

HOW TO GRADUATE WITH A DEGREE and WITHOUT A RECORD:

A New York college student's guide



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DISCLAIMER

This book is not intended as legal advice. Nor does it create an attorney-client relationship. It is simply written to educate college and high school students about some of the most common offenses associated with young people.

It is my goal to prevent crimes before they happen through education. I believe both students and their families should enjoy every moment of the New York college experience. Every case is different, and the best advice I can give anyone facing charges of any kind is to consult with a local licensed attorney who focuses on criminal defense.



INTRODUCTION

Don't you hate "preachy" books? I do. That is why this guide to NY criminal law for your college years is designed to be simple and direct. This book is not about judgment. We all do crazy things in college---it's part of the experience. My aim is to give knowledge to new college students and their families about the legal environment in Ithaca, NY.

Also, this book is NOT about how to "get away with things." It is one upstate lawyer's attempt to arm you to the teeth with knowledge so you can make educated decisions while enjoying your college years.

I went to Ithaca College (BFA in Acting, Class of 2004) and the years spent there were some of the best of my life. I wish you the same great four years and congratulate you on your acceptance to college!

Mike Cyr

Ithaca College Class of 2004

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PART I. ON THE ROAD



Chapter 1: Driving Drunk in NY

Did you know that in NY you can be charged with "buzzed" driving? Yep. NY is one state where you do not have to be **at or** over the legal limit of 0.08% BAC (blood alcohol concentration) to be charged with a pretty serious offense.

There are many alcohol driving offenses which you can be charged with in New York:

A. Driving While Ability Impaired ("DWAI"). Vehicle & Traffic Law §1192.1

Even if you only have 0.01% BAC, the police can charge you under this law. This does not mean you can be convicted, but they can charge you. Below 0.05% BAC there is a legal presumption that you are *not impaired*. From **0.06-**0.07% BAC, there is a presumption of impairment. DWAI is *not* a crime, but a traffic violation.

Penalties for DWAI:

1. 90 day suspension of license [1 year suspension if under age 21]
2. Up to 15 days in jail
3. \$300-\$500 fine
4. \$255 or \$260 court surcharge(depends on if City or Town/Village court) [2015]
5. Mandatory attendance to Victim Impact Panel (a 3 hour class)
6. DMV civil driver assessment fines of \$750
7. 1 year Conditional Discharge (i.e. no new arrests for one year)
8. Community Service Hours

Seems like a lot? Well, this is the *least amount of punishment* for merely impaired driving in New York. I hope that gives you some perspective as we move through the other DWI charges somebody could face.

B. DWI criminal offenses (VTL §1192.2 / 1192.3 /1192.2a)

New York has three different kinds of misdemeanor offenses¹. Being found guilty of any of these crimes will result in *GETTING A CRIMINAL RECORD* (which is against the purpose and title of this book). Criminal records are never expunged in New York, which means they are there forever.

i. “Common Law” DWI.

What is it? This is charging a person with DWI without a test of their blood or breath. In other words, there is no BAC number because you refused to take a chemical test. Without a BAC number, the prosecutor will have to use other evidence to prove you guilty. This charge is ALL based on the Police Officer’s opinion. They will use the police officer's observations, testing, and your driving to prove you were intoxicated.

ii. DWI over 0.08% BAC or Higher

This DWI charge is based upon a test of your blood or breath. If you are stopped by the police for suspicion of drunk driving, then the officer will ask you

¹ See Index for definitions

to do multiple tests. The only way they can prove this charge against is with a test of your blood or breath.

PENALTIES FOR DWI (common law) or DWI at or over 0.08%

1. Up to 1 year in jail
2. Up to 3 years probation (closely monitored community supervision)
3. Mandatory Ignition Interlock Device for 1 year
4. \$500-\$1000 fine
5. \$395 or \$400 court surcharge (depends on if City or Town/Village court)
6. Mandatory participation in Drunk Driver Program (DDP) class [7 week class]
7. Revocation of license for 6 months [1 year if under age 21]
8. Mandatory attendance to Victim Impact Panel
9. DMV fines of \$750
10. Fees for DMV relicensure
11. Community Service Hours

New York takes the honor of having the first DWI laws in the United States, but also some of the harshest.

iii. Aggravated DWI at or over 0.18% BAC, VTL §1192.2a

This crime is typically charged when somebody is driving and they're "really messed up." Most people charged with "ADWI" are clearly intoxicated and are usually caught because their driving is so terrible. I've had clients drive the wrong way up one-way streets, flip their cars, and even crash into people's homes. [NOTE: if you get into a car accident while driving drunk and hurt someone, then you will be facing MUCH more serious felony-level charges].

