

# Resilience and Recovery:

Creating Opportunity for  
Healing in the Court System

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## Executive Summary

Mental health advocates across the country have been fighting for decades to reduce reliance on the criminal court system for people living with mental health conditions. As community mental health treatment has become more scarce, people living with significant mental health needs who require treatment to manage their symptoms and avoid psychiatric crises have lacked options for regular care, and instead have increased interactions with police, jails, prisons and state-operated hospitals. We have long known that the system of community mental health support needs greater investment and innovation for change to be possible. Bolstering this system is central to the work of many advocates and policymakers, who are focused on building community capacity to provide mental health treatment, diverting from the court system, and addressing the recovery needs of people living with mental health conditions.

Until this system is built, individuals will continue to cycle in and out of jails and sometimes land within the state’s psychiatric hospital system or prisons. There are strong efforts within these environments to reform and rethink how individuals living with mental health conditions receive treatment and support. It is incumbent upon all stakeholders to deliberately and urgently push forward so that people who are treated within jails, state hospitals, and prisons are able later to thrive outside of these systems.

This brief makes several recommendations that seek to reform the approach to mental health needs within the criminal court system and state operated forensic system related to:

- Refocusing the forensic mental health system from punishment to recovery.
- Training court stakeholders on the importance of mental health to increase the likelihood of diversion at the earliest possible point.
- Improving system transparency and accountability through data collection, analysis, and policy development.

# Background

In Illinois, “forensic” mental health services are those provided by mental health professionals through criminal court order.<sup>1</sup> Forensic services typically refer to mental health services provided to individuals who have been found by the criminal court to be unfit to stand trial (UST) or not guilty by reason of insanity (NGRI). These services can be provided in a variety of settings: inpatient, outpatient, or in-home. There are three institutions that comprise the current forensic mental health system – hospitals, courts, and jails. In Illinois, reform of this system is made more challenging because all of these are operated at different levels of government. Specifically, jail systems are operated by county governments, state-operated hospitals are run by the Illinois Department of Human Services, and courts are overseen by judges based on county and are overseen by the Illinois Supreme Court.

These systems maintain jurisdiction over a significant number of people across the state. Within the locally-controlled jail system, an estimated 23,000 individuals are incarcerated in county jails across the state.<sup>2</sup> In Cook County, the jail population is roughly 5,500 people, with an additional 3,300 in “community corrections.”<sup>3</sup> The proportion of individuals diagnosed with a mental health condition before or during their time in a jail is high, and likely underrepresented in data kept by the court system.

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A national study found that about

**44%**

of individuals incarcerated in jails had been diagnosed with a mental health condition.<sup>4</sup>

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1 For more information, see: Lawrence Fitch, *Forensic mental health services in the United States: 2014* (Virginia: National Association of State Mental Health Program Directors, 2014).

2 “Illinois Profile,” Prison Policy Initiative.

3 The Cook County Jail population fluctuates over time and has decreased significantly since 2017. “Open Data Archive,” Cook County Sheriff’s Office.

4 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, by Jennifer Bronson and Marcus Berzofsky (2017).

While the vast majority of this population will not need the level of care provided by the state hospital system, there are about 780 forensic mental health referrals each year with 347 individuals who have been found not guilty by reason of insanity (NGRI) in the state. The average length of stay is approximately four years.<sup>5</sup> Given that there are only 869 forensic mental health beds in the state-operated psychiatric hospital,<sup>6</sup> limited inpatient capacity exists to treat individuals found NGRI as well as other individuals who are ordered by a court to a state psychiatric hospital.

There have been recent efforts by many system partners aimed at rethinking the connection between mental health and the court system, and there are efforts and new investments that are moving our forensic system in the right direction.<sup>7</sup> These are not always easy choices, as there is significant stigma around individuals who have been involved in the criminal court system and safety for release in the community. However, empirical evidence shows that with proper community-based support and services, individuals with serious mental health conditions are able to live in the community with extremely low recidivism rates.<sup>8</sup>

Right now, there are people in hospitals and jails who can and should be treated in the community. This requires continued investment, leadership, and coordination at city, county and state levels to ensure that individuals living with mental health conditions – who have fallen through the cracks in the mental health care system and have thus been caught in the criminal court system due to a mental health condition – receive the most appropriate support and have a chance to live their lives.

