

CONDUCTING VIRTUAL ADMINISTRATIVE HEARINGS

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The purpose of this project is to review the South Carolina Department of Probation, Parole and Pardon Services Administrative Hearing process. The South Carolina Department of Probation, Parole and Pardon Services (the Department) is facing a rapidly growing offender population, while maintaining good stewardship of state resources which align with interests of internal and external stakeholders, and ensuring the Constitutional rights of those under its jurisdiction. In order to understand current practices, it is practical to take a brief historical appraisal. From its inception in 1941 and as reflected in the 1942 Annual Report, the Department supervised a total of (1067) persons, (161) parolees and (886) probationers. Over three decades, the Department's business functions were reformed through either legislative mandates or precedent case law. Prior to 1972, any parole release or probation violations were referred directly back to the Board or General Sessions Court for retort. In 1972, precedent case law (see *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484, 1972 U.S. LEXIS 19 (U.S. June 29, 1972) established the requirement for preliminary hearings only on Parole release violations. At this time, there was still no intermediary process to address Probation violations. The Department only employed (3) Hearings Officers to perform preliminary hearings statewide though by the end of FY 1982, the Department actively supervised 18,133 offenders. This offender population

included only a small percentage of parolees requiring preliminary violation hearings. At the end of FY 1984, the number of persons under active supervision had increased to 21,551. Though case law had established the right for probationers to have a preliminary hearing (see *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656, 1973 U.S. LEXIS 70, 71 Ohio Op. 2d 279 (U.S. May 14, 1973)), the Department and the SC Courts had not changed its practices until it was mandated by the General Assembly in 1991. This mandate came about because of an overwhelming increase in the number of probation violations being addressed by the Court which resulted in a tremendous backlog in the Court system. As a result, the preliminary hearing process was extended to Probation cases and all other supervision programs, leading to the redevelopment of the preliminary hearing process and the birth of the current Administrative Hearing. Later research would support this redevelopment wherein violations identified as technical violations may be handled more efficiently administratively rather than in the courts or before the board (see, e.g. Carter, 2001). With the increase in cases qualifying for Administrative Hearings and the increase of the now named Administrative Hearing Officers' responsibilities, additional Administrative Hearing Officers were hired to accomplish the task. The Administrative Hearing Officer became the "gatekeeper" to the Court and the Parole Board, only forwarding cases back to these respective authorities that were warranted and exceeded the authority of the Administrative Hearing Officer.

As the active population has steadily increased, the number of Administrative Hearing Officers to perform this function did not change. To date, the Department only employs (10) Administrative Hearing Officers to conduct in-person Administrative Hearings in an assigned Hearing District. To understand how this remains a problematic current state of affairs, analysis of this position and the workload was studied. Initial data gathered and analyzed is contained in the South Carolina Department of Probation, Parole and Pardons Services Annual Statistical Report FY 2018 (see References). The Department supervises an active population of (29,171) persons on probation, parole and other release programs. Of this active population, 86% are Probationers, 9% are Parolees and 5% are Other release programs. This data shows a significant increase in the number of Administrative Hearings conducted from 2016 – 2019. (see Table A-1). Each Administrative Hearing Officer's District is based on residential location of the Administrative Hearing Officer and the workload in each county as represented in Appendix B. Administrative Hearing Officers are exempt state employees subject to work a (7.50) hour workday. The Administrative Hearing Officer is provided a personally assigned state vehicle for travel to the county(ies) in which hearings will be conducted daily. The workday for an Administrative Hearing Officer begins upon departure from their respective office. According to internally reported procurement data, total travel time daily can range from (30) minutes to (6) hours. Internal Standard Operating Procedures (SOPs) stipulate Administrative Hearings to be scheduled in (30) minute increments beginning at 9:00AM, with a maximum of

(8) cases scheduled per day. As a result, the Administrative Hearing Officer will spend a maximum of (4) hours actually conducting the Administrative Hearing and a maximum of (6) hours in travel time equating to a potential (10) hour work day. This (10) hour work day often extends into non-traditional work hours in order for required supplemental duties to be completed within established deadlines. With time being the most valued resource for an Administrative Hearing Officer, a more efficient use of time in a workday would be most beneficial and afford the maximum capability to serve the Department's customers and stakeholders while maintaining good stewardship of state funds and resources.