PENALTIES FOR AGGRAVATED DWI:

1. Up to 1 year in jail
2. Up to 3 years probation (closely monitored community supervision)
3. Mandatory Ignition Interlock Device for 1 year

4. \$1000-\$2500 fine

5. \$395 or \$400 court surcharge (depends on if City or Town/Village court)
6. Mandatory participation in Drunk Driver Program (DDP) class [7 week class]
7. Revocation of license for **12** months [1 year if under age 21]
8. Mandatory attendance to Victim Impact Panel
9. DMV fines of \$750
10. Fees for DMV relicensure
11. Restitution for any property damage, etc

iv. REFUSING TO TAKE A CHEMICAL TEST

There are many tests associated with a DWI police investigation. Some have harsh penalties and some do not.

a) Refusing the Preliminary Breath Test (PBT) on side of road

In New York, if the police think you are under the influence they can make a legal request for you to give a sample of your breath. You are legally required to give a breath sample, if you do not, then you face penalties. Refusing a PBT is merely a traffic violation with harsh penalties: Fines of up to \$150; and DMV surcharge of \$750.

b) Refusing the Field Sobriety Tests at the side of road

If an officer requests that you perform field sobriety tests, and you refuse, there are no penalties. However, the prosecutor can introduce evidence at trial that your refusal to take tests was because you were “conscious of your guilt.”

c) Refusing a Chemical Test of your Blood or Breath

The police must give you refusal warnings if they request a chemical test. If the police fail to do this properly, the DMV license revocation may be invalid. The police may determine you refused the test based on what you did or said when you didn't refuse them directly.

The Penalties for refusing a CHEMICAL TEST (breath or blood) are:

- mandatory 1 year revocation of your license
- DMV driver assessment fee of \$750
- \$500 civil administrative penalty

***PLAYING IT SMART:**

1. Alcohol affects the brain before it affects the body, so have a plan before you drink.
2. If you decide to drink and drive, and you get pulled over, your cooperation with police will not likely be rewarded. So at the very least, refuse two things: refuse to make any statements and refuse to take any field sobriety tests. NOTE: There are harsh license consequences with refusing a test of your breath or blood.

Chapter 2. Driving High in NY

New York has an offense called "Driving While Ability Impaired By Drugs." In Ithaca, the most common drug we see with this crime is Marijuana. Many drugs (both prescription and illegal) can impair your ability to drive. The police do NOT need a blood test to prove this crime. That's why it requires a much more detailed defense.

Penalties for VTL §1192.4-DWAI-Drugs:

1. Up to 1 year in jail
2. Up to 3 years probation (closely monitored community supervision)
3. \$500-\$1000 fine
4. \$395 or \$400 court surcharge (depends on if City or Town/Village court)
5. Revocation of license for 6 months [1 year if under age 21]
6. Mandatory attendance to Victim Impact Panel
7. DMV fines of \$750
8. Fees for DMV relicensure
9. Community Service Hours

The Blood Test: What's in Your Blood?

If the police find drugs in your blood in a DWAI drugs case, then it doesn't necessarily mean that you were impaired by them. Sometimes blood only shows the waste products of drugs called "metabolites." Sometimes a blood test may show drugs that have been in your system for a very long time. That is why it is so important to have your drug case reviewed by somebody familiar with drugged driving offenses.

***PLAYING IT SMART:**

1. Do not smoke weed in your car. Marijuana has such a distinct odor that police are more likely to charge you with DWAI drugs if they smell anything at all.
2. Be aware that prescription drugs can cause impaired driving too. See how any new prescription drugs affect you BEFORE you drive anywhere. You may want to discuss the effect on driving with your Doctor.
3. Be careful of combining drugs or taking drugs on an empty stomach as they may have a more powerful effect on you.

