



Department
of Health



Home Office

Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983

Report Summary and Recommendations

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Forewords

Since I became Home Secretary back in 2010, I have been determined to take on policing's toughest and most intransigent issues. Subjects such as domestic violence, public trust in the police, modern slavery and stop and search, all of which go to the heart of a just, decent and humane society.

The police response to people with mental health problems is another of these issues. Most members of the public won't think of the police in relation to people with mental health needs. The police catch criminals, arrest lawbreakers and deal with violent thugs. Unless you have done something wrong, or been a victim of crime, you won't expect to come across a police officer.

Yet all too often, it is a police officer who responds to the vulnerable person in crisis. I have been clear that it is incumbent on every officer to treat every person in crisis, every vulnerable victim of crime, and everyone in need of assistance, not just with respect and professionalism, but with care and compassion too. And it is incumbent upon government to make sure they are not put in impossible situations they are not trained to face and that vulnerable people – at moments when they are most in need – receive the right care and support.

That is why I announced this Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983 at the Police Federation conference in May 2013, and why it is so important.

We have already made significant progress in the past year. The street triage pilots that we launched in nine police force areas are showing promising signs: the number of people being detained has fallen by an average of 25% across all pilot areas, and all areas are recording a reduction in the use of police stations for mental health detentions. I have piloted a new data collection form among police forces, and will roll that out nationally to ensure we have the best possible picture of what is really happening. And in October I held a Policing and Mental Health Summit with Black Mental Health UK to explore – among other things – the issues around diversity in the operation of Section 136 of the Mental Health Act, and to address concerns over the way some people are treated by the police.



We know from the Care Quality Commission's review of health-based places of safety earlier this year that police cells in England are being used because of a lack of health-based places of safety provision, or because people are being unnecessarily excluded from health-based place of safety. I am very clear that this must not happen. It is vitally important for the person – someone who is experiencing a mental health crisis, not suspected of any criminal offence – that they are dealt with by the right agencies. That means health services, not the police. This is why, at the summit, I announced a pilot in Sussex of an alternative place of safety, to reduce the reliance on police cells as the back-up option when the health-based place of safety is full, or is unable to take the person.

Progress is being made, but there is more still to do. Some of this can only be addressed through changing the legislation, which will help us to ensure that people are being dealt with at the right time, by the right people, in the right place.

A handwritten signature in black ink, which appears to read 'Theresa May'. The signature is fluid and cursive, with a large initial 'T' and 'M'.

Home Secretary, Theresa May

Thank you to everyone who has contributed to this review of the operation of Sections 135 and 136 of the Mental Health Act 1983. It is clear from the level of engagement that this is an area that many people feel strongly about – from health and policing practitioners who do their best every day for the vulnerable people they encounter, through to people who have bravely come forward to tell us about their experiences of being detained under these parts of the Act, and their families and carers, who also took the time to contribute to the review. Thank you also to the Centre for Mental Health. The team travelled the length and breadth of England and Wales to help us to understand the range of perspectives. We have listened very carefully to everyone in developing the recommendations set out here.

It is clear that there is much good practice happening around the country, with areas where partners are working closely together in a positive way, to find solutions which are focused on the needs of the person who has been detained. In some places, the numbers of Section 136 detentions are very low – or are falling – and in some places no-one now is being taken to police stations when they are experiencing a mental health crisis. I commend everyone working in those areas to make this happen. So it is clear that it can be done.

The Crisis Care Concordat for England we published in February this year set out a detailed action plan and this has driven considerable improvement. This includes additional guidance for commissioners to make sure the right services are being commissioned, developing a programme of work to support primary care to work collaboratively with other services, facilitating access to specialist expertise and secondary care services including crisis care mental health and substance misuse services. We have also revised and updated the Code of Practice for the Mental Health Act 1983 in England, including reflecting the findings of this review. This review forms part of that wider picture and helps us to understand better the challenges, and solutions.



A handwritten signature in black ink, appearing to read 'Norman Lamb', with a horizontal line underneath the name.

Minister for Care and Support, Norman Lamb

Summary of report

This is a summary of the report and recommendations by the Home Office and the Department of Health in England on their joint work to review the operation of sections 135 and 136 of the England and Wales Mental Health Act 1983¹.

