



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

REVISED
FACT SHEET FOR H.B. 2239

incompetent, nonrestorable defendants; involuntary commitment

Purpose

Establishes procedures for the prosecuting agency and court to track incompetent defendants through the civil commitment process. Allows the county attorney to request an incompetent defendant be screened to determine if the defendant may be a sexually violent person under specified circumstances.

Background

The Arizona Rules of Criminal Procedure prohibit a person from being tried, convicted, sentenced or punished for a public offense if the person, as a result of a mental illness, defect or disability, is unable to: 1) understand the proceedings against him or her; or 2) assist in his or her own defense ([AZ R. Crim. P. 11.1](#)).

After criminal charges are filed, any party may request in writing, or the court on its own motion may order, an examination to determine whether the defendant is competent to stand trial ([A.R.S. § 13-4503](#)). If the court finds at the competency hearing that a defendant is incompetent and that there is no substantial probability that the defendant will regain competency within 21 months, any party may request that the court: 1) remand the defendant to the custody of the Department of Health Services (DHS) for the institution of civil commitment proceedings, also called Title 36 court-ordered treatment; 2) appoint a guardian for the defendant; and/or 3) release the defendant from custody and dismiss the charges against the defendant without prejudice (incompetency dispositions) ([A.R.S. § 13-4517](#)).

Statute provides requirements and procedures for civil commitment. If a court finds by clear and convincing evidence that a proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, has a persistent or acute disability or a grave disability and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court must order the patient to undergo treatment ([A.R.S. § 36-501 et seq.](#)). Such treatment may be inpatient, outpatient or a combination of both, but the court must order the least restrictive treatment available, subject to the patient's needs. Depending on the type of treatment and the reason for the order, the maximum period of a treatment order is 90, 180 or 365 days ([A.R.S. § 36-540](#)).

In 2016, [S.B. 1510](#) contained many similar provisions to this legislation. The bill was vetoed by the Governor, who indicated in his veto message that the bill could jeopardize the credentials and staff licenses of the Arizona State Hospital. Also in 2016, the FY 2017 budget

established the Study Committee on Incompetent, Nonrestorable and Dangerous Defendants ([Laws 2016, Chapter 119](#)). The Study Committee recommended that the Legislature extend reporting on nonrestorable defendants remanded for Title 36 court-ordered treatment, including reviewing and revising provisions of S.B. 1510.

The fiscal impact to the state General Fund associated with this legislation is undetermined.

Provisions

Competency Examinations

1. Requires mental health experts to be familiar with the criminal and involuntary commitment statutes.
2. Provides an exception to privilege granted to a defendant during an examination. Permits a statement or evidence to be used by any party in a hearing to determine whether the defendant is eligible for court-ordered mental health treatment or is a sexually violent person (SVP).
3. Permits the court to order sealed examination reports opened only for use by the court, defendant or prosecutor in a hearing to determine whether the defendant is eligible for court-ordered treatment or is an SVP.

Incompetent Defendants

4. Requires the prosecutor to file an evaluation petition (incompetency evaluation petition) and provide any known criminal history for the defendant if a nonrestorable defendant is remanded to the custody of an evaluation agency for the institution of civil commitment proceedings.
5. Allows the court, if the court enters an order for civil commitment or appointment of a guardian, to also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment. Lists specific public benefits as potential options.
6. Permits the court to retain jurisdiction over the defendant until the defendant is committed for treatment or a guardian is appointed.
7. Allows the court, if it has retained jurisdiction, to order the sheriff to take the defendant into custody so that the court may explore options related to guardianship or release if the court:
 - a) remands the defendant for the institution of civil commitment proceedings; and
 - b) the court is notified that the defendant has not had a civil commitment evaluation.
8. Allows the court, if it has retained jurisdiction, to order the sheriff to take the defendant into custody to explore options related to guardianship or release if the court is notified the defendant has not been ordered into involuntary treatment.