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5 "Forensic Services," *Illinois Department of Human Services*.

6 Department of Human Services–Division of Mental Health, "Forensic Workgroup," June 18, 2020, Powerpoint.

7 Illinois Supreme Court, "Mental Health Summit Series to be Held in Illinois," August 26, 2020, accessed December 14, 2020. <https://courts.illinois.gov/Media/PressRel/2020/082620.pdf>

8 E. Fuller Torrey, M.D. et. al., *Treat or Repeat: A State of Survey of Serious Mental Illness, Major Crimes and Community Treatment*, Virginia: Treatment Advocacy Center, 2017), pg 23.

# Opportunities

There are several opportunities to drive systemic change derived from NAMI Chicago's experience in aiding families as they navigate these institutions.

## **Start with Recovery**

Mental health recovery is not just about mental health treatment, but also the opportunities for individuals to build agency and purpose, community, and environmental safety. Refocusing programs, practices, policies, interventions, and the legal framework to center on enabling and supporting recovery will allow this work to be built on the premise that mental health recovery is possible and in the best interests of all involved.

## **Forensic Evaluations**

Establishing consistency and standardization for evaluations used when an individual is being considered for psychiatric treatment during court proceedings can help ensure quality across all evaluations.<sup>9</sup> The forensic evaluation process is central to the forensic system and building promising practices across Illinois should be a focus in order to promote quality, consistency, and accountability.

## **Transparency**

States across the country are moving in the direction of increased transparency and systems-level data around the forensic system. Some of this information is available – such as the data reported earlier here – but increased transparency for all parties regarding treatment options and decision-making processes helps increase trust at the individual and family level.

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<sup>9</sup> "Center for Forensic Psychiatry," *Michigan Department of Health and Human Services* online.

## **Legal Reform**

Revisiting legal requirements that dictate how individuals are treated within the court and forensic mental health system can move the state to promote recovery and fairness for individuals with serious mental health conditions in the criminal legal system.

## **System Strengthening and Navigation**

Individuals living with mental health conditions and their families are often at a loss when signs and symptoms of a mental health condition emerge. Increasing our prevention efforts, such as investment in early intervention and support for individuals and families to connect with the right services and supports, will help avoid involvement with jails and public hospitals in the long run. Further, mental health does not exist in a vacuum; investments in housing, nutrition access, and other basic needs provide stability and act as positive mental health supports necessary for individuals to achieve and maintain recovery.

As continued reforms to the jail and forensic systems are considered, the recommendations below are meant to build on current efforts that are moving the system in the right direction and identify policies and programs that will push even further towards a recovery-oriented system.



# Recommendations to refocus the forensic mental health system from punishment to recovery

The state of Illinois has released new grants around outpatient restoration<sup>10</sup> and peer support services<sup>11</sup> within state-operated hospitals and for discharge planning. There are also substantial efforts in Illinois to increase the use of healing-centered practices.<sup>12</sup> Other states have implemented innovative programs that show promising outcomes, such as peer support across the mental health system.<sup>13</sup> Expanding the legal tools available to the court system and state-operated hospitals, such as conditional release<sup>14</sup> or a psychiatric review board,<sup>15</sup> will also help move towards fostering wellness and recovery to empower individuals to lead healthier, independent lives.

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10 "NOFO - 2344 Outpatient Fitness Restoration (230)," *Illinois Department of Human Services*.

11 "2369 Transitional Community Care and Supports (855)," *Illinois Department of Human Services*.

12 "Illinois ACEs Response Collaborative," *Health & Medicine Policy Research Group*.

13 *Peer-Led Recommendations for Supporting Individuals Receiving Care in State Psychiatric Facilities during the COVID-19 Crisis*, (Virginia: National Association of State Mental Health Program Directors, 2020).

