Chapter DOC 328

COMMUNITY SUPERVISION OF OFFENDERS

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Subchapter I — General Provisions

DOC 328.01 Purpose. The purpose of this chapter is to provide rules, services, and programs for offenders who are under supervision of the department. All of the following specific goals and objectives assist the department in fulfilling this purpose:

(1) To supervise offenders to the extent necessary to meet public, victim, staff, and offender safety responsibilities.

(2) To assist in providing opportunities to achieve the critical success factors of residence, employment, appropriate treatment, and general stability in the living situation.

(3) To assist in providing access to community−based programs for offenders on community supervision.

(4) To establish necessary guidelines, procedures, and controls to maintain program, staff, and fiscal accountability and to promote program efficiency and effectiveness.

(5) To cooperate with other agencies and communities in activities for the purpose of prevention of crime and victimization.

(6) To protect the health, rights, and dignity of all offenders involved in the department's programs and activities.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.02 Applicability. This chapter applies to the department and to offenders under the division's custody and supervision for correctional purposes. It implements ss. 165.76, 301.001, 301.03, 301.45, 301.46, 302.11, 302.113, 302.114, 302.14, 302.19, 302.31, 302.335, 304.06 (3), 304.072, 304.074, 304.075, 304.12, 304.13, 304.135, 304.137, 304.14, 939.615, 941.29, 961.47, 971.17, 972.15, 973.01, 973.04, 973.06, 973.07, 973.08, 973.09, 973.10, 973.125, and 973.20, Stats., and chs. 950 and 980, Stats.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.03 Definitions. In this chapter:

(1) "Abscond" means the failure of an offender to make himself or herself available as directed by the agent.

(2) "Administrator" means the administrator of the division or designee.

(3) "Advocate" means a person who assists in the presentation of the offender's position, is independent, and able to act in an offender's best interest. The advocate may not be a person in the custody or under the supervision of the department or an employee of the department.

(4) "Agent" means an employee of the division who may be assigned the responsibilities under this chapter.

(5) "Alternative to revocation" means placement in a program or imposition of a sanction in lieu of revocation.

(6) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(7) "Body contents search" means a search in which the offender is required to provide a biological specimen, including but not limited to a sample of urine, breath, blood, stool, hair, fingernails, saliva, semen, or other identifying physical material.

(8) "Collateral" means any person who has contact with or information about an offender.

(9) "Commitment term" or "term" means that period of time during which the offender is subject to the control and supervision of the department.

(10) "Community supervision" or "supervision" means the control and management of offenders on probation, parole, extended supervision, or other statuses as authorized by court order or statute.

(11) "Conditions" means specific regulations imposed on the offender by the court or earned release review commission.

(12) "Contacts" means communications between an agent and an offender or collateral.

(13) "Contraband" means any of the following:

(a) Any item which the offender may not possess under the rules or conditions of the offender's custody or supervision.

(b) Any item whose possession is forbidden by law.

(14) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily harm to another.

(15) "Department" means the department of corrections.

(16) "Discharge" means the completion of the term of supervision by an offender.

(17) "Division" means the division of community corrections.

(18) "Extended supervision" means that portion of a bifurcated sentence that is ordered to be served on community supervision as provided in s. 973.01, Stats.

(19) "Extension" means the continuation by the sentencing court of supervision beyond the current discharge date.

(20) "Financial resources" of an offender means any income or assets from any source under the offender's sole or joint control.

(21) "Force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from act-

ing in a particular way. It includes the use of mechanical or physical power or strength.

(22) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(23) "Hearing examiner" means a person appointed to preside over a hearing to determine whether the department may impose a condition of supervision requiring compliance with prescribed psychotropic medication. The hearing examiner may not currently be involved in the offender's treatment, diagnosis, or supervision, or the direct supervisor of the agent or psychiatrist treating the offender.

(24) "Incapacitating agent" means any product or device commercially manufactured for the purpose of temporary control of an offender.

(25) "Interstate compact" means an agreement between Wisconsin and another state in the United States or territory of the United States, which provides the means for community supervision of offenders between states as authorized under ss. 304.13, 304.135, 304.14, and 304.16, Stats.

(26) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions.

(27) "Non−deadly force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily harm to another.

(28) "Offender" means a person who is committed to the custody of the department for correctional purposes and is under community supervision of the division.

(29) "Pat−down" means a frisk of the offender's body outside the clothing.