***Screening of Incompetent Defendants
SVPs***

9. Permits a county attorney who receives a report that a defendant is incompetent to request that the defendant be screened to determine if the defendant may be an SVP if:
 - a) the report concludes there is no substantial probability that the defendant will regain competency within 21 months after the date of the original finding of incompetency; and
 - b) the defendant is charged with a sexually violent offense.
10. Requires a court that orders a screening to appoint a competent professional to conduct the screening and submit a report to the court and parties within 30 days after appointment.
11. Prohibits the criminal case from being dismissed until the report is provided and a hearing is held or the county attorney files an SVP petition.
12. Allows the court to hold a hearing to determine if the county attorney is or will be filing a petition if the county attorney has not filed an SVP petition.
13. Requires the court to set a date on which the petition is due and further SVP proceedings will be conducted if the county attorney has filed or advises the court that it is or will be filing a petition.
14. Requires the court to proceed with an incompetency disposition if a petition will not be filed.

Court-Ordered Evaluations

15. Requires an incompetency evaluation petition to include any known criminal history of the proposed patient, including whether the proposed patient has ever been found incompetent.
16. Specifies that if an incompetency evaluation petition is filed by a prosecutor, a prior application for court-ordered evaluation or prescreening is not necessary.
17. Requires the person to be remanded for an incompetency disposition if:
 - a) the petition is not filed because it has been determined that the person does not need an evaluation; and
 - b) the prosecutor filed an incompetency evaluation petition.
18. Permits the court to order the person taken into custody for an incompetency disposition if the person is out of custody.
19. Requires the court and prosecuting agency to receive notice of the expiration of an order for evaluation if a prosecutor filed an incompetency evaluation petition.
20. Allows the court to enter any orders necessary for further incompetency-related disposition of the person, including a pickup order directing that the person be taken into custody.

21. Specifies that the preceding two provisions do not prevent any person from initiating another court-ordered evaluation of the person.
22. Requires the medical director of an evaluation agency to provide notice within 24 hours to the court and the prosecuting agency of the director's intention to release a person:
 - a) for whom the prosecutor filed an incompetency evaluation petition; and
 - b) who was being evaluated on an inpatient basis and the medical director determines further involuntary evaluation is not appropriate.
23. Requires the evaluation agency to detain a person remanded pursuant to an incompetency disposition for an additional 24 hours to allow for the provision of required notices.
24. Requires the medical director to provide the patient's records to the court and prosecuting agency.

Court-Ordered Treatment

25. Requires a treatment petition to be accompanied by the following if the prosecutor filed an incompetency evaluation petition for the person:
 - a) any known criminal history of the person; and
 - b) any previous findings of incompetency.
26. Allows the court to order the medical director to provide notice to the court of any noncompliance with the terms of a treatment order if the court enters an order for outpatient or combined inpatient/outpatient treatment.
27. Permits the court on its own motion to:
 - a) enter an order amending its original outpatient treatment order; or
 - b) authorize and direct a peace officer to take the patient into protective custody and transport the patient to the agency for inpatient treatment if the patient refuses to comply with an amended order for inpatient treatment.
28. Requires any authorization, directive or order issued to a peace office to take the patient into protective custody to include:
 - a) the patient's criminal history; and
 - b) the name and phone numbers of the patient's case manager, guardian, spouse, next of kin or significant other, as applicable.

Conditional Outpatient Treatment and Noncompliance

29. Permits a prosecuting agency that filed an incompetency evaluation petition to provide the court with information that is contained in the patient's criminal history and that may be relevant to protecting the well-being of the patient and the public, related to an order for conditional outpatient treatment.
30. Requires the outpatient treatment plan to include any other provisions that the medical director or court believes are necessary to protect the well-being of the patient and the public.

31. Permits the court, when ordering conditional outpatient treatment, to order the medical director to provide notice to the court of specific instances of noncompliance as specified by the court.
32. Applies notice requirements by the medical director to the court to the release of a person found to be a danger to others.
33. Requires copies of a new order and outpatient treatment plan to be filed with the prosecuting agency who filed an incompetency evaluation petition.
34. Requires the medical director to give notice that the director has rescinded an order for conditional outpatient treatment to the court that issued the treatment order and the prosecuting agency if the prosecutor filed an incompetency evaluation petition.
35. Allows a court to order a peace officer or employee of the treatment agency to take a patient into custody for delivery to the agency if the medical director rescinds an order for conditional outpatient treatment.