Chapter 3: Having Drugs in a Car

Basically, if there are drugs out in the open in a vehicle that you're in (like pills on the floor, or weed under a seat, or bags of drugs between two passengers in the back seat), then New York makes a PRESUMPTION that everybody in the car possessed these drugs. So, the police charge everybody in the car with criminal drug possession.

If the police see drugs, smell drugs, or have suspicion that you are on drugs in the car, then they can search the passenger compartment of the car. This presumption is something that must be overcome by your attorney. It is one of the few times in the criminal justice system where the "burden shifts" from the prosecutor to the accused.

***PLAYING IT SMART:**

1. Be careful who you hang out with or share rides. If you associate with people you don't know, you can expose yourself to long-term problems.
2. Always keep prescription drugs in their original containers. If the drugs are found without the prescription, then you can be charged with criminal possession.

Chapter 4. Speeding in New York

Driving is a privilege not a right. That's why it's easy to lose your license. The most common offense that causes the loss of your license is speeding. If you get three speeding tickets or 11 points on your driving record it will result in a suspension of your driving privileges in New York.

***PLAYING IT SMART:**

1. In upstate New York, and especially in Ithaca, speed limits frequently change. Speed limits vary from a low of 10 mph on campus to a high of 55 or 65 mph on local highways. Be sure to pay attention WHEN SPEED LIMITS CHANGE because they do constantly in Ithaca and the surrounding area.
2. Stay focused on your speed by minimizing distractions (such as loud music, texting, phone calls, etc).
3. If caught speeding, there are ways for a local attorney to often reduce or even dismiss the ticket.

Chapter 5: Using ANY Electronic Device While Driving in New York

People are under the mistaken impression that the ONLY THING they can be guilty of in NY is using their phone while driving. This is not true. Using ANY portable electronic device while driving can result in harsh penalties. From a GPS to an IPOD to your phone, the law applies equally to all.

Penalties for Using An Electronic Device & Driving:

Vehicle and Traffic Law, Art. 33, s. 1225

1. Suspension of License for 4 months (120 days)
2. \$50-\$200 fine
3. \$93 court surcharge
4. 5 points on your license
5. 5 point tickets are classified as “serious traffic offenses” for car insurance rates

*PLAYING IT SMART:

1. Don't use portable electronic devices while driving.
2. Attach devices to your car or Bluetooth them.
3. Realize that even if it looks like you're using or holding an electronic device, the police may charge you with this ticket.

PART II: HITTING THE PARTY!



Chapter 6: Partying Violations

The majority of these violations occur because the party goes from being private to public. Here are some common party-related offenses...

Public Urination in Ithaca

The Ithaca City/Town Code prohibits urinating in public.

Penalties

1. \$100-\$250 fine; or up to 25 hours community service
2. Up to 15 days in jail

Disorderly Conduct

NYS Penal Law s. 240.20

This is THE MOST COMMON party violation. The police LOVE to use this violation to charge students with when they “mouth off” to the police.

For the prosecutor to be successful at trial, they must prove *beyond a reasonable doubt* that the alleged conduct happened in a **public** place, and that the conduct caused **public** annoyance.

PENALTIES:

1. \$0-\$250 fines
2. up to 15 days in jail
3. \$120 surcharge in City Court / \$125 surcharge in Town Court

4. 1 year Conditional Discharge (1 year conditional release by Court)

Noise Violations

Ithaca has recently revised their Code on Noise Violations to make it easier for police to enforce them. Basically, there are many ways for the police to give tickets for this ordinance. The louder the party, the more likely it will be shut down. Also, the Ithaca Police Dept. just purchased NEW noise decibel measuring equipment that they will use to enforce the noise ordinance. This machine will be used as evidence of the violation at a trial.

Penalties Ithaca City Code s. 240-15

1. \$100-\$500 fine; or 25-100 hours community service;
2. Up to 15 days in jail

***PLAYING IT SMART:**

1. If people complain, then it's probably too loud.
2. If the police approach you, always be respectful.
3. Keep the party INDOORS.
4. If you gotta go, use the bathroom.
5. If you carry ID, be sure it's a legal one.