14 Fitch, *Forensic mental health services in the United States: 2014*, pg. 20.

15 Fitch, *Forensic mental health services in the United States: 2014*, pg. 18.

## Short-Term Recommendations to Focus on Recovery

- Build on existing peer support programs within the Illinois state-operated psychiatric hospitals. Other states, like Pennsylvania, have implemented peer support programs specifically for the forensic mental health population. Studies have found that peer support in the forensic setting facilitates a systemic cultural shift toward recovery, and on an individual level, provides individuals with hope, a positive role model, and discharge preparation.<sup>16</sup> Illinois has recently invested in community-based programs to enable smooth transitions from state psychiatric hospitals back to the community utilizing mental health professionals including peers.<sup>17</sup> The state should continue this effort and expand investment of peer supports in the forensic system.
- Policymakers should ensure there are resources for training efforts within the state hospital and court systems. The Department of Human Services–Division of Mental Health, which has recently begun an effort to train staff on best practices for conditional release, must be supported through staff professional development investments that build and maintain best practices for forensic clinical interventions that promote recovery. Additionally, the Illinois Supreme Court and justice practitioner training partners should explore national best-practices for implementing healing-centered practices throughout the court system and policymakers should consider opportunities to codify such practices into law.<sup>18</sup>

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<sup>16</sup> See: Larry Davidson et al, "Peer Support Among Persons with Severe Mental Illnesses: A Review of Evidence and Experience," *World Psychiatry* 11, no. 2, (2012): 123-128. and Reham Shalaby and Vincent Agyapong, "Peer Support in Mental Health: Literature Review," (*JMIR Mental Health* 7, no. 6 (2020): e15572).

<sup>17</sup> "2369 Transitional Community Care and Supports (855)," *Illinois Department of Human Services*.

<sup>18</sup> "Judicial Education in Illinois," Illinois Courts.

## Short-Term Recommendations to Focus on Recovery

- Court stakeholders, including State’s Attorneys, judges, and public defenders should collaborate to develop policies and procedures that limit criminal court involvement for individuals charged with low-level offenses by identifying treatment-oriented diversion options, particularly when issues of competency are raised. As the competency (or fitness to stand trial process) can be time- consuming, expensive, and traumatic, careful consideration must be taken to effectively use limited resources to achieve positive outcomes for individuals, the community, and the court. Cook County has piloted a misdemeanor fitness diversion program that offers mental health supports in lieu of a fitness evaluation when one might be appropriate. This model could be built upon throughout the state, and expanded in Cook County based on the findings of the pilot. Providing mental health services and other supports is essential as an alternative to the fitness restoration process.
- For individuals found unfit to stand trial, court stakeholders must develop policies and procedures to determine the most appropriate placement for treatment. For some individuals found unfit to stand trial, the Illinois Department of Human Services- Division of Mental Health recently announced a contract with Ingalls Memorial Hospital to provide restoration services in a secure, inpatient setting. This is a new placement option for this population within the state for individuals who are not appropriate for diversion.

## Long-Term Recommendations to Focus on Recovery

- Develop policies and incentives that expand the peer support workforce. The state has established a training and credentialing system for peer support professionals, however participation has remained stagnant over the last several years. Currently, state policymakers are considering legislation to expand the availability of the mental health workforce.<sup>19</sup> This should include peer support professional training and development opportunities to meet the growing demand for peer support professionals statewide and align with promising interventions for mental health recovery.
- The forensic evaluation process in Illinois should be improved and standardized. Illinois lacks statewide standards for forensic evaluations, so it is difficult to assess evaluation consistency, quality, and application. Through state leadership and partnership with providers, standards can be set that raise the bar statewide, which may include rule development and state legislation. This assessment of promising practices and development of consistency across Illinois can be undertaken by the Illinois Department of Human Services - Division of Mental Health through stakeholder convenings that have been recently established. Training for mental health professionals on conducting forensic evaluations for courts should also be considered. The state should look to states like Massachusetts,<sup>20</sup> Virginia,<sup>21</sup> and Oregon<sup>22</sup> which have well established standards for forensic evaluation and training for evaluators.