(30) "Personal search" means a search of an offender's person, including but not limited to the offender's pockets, an examination of the offender's shoes, hat, and other clothing, and a visual inspection inside the offender's mouth.

(31) "Region" means a subunit of the division.

(32) "Regional chief" means an employee or designee of the division responsible for the administration of a region.

(33) "Reporting" means a contact between an agent and offender determined by the rules or conditions of supervision.

(34) "Revocation" means the removal of an offender from community supervision in accordance with chs. DOC 331 and HA 2.

(35) "Rules" means departmental regulations applicable to a specific offender under supervision.

(36) "School" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats.

(37) "Secretary" means the secretary of the department or designee.

(38) "Supervision fees" means financial obligations imposed on offenders pursuant to s. 304.074, Stats.

(39) "Supervisor" means an employee of the division responsible for the oversight and management of staff involved in direct supervision of offenders.

(40) "Tolled time" means the period of time between the date of an offender's violation and the date the offender's supervision is reinstated or revoked.

(41) "Waiver" means the written relinquishment of known rights by an offender.

(42) "Working day" means each day, except Saturday, Sunday, and holidays designated in s. 230.35 (4) (a), Stats.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13; correction in (38) made under s. 13.92 (4) (b) 7., Register June 2013 No. 690.

Subchapter II — Offender under Supervision

DOC 328.04 Community supervision. (1) Division employees are to provide individualized supervision of offenders in a manner consistent with the goals and objectives of this chapter.

(2) When an offender is placed on supervision, an agent's duties shall include all of the following:

(a) Obtain information necessary for appropriate supervision of the offender.

(b) Evaluate the offender's needs and risk to re−offend.

(c) Determine the short−term and long−term goals and overall objectives of the offender's supervision.

(d) Establish rules and explain and provide the offender with a copy of the rules and conditions.

(e) Inform the offender of the possible consequences of not abiding by the rules and conditions.

(f) Cooperate with and assist the district attorney who is responsible for determining restitution.

(g) Inform the offender of the administrative review process under s. DOC 328.12.

(h) Inform the offender of applicable state and local law enforcement registration requirements.

(i) Monitor the offender's compliance with the conditions and rules.

(j) Maintain complete and accurate case records for each offender.

(k) Supervise persons committed under s. 971.17, Stats., and ch. 980, Stats., in accordance with the agreement between the department and the department of health services.

(L) Report suspected child abuse cases to the appropriate authorities.

(m) Report to a supervisor as directed on the status of the offender.

(n) Report all violations of the criminal law by the offender to a supervisor and if appropriate, to law enforcement.

(o) Conduct investigations and prepare institution release plans in accordance with s. DOC 328.05.

(p) Collect restitution and other court ordered financial obligations, and fees as authorized by statute.

(q) Inform the offender of the process to petition for termination of lifetime supervision under s. 939.615 (6), Stats., if applicable.

(3) Standard rules require that the offender shall comply with all of the following:

(a) Avoid all conduct which is in violation of federal or state statute, municipal or county ordinances, or tribal law.

(b) Avoid all conduct which is not in the best interest of the public welfare or the offender's rehabilitation.

(c) Report all arrests or police contacts to an agent within 72 hours.

(d) Make every effort to accept opportunities and counseling offered by the department. This includes authorizing the exchange of information between the department and any court ordered or agent directed program and subsequent disclosure to any parties deemed necessary by the agent to achieve the purposes of this chapter and ch. DOC 331.

(e) Inform the agent of whereabouts and activities as directed.

(f) Submit a written offender report and any other relevant information as may be required.

(g) Submit to searches ordered by the agent under s. DOC 328.22.

(h) Obtain permission from an agent prior to changing residence or employment. In the case of an emergency, notify the agent of the change within 72 hours.

(i) Obtain permission and a travel permit from an agent before leaving the state.

(j) Obtain permission from an agent prior to the purchase, trade, sale, or operation of a motor vehicle.

(k) Obtain permission from an agent prior to borrowing money or purchasing on credit.

(L) Pay court ordered financial obligations and other fees as required.

(m) Obtain permission from an agent prior to purchasing, possessing, owning or carrying a firearm or other weapon, including incapacitating agents. An offender may not be granted permission to possess a firearm if prohibited under federal or state law.

(n) Shall not vote in any federal, state, county, municipal, or school board election held in Wisconsin while on supervision for a felony conviction.

(o) Abide by all rules of any detention or correctional facility.

(p) Provide true and correct information verbally and in writing as required by the department.