Chapter 7: Loving the Weed

Many students in Ithaca love weed as I imagine students do on every college campus. I also have defended plenty of students charged with various "weed-related" crimes. Although some states have legalized marijuana (i.e. Colorado), New York is not one of them. New York has de-criminalized possessing a small amount of marijuana (less than 25 grams or 7/8 of an ounce), but it is still illegal.

IMPORTANT NOTE: Under Federal Law, Marijuana is considered an illegal CONTROLLED SUBSTANCE. The problem for college students is that pleading guilty to ANY Weed/marijuana offense in New York, will have to be disclosed on a FAFSA application. This will make them INELIGIBLE to receive ANY Federal Grants, Loans, or Work Study!

Unlawful Possession of Marijuana (Penal Law, s. 221.05)

A person is guilty of unlawful possession of marijuana when he knowingly and unlawfully possesses marijuana [less than 25 grams].

However, if the marijuana is HASH or “concentrated cannabis” then you can be charged with the ENHANCED offense of...

Criminal Possession of a Controlled Substance in the 7th degree

NY Penal Law, s. 220.03

This law is violated if a person knowingly and unlawfully possesses a *controlled substance*. See Penal Law, s. 220.00] This is a Class A misdemeanor.

Penalties: [YES. This is a crime.]

1. \$0-\$1000 fine
2. Up to 1 year in jail
3. Up to 3 years Probation (closely monitored community supervision & frequent drug testing)
4. A permanent criminal conviction (DNA sample given to police, DNA fee)

5. Court surcharges of \$200 (city) or \$205 (town)

There is another ENHANCED marijuana offense called...

Criminal Possession of Marijuana in the 5th degree (Penal Law, s. 221.10)

A person is guilty of this offense...when he knowingly and unlawfully possesses: 1. Marijuana in a public place and such marijuana ***is burning or open to public view***; or 2. One or more preparations, compounds, mixtures or substances containing marijuana and the preparations compounds, mixtures or substances are of an aggregate weight of ***MORE THAN 25 GRAMS***. This is a Class B misdemeanor.

Penalties: [this is a crime]

1. \$0-\$500 fine
2. up to 90 days in jail
3. up to 1 year Probation (closely monitored community supervision & frequent drug testing)
4. Court surcharges of \$200 (city) or \$205 (town)
5. A permanent criminal conviction (DNA sample required. DNA fee).

The DANGER of Drugs Found in a Room

New York has a legal presumption that ANY drugs found in a room are “possessed” by everybody in that room. This is true regardless of where the drugs are found whether in a college dorm, house, or apartment.

Again, just like drugs found in a car presumption, if you are in a room with drugs in "open view" and the police enter, then anybody in the same room as those drugs may be charged with possession. This legal presumption will have to be overcome and fought by your attorney.

***PLAYING IT SMART:**

1. Be careful who you hang out with or share space. If you associate with people you don't know, you can expose yourself to long-term problems.
2. Always keep prescription drugs in their original containers. If the drugs are found without their prescription, then you can be charged with criminal possession.
3. It is better from a criminal liability standpoint to smoke INSIDE.
4. Don't keep recreational drugs out in the open.

Chapter 8: Partying Too Hard...Overdosing

Fortunately, there are protections built into New York's laws that protect people who seek medical care for alcohol and drug abuse from criminal charges. The goal is to make sure all students know that their personal safety comes first and that **they will NOT get in trouble for seeking medical attention for themselves or their friends.**

The only exception is for people who are *selling drugs*. They may still be prosecuted under drug sale crimes, but not possession based crimes. All in all, this law protects both the user and "Good Samaritan" who seek medical attention in times of drug or alcohol emergency. Tell your friends and parents about this law. It could save your life someday.

***PLAYING IT SMART:**

1. Make sure your friends know about this law.
2. If you or a friend is unconscious, be safe, and get them medical attention immediately.

Chapter 9: Breaking Stuff!

For some reason, and I'm not judging, college-age men (and some women) like to destroy things. It happens all the time at colleges and universities all over the USA. During my own college years, it was very common to see fire exits ripped off the ceilings, white boards smashed on dorm room doors, and other shenanigans. I once represented a student who thought it was a good idea to light a couch on fire and throw it out a third story window with his friends...