In analyzing the data referenced in Table I, a rapid increase in Administrative Hearings is glaring. A key finding is that in just the first (8) months of FY 18-19, there have been (3573) Administrative Hearings conducted. That is an average of (447) Administrative Hearings conducted per month since July 2018. If this average continues to remain true for the remainder of FY 18-19, there will be a total of (1786) additional Administrative Hearings conducted for a projected total of (5359) Administrative Hearings conducted in FY 18-19. This projection indicates an 11.2% increase from previous FY 17-18.

Traditionally, to address the increase of additional job duties and responsibilities, the business trend in state government has been to expect the existing staff to absorb the increased workload. However, with such a large increase in the projected workload in the area of Administrative Hearings, the current staff will not be able to shoulder the 11.2% increase without a detriment to

the business process and the employee. The second most common response to an increase in workload has been to consider hiring additional staff to meet the need. To determine the Department's expense to hire an Administrative Hearing Officer, I spoke with the Department's Human Resources Office and Procurement Office. Currently, the full time Administrative Hearing Officer position includes: the base salary of \$47,500; plus fringe benefits which is calculated at 40% of the salary (\$19,000); a personally assigned state vehicle at the annual cost of \$10,800 annually (which includes fuel costs) through State Fleet Management; computer equipment cost of \$1551 and required certification at the cost of \$2500 for initial hiring for a total of \$81,351. While hiring an additional Administrative Hearing Officer may create available personnel to perform the additional work, it most likely will only generate another state employee being subjected to a (10) hour work day causing employee burnout. Additionally, if budgetary funding is not available to support the expense of hiring additional personnel, hiring staff would not be a practical solution. Therefore, taking stock of the untapped resources already available within the Department that may be of a potentially lighter fiscal impact may be a more practical solution.

In as much as the Department is undergoing a review, overhaul and upgrade to all business processes, new and updated technologies are also being considered. A potentially innovative way to improve an Administrative Hearing Officer's use of time would be conducting Administrative Hearings via virtual technology. Conducting Administrative Hearings via virtual technology would have an

immediate impact seen in the reduction of travel by the Administrative Hearing Officer. The maximum (6) hour travel time could be greatly reduced or possibly even eliminated periodically with this business process improvement. The premise would be that when available, the Administrative Hearing Officer would conduct the hearing proceedings virtually via currently used audio/visual communication platforms from their office location without having to travel. The internal customer(s) and other stakeholders in the Administrative Hearing process would be located in the county office or another Department remote site. Concurrent research and consultation with the Department's Information Technologies staff and external stakeholders explored this option identifying some key issues. First, there was an evaluation of areas where current technology supporting this function is currently being utilized and an assessment if it could be expanded.

Administrative Hearings are currently being conducted in-person and recorded via digital audio recording software that captures, stores and can be reproduced upon request. The digital audio recording software is utilized and has a cost of approximately \$32,000 annually according to the Department's Procurement data. At this time, no video capabilities are being utilized nor required by any standard. As this recording software is a necessity in the current Administrative Hearing process, it has been recognized as an area ripe for update and potential expansion due to the current operating software having become outdated and licensing having expired. According to the Department's Business Analyst, the latest version of the recording software and licensing can be obtained to maintain current business

practices at the projected cost of approximately \$68,000 annually. Additionally, the functions of the software, in scope, could be expanded to include video streaming and annotation capabilities for an additional cost.

To explore the software expansion options and identify any key variables, the Department's Audio Visual Site Vendor was consulted and preliminary scope of product reviews was completed. A comparison of (3) communication platforms were considered that met the need to carry out the Administrative Hearing process more efficiently for staff and stakeholders. Skype for Business is technology already in use internally for Department staff, with business partners and other state agencies and would be no additional cost. However, security considerations would be with connections to non-Skype Business contacts and personal Skype contacts that may not connect securely with public contacts. Also, video streaming functionality and quality will be contingent on bandwidth. WebEx is accessible, but is currently only utilized internally for training purposes. To consider WebEx for everyday business, membership subscriptions would be required for all hosts. The pricing plan would likely be \$13.50 monthly per member of the Administrative Hearing Section (\$1,620 annually), based on pricing for a starter subscription up to (50) participants. Each Administrative Hearing Officer would be considered a host to permit video streaming connections simultaneously from their respective locations. Procurement considerations for this service likely requires a purchase card on record to be charged monthly for the services requiring involvement and authorization through the Procurement division and state procurement protocol. Again, video streaming