The Mental Health Act 1983 ('the Act') is the main Act of Parliament covering the care and treatment of people with mental health problems. It aims to provide a balance between the need to detain, when this is necessary for the health and safety of the person and for the protection of other persons, and safeguarding an individual's human rights and civil liberties.

When a person is experiencing a mental health crisis, it is important that they are kept safe while an assessment is made of their needs. Section 135(1) (hereafter S135) and section 136 (S136) of the Mental Health Act 1983 can play a key role in these emergency situations². The Act sets out how and when a person believed 'to be suffering from mental disorder' can be removed to a place of safety and detained there. Under both S135 and S136, the person may be detained for a maximum of 72 hours.

S136 provides emergency powers for the police to deprive a person of their liberty temporarily, if the person is in a place to which the public have access and certain conditions are met. The police may remove the person if it appears to the police officer that they are suffering from a mental disorder and are in immediate need of care or control, and that it is necessary to remove that person to a place of safety in their own interests or for the protection of others. The person is not removed because they are suspected of committing any criminal offence. In the case of S136, the person must be removed to a place of safety for the purposes of enabling them to be

examined by a registered medical practitioner³, and to be interviewed by an approved mental health professional (AMHP) and for any necessary arrangements to be made for their care or treatment.

S135 only applies when a person is in private premises, such as their own home. It requires an AMHP to apply to a magistrate for a warrant which allows the police officer to enter, using force if necessary, and to search for and remove the person, to a place of safety, in circumstances as set out above. The AMHP may make a further application in respect of the patient under the Act, or make other arrangements for their treatment or care.

This review focused on the operation of these sections of the Act in order to improve the outcomes for people in mental health crisis who may be detained under these provisions, focusing specifically on S135(1), S135(3)⁴, S135(6)⁵, and S136. These outcomes are essentially concerned with ensuring the detained person is assessed in the most appropriate way, with due regard to their needs and dignity. The review considered views from police officers, AMHPs, health professionals, paramedics and ambulance workers, people who have experienced detention under these parts of the Act, and families, carers and the public⁶.

The main issues the review explored were:

- how these sections work in practice;
- whether the present legislation provides a balance between flexibility and safeguards;
- whether police stations should be used as places of safety;
- whether the maximum length of detention of 72 hours is appropriate;
- whether the legislation supports a person receiving help as quickly as possible if they are

¹ The full report can be found online at: <https://www.gov.uk/government/consultations/review-of-the-operation-of-sections-135-and-136-of-the-mental-health-act>

² S135(2) permits a warrant to be granted to the police to retake a person already formally detained in a hospital who has gone absent without leave and who is found in private premises. It is not the main focus of this review.

³ It is preferable that this should be a Section 12 approved doctor. Further details are online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281253/Instructions-2014.pdf

⁴ S135(3) sets out that 72 hours is the maximum length of detention under this part of the Act.

⁵ S135(6) provides a list of places of safety.

⁶ The review is online at: <https://www.gov.uk/government/consultations/review-of-the-operation-of-sections-135-and-136-of-the-mental-health-act>

- experiencing a mental health emergency in their own home; and
- whether there would be any benefit in extending the powers to others as well as the police.

How do these sections work in practice?

The review gathered evidence through an online survey, practitioner workshops, focus groups with service users, engagement with academics, and visits to explore local practices in different areas. This suggested there was widespread variation both in the frequency of S135 and S136 detentions and in the extent to which police stations are used as places of safety rather than those provided in health settings. In areas of effective practice, working relationships and communication between different agencies is good with active information-sharing, a multi-agency group which meets regularly and a shared understanding of the responsibilities, processes and practices of each agency. Access to health-based places of safety is a key factor in ensuring a person is not detained in a police station.

A multi-agency approach is critical to the effective operation of legislative provisions as set out in the Crisis Care Concordat for England⁷, the Codes of Practice for England and Wales⁸, and in local partnership agreements. The Crisis Care Concordat states that facilities should be available for the person experiencing mental health crisis regardless of age or location. NHS Clinical Commissioning Groups (CCGs) in England and local health boards in Wales must engage closely with partner agencies as they are responsible for ensuring that facilities and appropriate transport are available.