Sometimes great ideas at 3am don't seem so great during the light of day. Bottom line, if you destroy something that does not belong to you—you will likely face criminal charges.

*Property destruction of ANY value is a misdemeanor. If the property is worth \$250 or more, then you are facing felony-level charges.

Criminal Mischief in the 4th degree (Penal Law, s. 145.00)

Under our law, a person is guilty of Criminal Mischief in the Fourth Degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, that person intentionally damages property of another person.

Penalties: (this is a crime)

1. Up to 1 year in jail
2. Up to 3 years Probation (closely monitored community supervision)
3. \$0-\$1000 fine
4. Court surcharges
5. A permanent criminal conviction (DNA sample required. DNA fee)

***PLAYING IT SMART:**

1. Don't destroy stuff.
2. Think first. Even slashing a single car tire, could be worth more than \$250!

Chapter 10: Stealing Stuff in New York

The lowest theft crime in New York, like merely taking a pack of gum, is a crime! In other words, if you take anything, you are facing up to 1 year in jail. In Ithaca, Wegmans, Target, and Walmart are common places where students are frequently caught stealing.

Petit Larceny (Penal Law, s. 155.25) [this is a crime]

A person is guilty of petit larceny when such person steals ANY property.

Penalties: (see Class A misdemeanor in Index)

***PLAYING IT SMART:**

1. Don't take stuff that doesn't belong to you. Even little things.
2. Don't enter places where you are not supposed to be. This includes buildings on campus or dorm rooms or you could face serious charges.
3. Don't use a roommate's bank card or credit card without WRITTEN permission.

Chapter 11: Fighting!

The college experience means learning how to get along with people. Unfortunately, it doesn't always work out... The most common charge that I see is Harassment. All it takes to be charged is merely to *annoy* another person. Fighting charges can be complicated because there is always a question as to "who started it?" If somebody gets hurt during the fight, then the severity of the charge increases. Best bet is to be a lover, not a fighter.

Harassment in the 2nd degree

A person is guilty of Harassment in the Second Degree when, with intent to harass, annoy or alarm another person, he or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same.

Assault in the 3rd degree

A person is guilty of Assault in the Third Degree when, with intent to cause physical injury to another person, he or she causes such injury to that person [or to a third person]. PHYSICAL INJURY means impairment of physical condition or substantial pain.

Penalties: Class A misdemeanor (see Index) [this is a crime]

***PLAYING IT SMART:**

1. Walk away. Don't let somebody antagonize you into a fight.
2. The WORST TIME to have a heated discussion is when you've been drinking, using drugs, and it's late at night. The evil three: drinks, drugs, and being tired.

Chapter 12: Hazing

New York has anti-hazing laws. Typically, these laws are used to combat abusive initiation rituals. It is a serious problem, especially in Ithaca.

Hazing in the 2nd degree

A person is guilty of Hazing in the Second Degree when, in the course of another person's initiation or affiliation with any organization, he or she intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person [or to a third person].

Hazing in the 1st degree

A person is guilty of Hazing in the First Degree when, in the course of another person's initiation into or affiliation with any organization, he or she intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person [or to a third person] and ***thereby causes such injury.***

***PLAYING IT SMART:**

1. Even if you are pledging a fraternity/sorority or any group or organization, be mindful of your own limitations. Also, be mindful of the limitations of those around you.
2. Use your intuition. If you are uncomfortable, then get out of there.

Chapter 13: Having “the Sex”

As adults, it is important to know the law as it pertains to sex. I won't touch on the obvious stuff, like rape or forcible touching. However, I will make you aware of some basic things that students may find funny, but are, in fact, illegal in NY.

For starters, the age of consent to have sex in New York is 17. Most college students will be over the age of consent; however, some freshman (for one reason or another) could be under age 17.

Sexual Abuse in the 3rd degree

A person is guilty of Sexual Abuse in the Third Degree when he or she subjects another person to sexual contact without that person's consent. SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party.

Flirting, teasing, or even touching over the clothes could be considered a sex crime.