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<sup>19</sup> HB 3501, 101st General Assembly (IL 2020), <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3501&GAID=15&DocTypeID=SB&LegID=125316&SessionID=108&GA=101>

<sup>20</sup> "Forensic Services," *Massachusetts Department of Mental Health*, accessed January 4, 2021.

<sup>21</sup> "Forensic Services," *Virginia Department of Behavioral Health and Developmental Services*, accessed January 4, 2021.

<sup>22</sup> "Health Systems Division: Behavioral Health Services - Chapter 309," *Oregon Secretary of State*, accessed January 4, 2021.

## Long-Term Recommendations to Focus on Recovery

- Implement a Psychiatric Security Review Board (PSRB) to provide administrative oversight of individuals being treated in forensic units with complete authority to conditionally or unconditionally release individuals from state psychiatric facilities. The PSRB should be composed of individuals with psychiatric expertise as well as deep knowledge of mental health recovery and trends in the forensic system. An independent administrative body would also help to centralize this process as opposed to relying on individual judges across the state. Illinois Governor Thompson's Commission to Revise the Mental Health Code of Illinois (1989) first made this recommendation, and states such as Oregon and Maryland each have Psychiatric Security Review Boards.<sup>23</sup> The Commission report and the experiences of both states could provide valuable insight into this policy and allow Illinois to build on lessons learned and ensure such a board has appropriate independence and authority, as not to create an additional barrier to release for individuals who are involved in the forensic system.
- State policymakers and the Division of Mental health should begin studying opportunities to change state law to foster a recovery-oriented court and forensic mental health system. This includes laws around the NGRI and unfit to stand trial (UST) provisions to shift the focus of these processes from punishment by another name to opportunities to continue on the road to recovery. Statute and rules must be regularly reviewed and updated to keep up with evolving best practice. Currently, Illinois has outdated and ineffective laws that reduce the likelihood individuals can attain recovery and lead fulfilling lives. For example, Illinois can look to states, such as Maryland and Virginia, where conditional release practices are more common and results in low rates of recidivism for individuals who are able to maintain recovery in the community. Legal safeguards for hospitals can be developed to encourage participation.<sup>24</sup>

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23 E. Fuller Torrey, M.D. et al., *Treat or Repeat: A State of Survey of Serious Mental Illness, Major Crimes and Community Treatment*, (Virginia: Treatment Advocacy Center, 2017), pg. 19.

24 E. Fuller Torrey, M.D. et al., *Treat or Repeat: A State of Survey of Serious Mental Illness, Major Crimes and Community Treatment*, pg. 18.

## Long-Term Recommendations to Focus on Recovery

- Support funding for outpatient forensic psychiatric treatment options and expand the use of conditional release. While inpatient psychiatric treatment is the appropriate treatment setting for some individuals in the forensic mental health system, it is not appropriate for everyone at all points in their treatment. Increasing the use of outpatient treatment is cost effective<sup>25</sup> and promotes recovery by providing treatment in settings most appropriate for each individual. The Illinois Department of Human Services–Division of Mental Health recently released funding opportunities to expand outpatient fitness restoration programs and supervised residential treatment options. These efforts are crucial and should be sustained and expanded. The state should consider building out the provider network for individuals stepping down from supervised residential on conditional release and centralize planning and coordination efforts for such individuals. Further, the state should make the necessary resources available to continually evaluate the appropriateness of each person’s level of care to ensure recovery-oriented services are provided in the least restrictive setting. An opportunity to expand the continuum of services for those on conditional release includes emphasizing the use of the peer workforce. There are models in Illinois, such as the services and supports provided to Williams and Colbert Class Members, that can be looked to for this population.
- Illinois has historically had limited Forensic Assertive Community Treatment (FACT) teams, which provide high-fidelity in-home mental health services for individuals in the forensic mental health system living with serious mental health conditions. In recent years, FACT teams have been studied for effectiveness, as the model is relatively new. Policymakers should consider the use and viability of FACT teams in Illinois, based on the national research.<sup>26</sup> This will provide the state further options to better utilize existing state hospital beds for individuals who desperately need inpatient mental health treatment but cannot access it due to a lack of capacity.