functionality and quality will be contingent on bandwidth. Thirdly, Polycom services was considered at the cost of \$569 to \$700 per person per annual recurring subscription cost in addition to \$131 recurring annual support service cost per person. Yet again, video streaming functionality and quality will be contingent on bandwidth. A key component of this research yielded a common trend, bandwidth or internet accessibility could be problematic for quality video streaming connections based on geographic locations of the county office and availability of internet. Another key component yielded that cost and capability will impact every software streaming connection on all platforms (Skype, Webex, or Polycom). Additional cost analysis was performed for consideration if investment is to be made in establishing or upgrading internet services necessary to support Virtual Administrative Hearings. Per the Department's Business Analyst as advised by the South Carolina Department of Technology Office, internet cost would be recurring at a varying monthly expense depending upon the upgrade service level for the respective county office. There are multiple Statewide Pricing levels (which are subject to change) for internet services at county offices (see Table A-2). Audio recording is not impacted by bandwidth (internet) because the connection is local to the computer device and not streaming between multiple locations.

The most cost effective and efficient solution to eliminate waste in the form of travel time in an Administrative Hearing Officers' workday is to implement the quality facilitation of Virtual Administrative Hearings by utilizing Skype Business

and making the investment into upgrading bandwidths (internet) in the county offices.

First steps of the implementation plan must be to complete the delayed computer upgrades that were slated to occur for Administrative Hearings Section staff in October 2018. This technology upgrade was included in the FY 2017-2018 budget so there is no current fiscal impact in this action step. To avoid a potential obstacle of further delay, the internal workgroup including the Director's Office, Procurement, Information Technology, and Fiscal Affairs must expedite securing the recording software and licensing agreements. In order for the cost projections for the upgraded recording software to remain relevant, the computer units with the new versions of the recording software installed should be completed prior to June 2019 to avoid impacting another fiscal year budget.

Integration of Virtual Administrative Hearings into standard operating procedure would require development of parameters to determine which cases will be conducted via in-person Administrative Hearings or Virtual Administrative Hearings. These parameters will directly correlate to: 1) the distance to be traveled by the Administrative Hearing Officer; 2) the type of case scheduled; and 3) the number of cases scheduled for a hearing in the county identified to participate in testing phase. In the selected test counties, specialized caseloads will be designated for participation in the Virtual Administrative Hearing process. These specialized caseloads are fitting for the Virtual Administrative Hearing process as they require violations to be addressed with a hearing swiftly. These piloted specialized

caseloads will serve as the sample set for testing across the state. To measure the result, monthly statistical reports will be submitted by the Administrative Hearing Officer conducting these Virtual Administrative Hearings. Indicators tracked will focus on: 1) number of cases heard; 2) time utilized conducting the hearing within a workday; 3) time utilized performing supplemental duties; 4) any loss of internet connection and the timeframe; and 5) time not required to travel to generate a quantitative value in time savings. After (6) months of data collection, the Virtual Administrative Hearing process will be evaluated. Emerging trends expected are more efficient use of time and productivity by the Administrative Hearing Officer and a reduction of non-traditional work hours. Providing the measured results are positive, it is recommended the program is expanded in stages as budgetary provisions permit until implemented statewide.

Whether through working with the Department of Corrections to implement video conferencing to conduct parole hearings, expanding video sites to help victims be able to have input in the parole process, or enhancing mobile technology to allow Agent staff to access information on the offender population we serve in real time and at their fingertips, the Department has been very innovative in seeking and developing inventive ways to improve business processes. Implementing this project would be in alignment with the Departments' strategic goal to always seek innovative imaginative ways to serve its customers and stakeholders as well as be a good steward of state funds and resources.

References

Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484, 1972 U.S. LEXIS 19 (U.S. June 29, 1972). Brief Fact Summary - Two parolees had their parole revoked. Synopsis of Rule of Law - Revocation of parole requires "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior."

Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656, 1973 U.S. LEXIS 70, 71 Ohio Op. 2d 279 (U.S. May 14, 1973). Brief Fact Summary - The respondent, Scarpelli (the "respondent"), a felony probationer, was arrested after committing a burglary. The respondent's probation was revoked without a hearing and he was not represented by counsel. He filed a petition for habeas corpus and the District Court concluded that revocation of probation without a hearing and without counsel was a denial of due process. The Court of Appeals affirmed.

Carter, M. (2001). Responding to Parole and Probation Violations: A Handbook to Guide Local Policy Development. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Corrections.

South Carolina Department of Probation, Parole and Pardons Services Annual Statistical Report FY 2018.

