plan, ACS is required to start a court case to terminate your parental rights.

If your child is in kinship foster care for 15 out of the last 22 months, the Judge will review your case during a permanency plan hearing.

To avoid termination of parental rights, you must:

- Complete all actions the Judge ordered and attend whatever programs and/or classes that are part of the plan to get your child back home (for example, drug/alcohol treatment, parenting skills classes or counseling programs).
- Attend all planning meetings (conferences) at the foster care agency. There should be a conference or meeting at the foster care agency 3 months after your child has been placed in foster care and every 6 months after that. You should take a friend or someone else you trust with you.
- Keep in contact with foster care agency.
- Make sure you visit your child regularly.
- Go to all court dates and don't be late to court.

WHAT IS A PERMANENCY PLAN HEARING?

The permanency plan is the plan for the future care of, and living arrangements for, the child who is in foster care.

After your child has been in foster care for 12 months, there will be a Family

Court review of the permanency plan that ACS and/or foster care agency thinks is right for your child. This is called the permanency plan hearing. You have a right to a lawyer for the permanency plan hearing. At this hearing, you can tell the Judge what you believe is the right plan for your child.

The permanency plan hearing is a hearing to decide what the best permanency plan is for the child and what services should be offered to the child and the parent while the child is in foster care.

At the end of the hearing, the Judge will decide what the right permanency plan is for the child.

The permanency plan might be:

- To keep your child in foster care for a limited period of time.
- To return your child to you or another relative.
- To terminate your parental rights and place your child up for adoption.
- To give custody or guardianship to a relative.
- To have your child be prepared for independent living. This usually is an option for children who are older or who do not want to be adopted by their foster parents.

If the permanency plan is continued foster care or eventual adoption, ACS is required to go back to court every 12 months to ask the Judge to allow your child to remain in foster care. You have a right to be present each time this happens, to be represented by a lawyer and to ask for your child to be returned to you.

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