Release or Discharge from Treatment

36. Requires the medical director to provide notice to the prosecuting agency that filed an incompetency evaluation petition at least 24 hours before releasing or discharging a patient if:
 - a) the court approves admitting the patient to voluntary treatment; or
 - b) the patient is discharged.
37. Requires the evaluation agency to detain the person for an additional 24 hours to allow for notification to the prosecuting agency.
38. Permits the prosecuting agency to request a hearing to determine whether the court should order the defendant returned to custody for an incompetency disposition.
39. Requires the court to order the medical director to provide the patient's records to the court and prosecuting agency for any such hearing.
40. Prohibits a person who has had an incompetency evaluation petition filed by a prosecutor from being released or discharged from treatment before the expiration of the court-ordered period for treatment unless the medical director gives notice as specified.
41. Modifies the circumstances in which the medical director of the mental health treatment agency must notify the prosecuting agency if a civil commitment order expires or terminates, or if the patient is discharged to outpatient treatment. Requires such notice if the patient is a person undergoing court-ordered treatment as a result of an incompetency evaluation petition filed by a prosecuting agency. Adds the court to the notification requirement.
42. Specifies the above requirement does not apply to amended orders that are a result of the patient's need for acute or emergency care during the period of court-ordered treatment.

43. Requires the court to order the medical director to provide the patient's records to the court and prosecuting agency if a hearing is held to determine whether the standard for release of the patient has been met.
44. Prevents a patient from being discharged from treatment if an application for continued court-ordered treatment is granted pursuant to statute.
45. Prohibits a patient from being discharged or released from treatment before complying with release procedures if:
 - a) the patient is undergoing court-ordered treatment as a result of an incompetency evaluation petition filed by a prosecutor; and
 - b) the patient is being discharged because the medical director has decided not to file a new petition or to request the court to order that the previous order be continued.
46. Requires the evaluation agency to notify a prosecuting agency that filed an incompetency evaluation petition within 24 hours if the court does not find the person to be in need of treatment.
47. Requires the court to order the medical director to detain the person for an additional 24 hours to allow the prosecuting agency to be notified.
48. Allows the court, if it has retained jurisdiction, to remand the person to the sheriff's custody for guardianship or release.

Unauthorized Absence

49. Permits an evaluation or treatment agency to apply to the court for a warrant or court order, if necessary, directing any peace officer to:
 - a) take a patient who is absent without proper authorization into custody; and
 - b) deliver the patient to the agency.
50. Allows the period of court-ordered treatment to be tolled for any unauthorized absence, instead of only absence from inpatient treatment.
51. Requires the treatment agency to file a notice with the court within five days after a patient's unauthorized absence and:
 - a) provide the date the absence began; and
 - b) request that the treatment order be tolled.
52. Requires, if the court tolls the period of court-ordered treatment, notice to be provided to the patient by regular mail at the patient's last known address.
53. Requires notice to be provided to the prosecuting attorney if the patient is undergoing treatment as a result of an incompetency remand.
54. Requires the treatment agency to notify the court of the date of the patient's return.

55. Requires the court, on notice of the patient's return, to issue an order that provides the time period that was tolled.
56. Eliminates the ability of a patient who remains on unauthorized absence status for at least 90 days to petition the court for a hearing to determine his current mental status and present need for treatment.
57. Allows a patient whose period of court-ordered treatment is tolled for at least 60 continuous days to request a judicial review on the patient's voluntary or involuntary return to treatment.
58. Requires, during the period tolled by court order, the treatment agency to:
 - a) use information and other resources available to the agency to facilitate efforts to locate and return the patient to appropriate treatment; and
 - b) at least once every 60 days, or as often as ordered by the court, file a report with the court that specifies the information and resources used by the agency to facilitate the agency's efforts.
59. Allows the court to terminate the order for treatment or order the treatment agency to make further specific efforts to locate and return the patient to the appropriate treatment as follows:
 - a) after the period of treatment is tolled for a period of 180 days;
 - b) if the court is satisfied the agency has made the efforts required above; and
 - c) on petition of the treatment agency.
60. Requires the treatment agency to provide notice to the prosecuting agency of the petition to terminate treatment if the prosecutor filed an incompetency evaluation petition.
61. Prohibits the period of treatment under a court order from being tolled for more than 365 days.
62. Exempts the treatment agency from civil liability for damages that result from the actions of a patient during any period of treatment tolled by a court order if it has followed the above requirements in good faith.