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25 Karen J. Cusack et al., “Criminal Justice Involvement, Behavioral Health Service Use, and Costs of Forensic Assertive Community Treatment: A Randomized Trial,” *Community Mental Health Journal* 46, no. 4 (2010).

26 U.S. Department of Human Services, Substance Abuse and Mental Health Services Administration, *Forensic Assertive Community Treatment (FACT)*, 2019.

## **Long-Term Recommendations to Focus on Recovery**

- There is currently a gap in the treatment system in Illinois for individuals whose treatment needs or supervision requirements exclude them from the available community-based treatment options and settings. These individuals are often connected to the forensic mental health system over time because they cycle in and out of hospitalization and criminal court involvement. Illinois must develop a long-term level of care that acts as a safety net for individuals whose recovery will rely on ongoing, high-level care for most of their lives.

## Recommendations to train court stakeholders on the importance of mental health to increase the likelihood of diversion at the earliest possible point

In other areas of our criminal justice system, mental health training has proven highly impactful with further opportunities for improvement. For example, Crisis Intervention Team training is a longstanding police diversion program with substantial traction in Illinois. Providing training on mental health and related legal opportunities for State's attorneys, public defenders, and judges can begin to improve outcomes for the disproportionate population of individuals with mental health conditions in the criminal court system. Providing appropriate training can also begin to reorient our court system to one of recovery. The American Bar Association has developed suggested guidelines for such training.<sup>27</sup>

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<sup>27</sup> Christopher Slobogin, *Criminal Justice Standards on Mental Health*, pg. 8.



## Short-Term Recommendations for Court Stakeholder Training

- Develop comprehensive, statewide training for court staff, attorneys, and judges on mental health in the criminal justice system. Too often, opportunities to divert individuals in need of mental health treatment and support are missed in the criminal court system. Providing comprehensive training to all court stakeholders can provide court staff, attorneys, and judges the knowledge to reduce stigma and improve outcomes for individuals experiencing symptoms of mental health conditions. The Illinois Supreme Court recently held a five part virtual summit which explored the correlation between mental health and the criminal justice system and how these disparities can be addressed. Such opportunities are a great start and must be institutionalized. Statewide training opportunities provide a concrete and effective next step for this effort.

## **Recommendations to improve system transparency and accountability through constant data collection, analysis, and policy development**

The forensic system is incredibly complex and requires cross-system engagement and collaboration. As noted, there are a variety of partners across the state engaged in each system. For the state to make well-informed decisions, data must be centrally collected, analyzed, and disseminated. There is a need for coordination and technical assistance to promote best and promising practices.

## Short-Term Recommendations for System Improvement

- Codify the recently established forensic workgroup developed by the Department of Human Services–Division of Mental Health as a formal statewide advisory board on the forensic mental health system. This workgroup includes stakeholders involved in the forensic mental health system, such as state agencies, judges, court staff, treatment providers, public defenders, state’s attorneys and advocates. This body can support streamlining and increasing transparency across stakeholders and allow for ‘real-time’ input.
- Elevate the Department of Human Services-Division of Mental Health as a central leader and convener for reform in Illinois’ mental health system, driving innovation through funding, developing and disseminating best practices, coordinating services, and providing safety-net services. DMH should also serve as the central hub for forensic services and best practice in the state. This is an opportunity to ensure forensic services in the state are adhering to broadly accepted practices that aim to provide recovery-oriented services.