***PLAYING IT SMART:**

1. Be smart about how you flirt.
2. Don't touch anybody without their consent.
3. If somebody says NO during ANY part of a sexual encounter –STOP.
4. Don't go to places or stay in places where you are uninvited or unwelcome.
5. Make sure you get a YES.

Chapter 14: DEALING WITH THE POLICE

Ithaca, NY is a seemingly small community with FIVE different police forces. They are: Ithaca Police Department, Tompkins County Sheriff's Department, New York State Police, Cornell University Police, and Ithaca College Police.

For starters, the college/university cops are NOT security guards. Do not make the common mistake by students that college or university police are not "real cops." They are sanctioned, licensed, state-regulated police departments and they can charge you and prosecute you with as much power as any of the other departments in the area.

There are several common crimes associated with being disrespectful or belligerent with the police in New York. They are:

Obstructing Government Administration in the 2nd degree

A person is guilty of Obstructing Governmental Administration in the Second Degree when that person intentionally [obstructs, impairs or perverts the administration of law or other governmental function or] prevents or attempts to prevent a public servant from performing an official function.

This crime is most often charged when somebody runs from the police or refuses to comply with the police. Basically, if you do not do what the police ask you to do, they can charge you with this crime.

Resisting Arrest

A person is guilty of Resisting Arrest when he or she intentionally prevents or attempts to prevent a police officer [or peace officer] from affecting an authorized arrest of himself or herself [or another person].

If an officer is trying to arrest you, do not struggle/fight or you will simply add more charges.

Talking to Police Officers

It is important to maintain and protect your rights when speaking to police officers. Answering their questions could incriminate you, and you should invoke your right to remain silent. You should request to speak to an attorney immediately. That is my best advice.

***PLAYING IT SMART:**

1. Always be polite and cooperative with police officers.
2. Be respectful when refusing to answer questions and making your request to speak to a lawyer.

INDEX OF DEFINITIONS

BAC = "Blood Alcohol Concentration": This is the ratio of alcohol in your blood based on a percentage. It is commonly measured by a chemical test of your blood or breath.

Conditional Discharge or "CD": This is a form of conditional release in the NY criminal justice system. It is a set of obligations given by the court that you must complete by a certain date. A CD can last for 1 or 2 years and requires that you have no new arrests during that time period.

Violation (penalties): A violation in New York is not a crime. However, there could be many collateral consequences. Penalties have wide ranges: up to 15 days in jail, up to \$250 fine, up to \$125 court surcharge, 1 year CD.

Misdemeanor (penalties): This offense is a crime in New York. Penalties range from: up to 1 year in jail, up to 3 years of Probation (closely monitored

community supervision), up to \$1000 fine, up to \$205 court surcharge [up to \$400 if DWI charge], DNA fee of \$50

Felony (penalties): This is the most serious level of crime in New York. Penalties usually range from: 1 to 7 years in STATE PRISON, up to \$5000 fine, up to 5 years post-release supervision (a.k.a. Parole), court surcharges [lower level felonies]

DISCLAIMER

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It is my goal to prevent crimes before they happen through education. I believe both students and their families should enjoy every moment of the New York college experience. Every case is different, and the best advice I can give anyone facing charges of any kind is to consult with a local licensed attorney who focuses on criminal defense.





ABOUT THE AUTHOR

I'm **Mike Cyr**, a criminal defense attorney at CYR & ASSOCIATES. We are based in Ithaca, NY and our practice focuses on DWI, criminal defense, and traffic-related matters.

We represent people throughout the Finger Lakes region of upstate NY. My personal defense philosophy is to be thorough and complete. So I'm mindful of the "past, present, and future" --i.e. minimize the charges, fight the case, and protect your future.

I went to Ithaca College and received my Bachelor of Fine Arts in Acting. I then attended law school in Boston. As an actor, I enjoy trying cases and creating a story in the courtroom.

I'm licensed in Massachusetts, Maine, and New York. I've worked both sides of the fence (so to speak). First, I worked in the prosecutor's office in Boston and then defended those accused in Ithaca.

My wife and I moved to Ithaca in 2013. I love what I do. If you or someone in your family has an issue, please reach out. I'm available to discuss your situation.

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