Miscellaneous

63. Specifies that *records* include the patient's medical and treatment records.
64. Defines *criminal history* as police reports, lists of prior arrests and convictions, criminal case pleadings and court orders, including a determination that the person has been found incompetent.
65. Defines additional terms.
66. Makes technical and conforming changes.
67. Becomes effective on the general effective date.

Revision

- Adds details regarding certain provisions.

House Action

JPS	2/1/17	DPA	9-0-0
3 rd Read	2/9/17		58-0-2

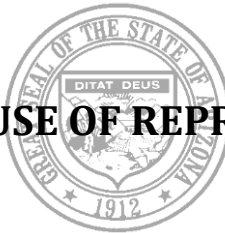
Senate Action

JUD	3/2/17	DP	7-0-0
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Prepared by Senate Research

March 6, 2017

AW/rr



ARIZONA HOUSE OF REPRESENTATIVES

HB 2239: incompetent, nonrestorable defendants; involuntary commitment

PRIME SPONSOR: Representative Farnsworth E, LD 12

BILL STATUS: [Chaptered](#)

Legend:

ASH – Arizona state hospital

RHBA – Regional Behavioral Health Authority

SVP – sexually violent person

Amendments – **BOLD** and ~~Stricken~~ (Committee)

Abstract

Relating to the evaluation of incompetent defendants.

Provisions

Incompetent Defendants

- 1) Permits the use of any statement by a defendant during an examination or evidence resulting from a statement by any party in a hearing to determine if the defendant is eligible for court-ordered treatment or is an SVP.
- 2) Allows reports that are otherwise sealed at the conclusion of the case to be ordered open by the court for purposes of a hearing to determine if the defendant is eligible for court-ordered treatment or is an SVP.
- 3) Allows the court to order the prosecutor to file a petition for evaluation and provide criminal history for the defendant if the defendant is remanded to the custody of an evaluating agency for civil commitment proceedings.
- 4) Provides that if the court enters an order related to commitment or the appointment of a guardian, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the cost of the defendant's medically necessary care.
- 5) States that the court may retain jurisdiction over the defendant until the defendant is civilly committed or a guardian is appointed.
- 6) Provides that if the defendant is remanded for civil commitment proceedings and the court is notified that the evaluation is not completed, the court must order the sheriff to take the defendant into custody to determine if either a guardian should be appointed or the charges should be dismissed without prejudice.
- 7) Expands the A.R.S. Title 13, Chapter 41 (Incompetence to Stand Trial) definition of a *mental health expert* to include a licensed physician or psychologist who is familiar with criminal and involuntary commitment statutes.

Sexually Violent Persons (SVP)

- 8) Allows the county attorney to request screening for an incompetent defendant who may be an SVP if:
 - a) There is no substantial probability that the defendant will regain competency within 21 months, and
 - b) The defendant is charged with a [sexually violent offense](#).

Prop 105 (45 votes)

Prop 108 (40 votes)

Emergency (40 votes)

Fiscal Note

- 9) States that if the screening is ordered by the court:
 - a) The court must appoint a [competent professional](#) to conduct the screening and submit a report to the court, and
 - b) The case cannot be dismissed until the report is provided to the court and either:
 - i) A hearing is held, or
 - ii) The county attorney files an SVP petition.
- 10) Permits the court to hold a hearing to determine if the county attorney will file an SVP petition.
 - a) Outlines options for the court.
- 11) Requires a mental health expert who has determined that a defendant may be an SVP to provide the report to the prosecuting agency for purposes of filing a petition for commitment.
- 12) Expands the definition of an *agency* in A.R.S. Title 36, Chapter 37 relating to SVPs to include other mental health treatment agencies in addition to ASH.