<https://www.dppps.sc.gov/content/download/171480/3901646/file/Annual+Statistical+Report++FY2018.pdf>

Table A-1

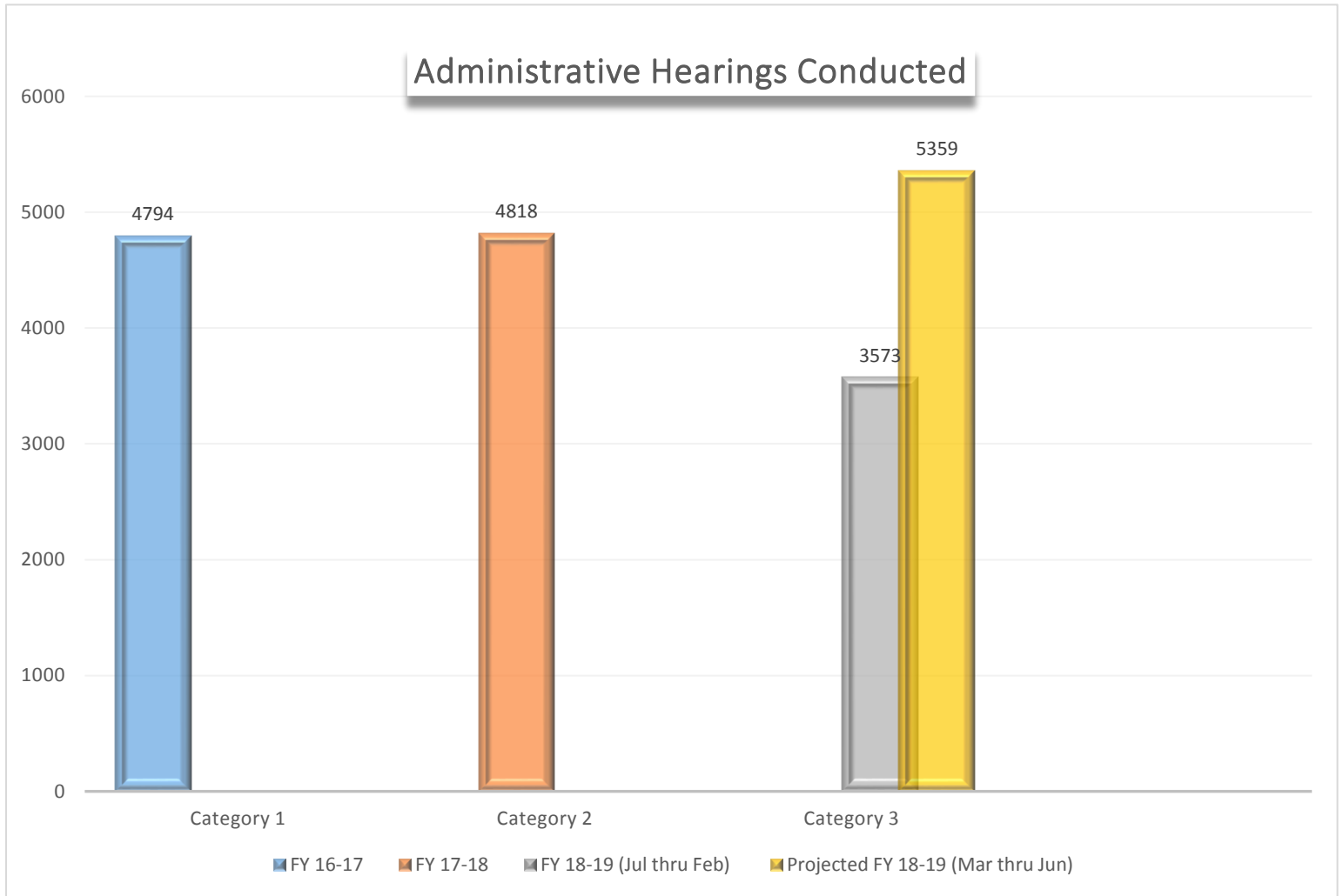


Table A-2

STATEWIDE PRICING FOR BANDWIDTH COST (recurring monthly)

4 Mbps	\$728.05 monthly
6 Mbps	\$881.73 monthly
8 Mbps	\$1105.43 monthly
10 Mbps	\$1307.84 monthly
20 Mbps	\$2061.36 monthly
30 Mbps	\$2126.25 monthly
40 Mbps	\$2494.15 monthly
50 Mbps	\$3550.91 monthly