(q) Report to an agent as directed.

(r) Submit a biological specimen for testing when ordered by a court or under s. 165.76, Stats.

(s) Comply with any additional rules that may be established by an agent. The rules may be modified at any time as appropriate.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.05 Institution release planning. After the inmate and institution staff have prepared a proposed release plan, the agent shall investigate the plan, comment as to its appropriateness, and suggest modifications if necessary. The plan must address any court−ordered conditions or conditions of release.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.06 Notice to law enforcement of inmate release to supervision. Before releasing an inmate to supervision, the department shall notify the municipal police department and the county sheriff in the area where the individual will reside.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.07 Supervision fees. (1) SUPERVISION FEE. An offender shall pay a supervision fee.

(2) ESTABLISHMENT OF FEE. (a) The department shall set a monthly supervision fee for an offender based on the following table:

Table DOC 328.07

Category	Gross Monthly Income	Monthly Supervision Fee
I	$0 − 799.99	$20.00
II	$800.00 − 1,499.99	$40.00
III	$1,500.00 or more	$60.00

(b) The department shall adjust the supervision fees in Table DOC 328.07 every 5 years by multiplying each fee by the percentage increase of the Consumer Price Index, as defined in s. 16.004 (8) (e) 1., Stats., from January 1, 2012, to January 1, 2017, and every 5 years thereafter and adding that amount to each fee, rounded to the nearest $5.00 increment. If the Consumer Price Index reflects a percentage decrease, the supervision fees will not be reduced but remain the same.

(c) The department shall publish adjustments to Table DOC 328.07 in the Wisconsin administrative register.

(3) AGENT ACTION. The assigned agent shall:

(a) Establish the offender's supervision fee payment.

(b) Provide the offender with a copy of the fee schedule.

(c) If sub. (5) is applicable, exempt the offender from paying the supervision fee.

(4) REPORTING AND VERIFICATION OF SUPERVISION FEE. The department shall do all of the following:

(a) Record all supervision fees paid by the offender.

(b) Provide the offender access to a copy of the record of payments to verify receipt of payment.

(5) EXEMPTIONS. (a) Except as provided under par. (b), the department may exempt supervision fees if an offender meets one or more of the following conditions:

1. The offender has used all reasonable and appropriate means to obtain employment as determined by the offender's agent, but has been unable to obtain employment which provides the offender sufficient income to pay supervision fees.

2. The offender is a student enrolled in a full−time course of instruction. For the purpose of this subdivision, a "full−time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full−time high school or full−time junior high school. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no exemption may be given.

3. The offender is undergoing psychological, chemical, or medical treatment consistent with the supervision plan and is unable to be employed. The offender shall provide a release of information to verify participation.

4. The offender has a statement from a licensed health care provider excusing the offender from work for a medical reason and the offender is unable to be employed because of the medical reason.

(b) An offender shall not receive an exemption if the department determines that the offender has the ability to pay despite his or her meeting one or more of the exemption criteria.

(c) The agent shall make a determination concerning an offender's exemption from the supervision fee within 10 working days of receiving an offender for supervision or within 10 working days of a reported change in the offender's financial status.

(d) An offender who is supervised by another state under an interstate compact transfer is not required to pay a supervision fee.

(e) An offender who is serving a sentence in prison and has a concurrent supervision case is not required to pay a supervision fee.

(f) The agent's supervisor shall review all exemptions from payment of the supervision fee.

(6) REFUNDS OF SUPERVISION FEES. (a) The department shall refund supervision fees only when the offender has paid in advance for a month that the offender was not under supervision.

(b) The department will not make any refund to an offender for a partial month of supervision.

(c) The department shall apply the refund to restitution ordered by the court or any other outstanding financial obligations required by the department or the court. The department shall refund to the offender the remainder of any unapplied funds.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.08 Financial obligations. When an offender is required to pay restitution or other financial obligations pursuant to state statute or court order, the following procedures apply:

(1) ACCEPTANCE AND DISBURSEMENT OF PAYMENT. The department may at any time accept a payment from or on behalf of an offender, which is made pursuant to state statute or court order. The department shall transmit the payment to the department cashier for deposit in the offender's account. The cashier shall dis-

burse funds from the account in accordance with the court order or state statute.

(2) UNPAID FINANCIAL OBLIGATIONS. (a) For offenders who have not paid court ordered obligations, the department will provide notification to the sentencing court, district attorney, and victim at least 90 days prior to discharge.