Court-Ordered Treatment/Civil Commitment

Evaluation of a Person Incompetent to Stand Trial

- 13) States that a prescreening is not necessary if a petition for court-ordered evaluation is filed by a prosecutor on a finding that the defendant is incompetent to stand trial.
- 14) Requires a petition for evaluation filed by a prosecutor to include any known *criminal history*, including whether the proposed patient has ever been found incompetent to stand trial.
- 15) States that if the person is determined to not need an evaluation, the person must be remanded for disposition. If the person is out of custody, the court may order the person be taken into custody for disposition.
- 16) Requires the court and prosecuting agency to receive notice of the expiration of an order for evaluation.
- 17) Permits the court to enter orders for further disposition, including orders that the person be taken into custody.
- 18) Provides that if the evaluation order expires, it does not prevent another person from initiating another evaluation of the person.
- 19) Requires the medical director of an evaluation agency to provide notice within 24 hours to the court and the prosecuting agency of the intent to release a person if further evaluation is not appropriate in the opinion of the medical director.
 - a) The person must be detained for an additional 24 hours to allow for required notices.
 - b) The medical director must provide patient records to the court and prosecuting agency.
- 20) Requires a petition for court-ordered treatment filed by a prosecutor to include known *criminal history* and any previous findings of incompetency.

Court-Ordered Treatment

- 21) Provides that if a patient is admitted for voluntary treatment or before a patient is discharged, the medical director must notify the prosecuting agency at least 24 hours before release or discharge.
 - a) The evaluation agency must detain the person for an additional 24 hours to provide for notice.
 - b) The prosecuting agency may request a hearing to determine if the person should be returned to custody for a disposition.

- c) The court must order the medical director to provide patient records to the court and the prosecuting agency.
- 22) Allows the court to order a medical director to provide notice to the court of any noncompliance with the terms of a treatment order, if the person is subject to court-ordered treatment.
- 23) Permits the court on its own motion to determine that a patient is not complying with the terms of an outpatient treatment order. Current law provides this option on motion by the medical director of the patient's outpatient treatment facility.
- 24) Permits the court, on its own motion or at the request of the medical director, to authorize and direct a peace officer to take a patient into protective custody and transport the patient for inpatient treatment, if a patient refuses to comply with an amended order for inpatient treatment.
 - a) An amended order arises from a situation where the court determines that the patient is not complying with the terms of the outpatient treatment order and may include ordering the patient to inpatient treatment.
- 25) States that an order, authorization or directive to a peace officer must include:
 - a) The patient's *criminal history*; and
 - b) The name and phone numbers of the patient's:
 - i) Case manager;
 - ii) Guardian;
 - iii) Spouse;
 - iv) Next of kin; or
 - v) Significant other, as applicable.
- 26) Provides that if the court does not find a person to be in need of court-ordered treatment, the evaluating agency must notify the prosecuting agency within 24 hours of its finding.
 - a) The court must order the medical director to detain the person for an additional 24 hours for notice to the prosecuting agency.
 - b) The court may remand the person to the sheriff's custody for disposition (if the court has retained jurisdiction).
- 27) Permits the prosecuting agency to provide information contained in a patient's *criminal history* that may be relevant for protecting the patient and the public, for purposes of preparing the patient's outpatient treatment plan.
- 28) Provides that the outpatient treatment plan must include any provisions that the medical director or court believe are necessary to protect the well-being of the patient and the public.
- 29) Allows the court to order that the medical director provide notice to the court of specific instances of noncompliance, as specified by the court.
- 30) Requires copies of any subsequent order and amended outpatient treatment plan to be provided to the prosecutor.
- 31) States that if the medical director rescinds an order for conditional outpatient treatment and orders the patient to return to a mental health treatment agency, the medical director must provide notice to the court and the prosecuting agency.
- 32) Requires the medical director to provide notice to the court before releasing a person who was found to be a danger to others for outpatient treatment. Also includes notice to the prosecuting agency, if a prosecutor filed the petition for court-ordered treatment.