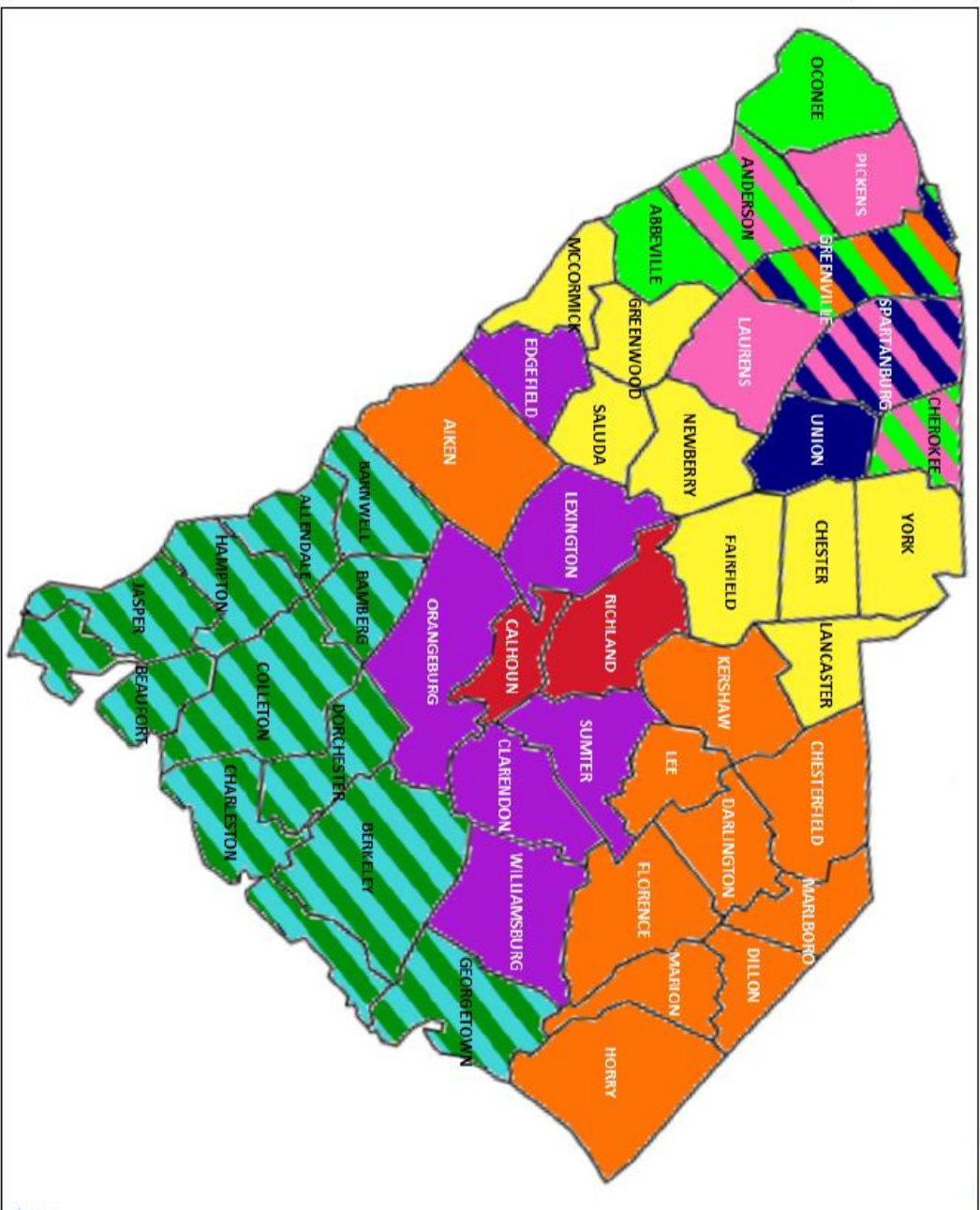
Appendix B

South Carolina Department of Probation, Parole and Pardon Services

Hearing Officer Districts 2018



Kay Hutson Director of Hearings
Alene Fleming Program Assistant
Hearing Officers
Kevlin Rhodes Greenville, Spartanburg, Union
Catherine Guedalla Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Hampton, Jasper
Melvin Suber Allen, Chesterfield, Darlington, Dillon, Florence, Greenville, Horry, Kershaw, Lee, Marion, Marlboro
Stacy Murrell Anderson, Cherokee, Laurens, Pickens, Spartanburg
Kathleen Nadohny Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Hampton, Jasper
Mark Simmons Abbeville, Anderson, Cherokee, Greenville, Oconee
Bennie Sumpter Calhoun, Richland
Deon Wilborn Chester, Fairfield, Greenwood, Lancaster, McCormick, Newberry, Saluda, York
Toya Williams Clarendon, Edgefield, Lexington, Orangeburg, Sumter, Williamsburg



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