Does the present legislation provide a balance between flexibility and safeguards?

The evidence informing this review has suggested that some aspects of the primary legislation are sufficiently broad, while in other respects it lacks

flexibility and there is some confusion about its application in practice.

The threshold to justify a S136 detention is '*if a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety*'. This provides the police with the flexibility to use individual judgement as to whether or not the person should be detained. A proportion of S136 detentions will be of people who, following removal from the situation and once assessed by a medical professional, are not deemed to require detention in a mental health hospital under the Mental Health Act. This review considers whether further or strengthened safeguards would improve outcomes for people detained under S136.

The restriction that S136 applies only in 'places to which the public have access' was reported to create considerable confusion in practice over whether the power can or cannot be used in a particular situation. From the survey, it was apparent that some people believe there are places which may not, in effect, be adequately covered either by S135 or S136 at present⁹. For example, there is confusion about most workplaces (which often have fob or swipe-card access), private car parks, and railway lines (because the railway network is privately owned and the line is not accessible to the public). While S135 covers any private premises, some have questioned whether a magistrate would consider granting a warrant to remove a person from a workplace, car park or railway line given that S135 requires there to be '*reasonable cause to suspect that a person believed to be suffering from mental disorder has been or is being ill-treated, neglected or kept otherwise than under proper control in any place within the jurisdiction of the justice, or being unable to care for himself is living alone in any such place*'¹⁰. Furthermore, in some cases there may not be proper processes in place to ensure a warrant can be obtained in a timely manner.

The review uncovered a number of issues in the operation of S135 and S136 which can cause delays.

⁷ Online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281242/36353_Mental_Health_Crisis_accessible.pdf

⁸ Online at: <https://www.gov.uk/government/consultations/changes-to-mental-health-act-1983-code-of-practice>

⁹ See Summary of Evidence, p.38

¹⁰ *ibid*

For example, in the practitioner workshops, some people noted that a paramedic does not have powers to detain a person under the Mental Health Act 1983 and would, in cases where removal and detention is required and the person refuses to consent, need to call the police and wait for them to arrive. Others felt that the procedure involved in obtaining a S135 warrant in order to enter a person's home and take them to a place of safety can also cause considerable delay.

Should police stations be used as places of safety?

The government's concerns over the use of police cells for people detained under S136 are shared by a number of service users, police, and health professionals. However, many practitioners believe that in exceptional circumstances where the person is too violent to be safely managed in a hospital, a police cell may sometimes be the most appropriate place.

Although most service users who were detained in police cells found the experience 'criminalising', distressing, and often de-humanising, a few felt that this was preferable provided that the cell door was open and that the police officer talked to them and was sympathetic, compared to being in a health-based place of safety where they felt 'observed' at a distance¹¹.

There was strong support for police cells never to be used as a place of safety for people aged under 18.

Is the maximum length of detention of 72 hours appropriate?

Once detained under S136, the detention is for the purpose of enabling a mental health assessment to be carried out and, if needed, any further arrangements made for the person's care. The Act currently sets a maximum length of detention of 72 hours for both S135 and S136. This is rarely reached in practice¹² and good practice dictates that assessment should take place within three hours where clinically appropriate¹³.

72 hours is longer than most other European countries permit under equivalent emergency mental health legislation¹⁴ given that the person is initially detained without being assessed by a medical professional. Many practitioners and service users who responded to the review supported a reduction in the maximum length of detention (currently 72 hours) in police custody to 24 hours, with some drawing a parallel with the fact that, for people arrested for criminal offences, the police may only detain them for 24 hours in the first instance with extension on application to a magistrate.

Views on the maximum length of detention in *any* place of safety (i.e. health-based places of safety) were more mixed. Some responses noted that a period of time was useful to allow the person to settle down or, if necessary, recover from the effects of drugs and alcohol, and for the mental health assessment to take place without being rushed. However, there was overall support for a reduction in the maximum period of detention in any place of safety.

Does the legislation support a person receiving help as quickly as possible if they are experiencing a mental health emergency in their own home?