- 33) Prohibits the release of a person subject to court-ordered treatment who was found incompetent to stand trial prior to the expiration of the treatment period ordered by the court, unless notice is provided by the medical director.
- 34) Provides that if a patient is undergoing court-ordered treatment pursuant to a petition filed by a prosecuting agency, the medical director must notify the court and the prosecuting agency if the civil commitment order expires, is terminated or if the patient is discharged to outpatient treatment.
 - a) This notice is not required for amended orders resulting from a patient's need for acute or emergency care during the court-ordered treatment.
- 35) Extends pre-release and pre-discharge notice provisions to victims, relatives and other persons for patients who are subject to court-ordered treatment and who have been found incompetent to stand trial.
- 36) Requires the court to order the medical director to provide patient records to the court and prosecuting agency if a hearing is held to determine if the standard for release of the patient has been met.
- 37) States that a patient subject to court-ordered treatment is not discharged at the end of the treatment period if an application for continued court-ordered treatment is granted.
- 38) Requires a patient to comply with the discharge statute requirements prior to discharge, if the discharge is the result of the medical director deciding not to file a new petition for court-ordered evaluation, court-ordered treatment or a continuation of the previous court-ordered treatment.
- 39) Relieves the treatment agency from civil liability for any acts committed by a released patient if the treatment agency followed the requirements and process outlined in law in good faith.
- 40) States that the evaluation or treatment agency may apply to the court for a warrant or court order to take a patient who is absent from evaluation or treatment into custody to bring the patient back to the agency.
- 41) Defines *criminal history* and *prosecuting agency*.

Absence from Court-Ordered Treatment

- 42) Tolls the period of court-ordered treatment during the unauthorized absence of a patient.
- 43) Requires the treatment agency to file a notice with the court within 5 days of a patient's unauthorized absence to request that the treatment order be tolled.
- 44) Outlines notice requirements if the court tolls the period of treatment.
- 45) Requires the agency to notify the court of the date that the patient returns.
 - a) On notice, the court must issue an order providing the time period that was tolled.
- 46) Permits a patient whose treatment is tolled for at least 60 days to request judicial review on return to treatment.
- 47) Requires the treatment agency to use information and other resources to facilitate efforts to locate and return the patient to treatment. The agency must file a report that specifies the information and resources used to facilitate its efforts at least once every 60 days or as often as ordered by the court.
- 48) Permits the court to terminate the treatment order after 180 days of tolling, if specific conditions are met and notice is provided to the prosecuting agency.
- 49) Prohibits tolling court-ordered treatment for more than 365 days.

50) Relieves the treatment agency from liability for any damages that result from the action of a patient during a court-ordered tolling period if the treatment agency followed the requirements and process outlined in law in good faith.

51) Defines *absent without proper authorization* and *unauthorized absence*.

Miscellaneous

52) Makes technical and conforming changes.

Current Law

[A.R.S. Title 13, Chapter 41](#) outlines the process for determining that a defendant is incompetent to stand trial. [A.R.S. § 13-4501](#) defines *incompetent to stand trial* as a defendant who, as a result of a mental illness, defect or disability, is unable to understand the nature and object of the proceeding or to assist the defense. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial. This determination is different from finding a defendant *guilty except insane*.

If the court finds a defendant incompetent to stand trial and finds that there is no substantial probability that the defendant will regain competency within 21 months of the finding, a party may request that the court:

- Remand the defendant to the custody of ADHS for civil commitment proceedings under [A.R.S. Title 36, Chapter 5](#);
- Appoint a guardian; or
- Release the defendant from custody and dismiss the charges without prejudice.

[A.R.S. Title 36, Chapter 5, Articles 4 and 5](#) outline the process for evaluating a person and seeking civil commitment for purposes of court-ordered mental health treatment. Under [A.R.S. § 36-520](#), any responsible person can apply for a court-ordered evaluation of a person who is alleged to be:

- A danger to self or to others; or
- A person with a persistent or acute disability or grave disability; and who
- Is unwilling or unable to undergo a voluntary evaluation.

The application is provided to a screening agency, which must provide a pre-petition screening within 48 hours. From the pre-petition screening, the agency completes a report of opinions and conclusions. If the report indicates that there is reasonable cause to believe the patient meets the criteria above, the agency is required to file a petition for a court-ordered evaluation of the person. If after evaluation, the court finds by clear and convincing evidence that the patient meets the criteria above, the court must order the patient in to one of the following:

- Outpatient treatment;
- Combined inpatient and outpatient treatment; or
- Inpatient treatment in a mental health treatment agency or in a hospital.

The court must consider all available and appropriate alternatives for treatment and patient care and must order the least restrictive treatment alternative available.