## Long-Term Recommendations for System Improvement

- Increase communication and coordination between the state hospital system and the courts via dedicated liaisons. Colorado passed legislation in 2018 creating a court liaison program within the state court system.<sup>28</sup> Appropriating \$2 million, the state has created a statewide network of court-based liaisons who work with individuals identified as having a mental health condition to connect them with mental health services and to help inform the court on treatment options. This type of program, while not specific to the NGRJ process, could help divert individuals from the criminal court system to the mental health system when appropriate as well as keep families informed on the court process.<sup>29</sup>
- Report and disseminate data on the Illinois forensic system on an annual basis to increase transparency. This should be a collaborative effort among the Department of Human Services-Division of Mental Health and the county court systems. This effort can continue promoting recovery throughout the system by increasing transparency and providing more information to stakeholders, including those with lived experience, about how the system functions.

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<sup>28</sup> SB 18-251, 72nd General Assembly (CO 2018). Accessed December 4, 2020. <https://leg.colorado.gov/bills/sb18-251>

<sup>29</sup> Turner, Jennifer, "Bridges Program: Connecting Colorado's Criminal Justice and Mental Health Systems."

## Definitions

- **Community Corrections:**<sup>30</sup> Individuals released to the community from the jail pre-trial, individuals sentenced to probation, or parole are said to be in community corrections because they are under court-ordered supervision by a law enforcement entity, but they are living in the community. For individuals in community corrections pre-trial, this may mean they are subject to home confinement with electronic monitoring or other conditions of release as ordered by a judge. This is opposed to confining individuals “behind the walls” of a correctional facility.
- **Conditional release:**<sup>31</sup> Conditional Release, a commonly used practice across the country, is a partial discharge from a state-operated psychiatric facility, whereby the person subject to a court order or other legal authority may be returned to the facility if certain treatment conditions are not met.<sup>32</sup>
- **Not Guilty by Reason of Insanity (NGRI):**<sup>33</sup> NGRI is a plea in criminal court where the defendant claims they were unaware of the nature of their alleged actions due to a mental health condition. Illinois statute uses this term, however other states use varied terms across the country.
- **Peer Support Professional:**<sup>34</sup> Peer support professionals are individuals with lived experience who assist others in their own recovery through trust, empowerment, understanding, and respect. Peer support professionals are uniquely positioned to connect with people receiving their services to engage in their recovery and reduce the likelihood of relapse.

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30 For more information on Community Corrections, see: “Pretrial,” National Institute of Corrections, accessed January 8, 2021.

31 For more information on Conditional Release in Illinois, see: “Department of Human Services Forensic Services Handbook,” *Illinois Department of Human Services*, pg. 72-75.

32 E. Fuller Torrey, M.D. et al., *Treat or Repeat: A State of Survey of Serious Mental Illness, Major Crimes and Community Treatment*, pg. 17.

33 For more information on NGRI in Illinois, see: “Department of Human Services Forensic Services Handbook,” *Illinois Department of Human Services*, pg. 79-102.

34 For more information on the peer support profession, see: “Peers,” Substance Abuse and Mental Health Services Administration.

## Definitions

- **Unfit to Stand Trial (UST):**<sup>35</sup> An adult criminal defendant is presumed to be competent to stand trial, meaning they reasonably understand the court proceedings and potential consequences of those proceedings. Individuals can be found unfit to stand trial if they are not able to comprehend proceedings and potential consequences due to a mental health condition or other impairment.
- **Williams and Colbert Class Members:**<sup>36</sup> This term refers to the members of two class action lawsuits against the State of Illinois that have resulted in active consent decrees. Williams Consent Decree members are current or former Specialized Mental Health Rehabilitation Facility (SMHRF) residents. Colbert Consent Decree members are Cook County, IL nursing home residents who are eligible for Medicaid. Both lawsuits allege the state violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by not providing class members the opportunity to live in community-based settings. The Colbert Consent Decree also alleges the state violated the Social Security Act.

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<sup>35</sup> For more information on UST in Illinois, see: "Department of Human Services Forensic Services Handbook," *Illinois Department of Human Services*, pg. 7-78.

<sup>36</sup> For more information on the Williams and Colbert Consent Decrees, see: "Olmstead Consent Decrees," *Illinois Department of Human Services*.

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