S136 does not apply in private homes. So when a person in their own home experiences a mental health crisis, the police do not have the power to remove them to a place of safety until an AMHP obtains a S135 warrant for entry and removal which can in practice take hours to arrange. Moreover, if the person or their family permit entry, some people said that the magistrate might refuse to grant the warrant leaving the police officer and AMHP with no power then to remove the person to a place of safety and detain them for the purposes of a mental health assessment.

The review heard from several police officers that this situation can lead to them working around the limitations out of a desire to help the person. For example the police may encourage the person to move outside into a public area so they can be detained under the provision.

There is considerable support among many practitioners and the families and carers of service

¹¹ Centre for Mental Health report, p.17

¹² See Literature Review, p.39 – 40, Centre for Mental Health report, p.7, and Summary of Evidence, p.30

¹³ Royal College of Psychiatrists guidance, online at: <http://www.rcpsych.ac.uk/files/pdfversion/CR159x.pdf>

¹⁴ See Literature Review, p.52

users for legislative change to address this situation, so that a person can be helped wherever they are at the time provided that there are safeguards in place to prevent abuse of this power. However, many service users and health professionals were concerned about the suggestion that police (or other professionals) could remove a person from their home without a warrant if such a change were introduced because of the potential for such a power to be over-used or applied inappropriately.

Would there be any benefit in extending the powers to others as well as police?

Views on this were mixed but many people felt there could be benefits in the powers being extended, in particular to paramedics, if there was appropriate training.

Aims

The overarching aim of this review was to improve access to mental health services for people detained under S135 or S136 and decrease the stigmatising association with criminality. The focus was to review the operation of S135 and S136 and make recommendations for any changes to primary legislation which could improve the outcomes for people in mental health crisis detained under these provisions.

Based on the evidence presented to the review, a number of recommendations are set out below which seek to:

- **significantly reduce the use of police custody as a place of safety;**
- **encourage and enable innovation in using alternative places of safety;**
- **remove barriers preventing a person in mental health crisis from accessing help wherever they are while protecting human rights and civil liberties;**
- **encourage more rapid assessment and to ensure a person is not detained for longer than the minimum time necessary;**
- **reduce inappropriate use of S136;**
- **improve the operation of S135; and**
- **ensure that police, paramedics, AMHPs and health professionals have appropriate powers.**

Legislative Recommendations

Subject to affordability considerations and consultation prior to the full parliamentary process the review recommends:

1. Amending legislation so that **children and young people aged under 18 are never taken to police cells** if detained under S135 or S136;
2. Ensuring that **police cells can only be used as a place of safety for adults if the person's behaviour is so extreme they cannot otherwise be safely managed;**
3. Amending the list of possible places of safety in S135(6) so that **anywhere which is considered suitable and safe can be a place of safety** – this will remove barriers to using community-run places of safety or other alternatives which could not be said to have a single 'occupier'. This could help to enable innovative practice in terms of identifying places of safety;
4. Amending **S136 to apply anywhere except a private home** but including railway lines, private vehicles, hospital wards, rooftops of buildings, and hotel rooms. This would ensure that the provision could apply in workplaces, for example, where neither S136 nor S135 currently apply;
5. **Reducing the maximum length of detention under S135 and S136 to 24 hours** from 72 hours, in any place of safety. This would be subject to the possibility of an extension (length to be determined through further consultation) to be authorised in unavoidable cases where an assessment could not be carried out in the timeframe;
6. Requiring the police to **consult a suitable health professional prior to detaining a person under S136** provided it is feasible and possible to do so (for example if neither the police officer nor the person is put at risk by waiting for a clinical opinion). This means that local areas would need to have arrangements in place to ensure there would always be somebody available. This could, for example, include having street triage arrangements, calling the mental health nurse or on-duty doctor in the custody suite, or having arrangements in place to call the crisis service;

7. Setting out clearly in legislation that when a S135 warrant is carried out, **assessments can take place in the home** as part of the warrant process if it is considered appropriate and safe to do so, and that **police, paramedics, and AMHPs can remain present** while this is carried out. This ratifies existing practice in many areas (where a person consents) and reduces pressure on health-based places of safety;
8. Potentially creating a new limited power for **paramedics to convey a person to a health-based place of safety from anywhere other than a private home**. The feasibility of extending this or any other powers to suitable health professionals should be explored fully in consultation with the relevant stakeholders.

The proposals for legislative changes will be subject to further scrutiny and consideration, including considering the financial implications. In order for any amendments or revisions to the Mental Health Act 1983 to also apply in Wales, changes in relation to all health related matters would need to be agreed by the National Assembly for Wales.

Non-legislative Recommendations

During the review a number of issues were raised about the operation of S135 and S136 which would not require amendments to primary legislation and which should be addressed through improved practice and understanding between different partner agencies. Many of these issues have been fed into the parallel review of the Code of Practice for the Mental Health Act 1983 in England. Many are already reflected in the action plan of the Crisis Care Concordat for England published in February 2014¹⁵. The Mental Health Act Code of Practice for Wales is currently being revised and will take into account the findings of this review. Specific guidance regarding S135 and S136 in Wales was issued in April 2012¹⁶.

¹⁵ Online at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281242/36353_Mental_Health_Crisis_accessible.pdf

¹⁶ Online at:

<http://wales.gov.uk/topics/health/publications/health/gu>

The review concurs with the recommendations of the recent Care Quality Commission (CQC) report '*A safer place to be: Findings from the Care Quality Commission's survey of NHS mental health trusts to examine the availability, accessibility and operation of health-based places of safety for people detained under section 136 of the Mental Health Act*¹⁷ that:

9. **Health-based places of safety and CCGs in England (local health boards in Wales) should understand the demand and provide adequate levels of service, which may include increasing the capacity and staffing in health-based places of safety.** Health-based places of safety should agree plans to improve any areas of shortfall in discussion with partners. They should review and amend their exclusion criteria in relation to people who are under the influence of drink or drugs, whose behaviour is disturbed or who have a previous history of offending or violence. This may mean that there needs to be greater flexibility in which places are designated a place of safety, or having a greater range of places that can be used when needed. Health-based places of safety should ensure that a minimum of two healthcare staff are allocated to receive an individual brought to the place of safety by the police, and that training for staff who work in the place of safety should be reviewed. Plans should then be developed to address any shortfalls. This should include training for security staff that may be required to intervene physically with an individual brought to the place of safety.
10. **CCGs and their equivalents in Wales should review the availability and use of health-based places of safety to identify whether provision meets local needs.** This includes reviewing when people are unable to access the local place(s) of safety and the reasons for this. CCGs will need to ensure that there are sufficient and appropriate places of safety for children and young people. They will also need to put in place commissioning specifications, including appropriate and timely arrangements for

[idance/section/;jsessionid=0CswQf3fqCPmGQpS4ZW9Tjp ppsgQyFvyjvk3rrSVfVxhWv8BNnB9!-1988510053?lang=en](https://www.cqc.org.uk/sites/default/files/20141021%20CQC_SaferPlace_2014_07_FINAL%20for%20WEB.pdf)

¹⁷ Online at:

http://www.cqc.org.uk/sites/default/files/20141021%20CQC_SaferPlace_2014_07_FINAL%20for%20WEB.pdf

transporting people subject to S136 to hospital. This may require a needs assessment for specialist ambulance provision for people in mental health crisis. The Association of Ambulance Chief Executives' national protocol as part of the Crisis Care Concordat in England sets out that response times should be within 30 minutes or an immediate priority response for people who are being actively restrained or if their condition is life-threatening.

Consideration will need to be given to how these recommendations will be implemented. In addition to these recommendations made by the CQC, the review also recommends that:

11. **CCGs in England (and their equivalent in Wales) should review their commissioning processes for places of safety** to ensure they are commissioning to CQC standards. CCGs or their equivalent should ensure that sufficient spaces are available for children and young people, and that no child or young person is being turned away from a health-based place of safety because of their age. CCGs or their equivalent should specifically consider the transportation of people detained under S136 when commissioning ambulance services.
12. **CCGs in England, and their equivalent in Wales, and partner agencies should explore alternative places of safety**, such as designated care homes, or modifying the environment and facilities in police stations so that a space other than a normal cell could be used for S136 detentions. Key considerations include ensuring the alternative facility is legally permissible under S135(6), can keep the person safely and securely, has appropriate clinical staff if necessary over and above that of day to day staffing levels, and is part of existing health services processes for assessment and admission. They should have access to health staff and to medical records and be able to take responsibility for the person so the police officer can leave. They should be capable of managing complex cases such as people who may also be drunk or misusing drugs.
13. **Speed up S135 warrants and streamline processes:**
 - a. Local Authorities should sign up to the new Fee Account system to ensure payment for the warrant does not become a delaying factor¹⁸;
 - b. Courts should prioritise S135 warrants where the AMHP explains that it is very urgent, and magistrates should understand that without the S135 warrant, the person cannot be removed to or detained in a place of safety. Magistrates should understand the differences between S135(1) and S135(2) warrants, and that it is not necessary for permission to enter to have been refused to grant a S135(1) warrant. Additional guidance will be provided on this;
 - c. There are proposals for digital warrants to be introduced which would reduce the time spent travelling to and from courts. This is to be encouraged; and
 - d. In some areas, close working arrangements between out-of-hours magistrates and AMHPs have helped to ensure that obtaining a warrant does not introduce unnecessary delays. This should be adopted as best practice.
14. **The Code of Practice should, where possible, provide guidance and clarification on issues where custom and practice has developed that is not compliant with the current legislation.** Recommendations have been fed into the parallel review of the Code in England.
15. **The Disclosure and Barring Service (DBS) and police service should issue additional guidance to police on DBS disclosures relating to detention under the Mental Health Act.** This will help ensure that chief officers of police responsible for disclosures are fully aware of the factors which should be taken into account and, in particular, whether the circumstances of any detention indicate a risk to the public. The Home Office should explore whether the statutory guidance and quality assurance framework should be amended.

¹⁸ More information can be found at: <http://www.justice.gov.uk/courts/fees/payment-by-account>

16. **The police and health services should work towards improved data capture, monitoring and review.** The police should record every use of S136 carefully including ethnicity and length of detention, and record S135 involvement, so that any issues can be properly reviewed and lessons learnt. A new data toolkit was trialled by three police forces in England in autumn 2014, with the potential for national roll-out from April 2015. The toolkit involved the collation of more in-depth and consistent data about police interactions with people with mental ill-health. Also, the Home Office will also be working with the police to explore whether data on S135 and S136 can be made part of the police's Annual Data Requirement (ADR).

17. **Multi-agency groups should meet regularly to review data and discuss issues.** In some areas multi-agency groups regularly review S136 detentions, identifying repeat detentions, and using this information to drive improvements. This should be considered best practice everywhere. It may be helpful for people repeatedly detained under S136 to have multi-agency care plans put in place to ensure they receive a consistent response across different agencies and that they are 'flagged' on different IT systems. In Wales a shared data collection method has recently been developed. Such collaboration between health providers and the police forces should be encouraged.

18. **Training on mental health needs to be improved for all agencies.** All agencies involved in mental health processes need to work together to develop a multi-agency framework of training that delivers better understanding of the legislation and the roles and responsibilities of the other partner agencies involved to ensure the individual in crisis is dealt with dignity and within the legislative framework. The College of Policing are already undertaking a review of mental health training for police and partners.

19. **Health services and police should work together to explore the potential for new technologies to improve police and health responses to mental health crises.** Investment by the police and health agencies in video messaging, texting, or instant messaging technology could help the person in crisis and the police to access emergency health advice

lines and speak to a health professional immediately to determine how to support the person in crisis.

These non-legislative options may also have financial implications which will need to be considered. In Wales, changes in relation to all health related matters would need to be agreed by the National Assembly for Wales.

Conclusion and Next Steps

This review has shown that in a number of areas there is a case for legislative change and that there is strong support for change from practitioners and from service users. In particular, there is a need to reduce the use of police cells as places of safety for people detained under S136 to those circumstances where such use is unavoidable and to end their use for children or young people. There is also a continuing need to ensure that people can get the help they need as soon as possible wherever they are at the time.

The Home Office and Department of Health in England will work together to explore the impact of any legislative and non-legislative changes including further detailed consultation with health and police stakeholders and those affected by any such changes. This work will include diversity and equality considerations. The government's commitment to the principles of the mental health Crisis Care Concordat will continue.