(b) If the department determines that the offender has made a good faith effort to pay ordered obligations, the department shall recommend the court order the restitution due be entered as a civil judgment in favor of the victims.

(c) When the department determines that an offender who is on probation has not made a good faith effort to pay the ordered obligations, the department may recommend that the court extend the term of probation and modify any condition or recommend that the court enter a civil judgment in favor of the victims. The department shall inform the offender of his or her rights to a hearing and waiver under s. DOC 328.09 (2) and (3).

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.09 Extension of probation. (1) DEPARTMENT RECOMMENDATION. The department may recommend that a court extend the probation period under s. 973.09 (3) (a), Stats.

(2) HEARING. If the department recommends extension of an offender's probation, the department shall notify the offender of the recommendation and the right to a court hearing.

(3) WAIVER. An offender may knowingly and voluntarily waive the hearing in writing. The waiver shall state that:

(a) The offender has read the notice, or has had it communicated to him or her, and understands the notice under this section.

(b) The offender acknowledges that there is good cause for the extension.

(c) The offender consents to an extension of the supervision for the specific period of time stated in the notice.

(d) The offender was notified of the right to consult with an attorney before signing the waiver.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.10 Funds and property. (1) DISCLOSURE OF FINANCIAL INFORMATION. An agent may require the offender to disclose all financial information, including tax returns, financial institution account statements, and wage information, to assist in the management of the offender's financial resources.

(2) MONITORING OF OFFENDER FINANCIAL OBLIGATIONS. Receipting, remitting, and auditing of offender financial obligations shall be done in a manner consistent with department policies.

(3) VOLUNTARY WAGE ASSIGNMENT. An agent may initiate a voluntary wage assignment against an offender's wages in order to assure collection of court ordered financial obligations and other fees. If married, the offender's spouse must also consent to the wage assignment.

(4) EMERGENCY LOANS. The department may establish a revolving fund to provide emergency loans to offenders for the purchase of basic living necessities.

(5) OFFENDER PROPERTY. Agents shall not receive or store any property for an offender except as provided under s. DOC 328.23.

(6) MANAGEMENT OF OFFENDER'S FINANCIAL RESOURCES. (a) An agent may assist in the management and disbursement of the financial resources of an offender if one of the following factors applies:

1. The offender requests assistance.

2. The agent believes that management is necessary to control the offender's funds.

3. The agent believes that management is necessary to ensure compliance with the offender's existing restitution orders, and other financial obligations, including payment of supervision or monitoring fees under ss. DOC 328.07, 332.18, 332.19, and 332.20.

(b) When an agent manages funds under this section, the agent shall document all actions under this section as required by the department, including the reason the offender's money is being managed.

(c) Management of the funds may be done only through a bank account in the offender's name. All financial resources of an offender managed by an agent shall be deposited directly into the offender's account upon receipt.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.11 Purchase of goods and services. If an offender requires assistance or materials that cannot reasonably be provided through any other available resource, the department may provide assistance in accordance with s. 301.08, Stats. Approval of the expenditure is necessary before services may be provided.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.12 Offender administrative review process. (1) PURPOSE. The department shall provide offenders an opportunity for administrative review of certain decisions by allowing offenders to raise concerns regarding their supervision in an orderly manner.

(2) SCOPE. An offender may request administrative review to challenge any department decision affecting an offender except a decision concerning:

(a) Revocation.

(b) Custody and detention.

(c) Denial of use or possession of firearms pursuant to federal or state law.

(d) Special conditions or terms of supervision imposed by a court or the parole commission.

(e) Decisions regarding early discharge from the term of supervision.

(3) REQUEST FOR ADMINISTRATIVE REVIEW. (a) Prior to initiating a request for administrative review, the offender shall attempt to resolve the concern with the agent.

(b) If the concern is not resolved under par. (a), the offender may file within a reasonable time a written request for administrative review to the agent's supervisor. The request and subsequent reviews shall be filed utilizing the department's forms.

(c) The offender may request within a reasonable time a review of the supervisor's decision by the regional chief. If the concern is not resolved, the offender may request within a reasonable time a final review by the administrator.

(4) EFFECT OF REVIEW OF DISPUTED DECISION. During the administrative review process, the affected parties shall comply with the decision under dispute.

(5) EXPEDITED REVIEW. The department may expedite the review process under this section if the concern raised is time sensitive.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.13 Temporary travel. (1) The department may authorize temporary out−of−state travel when it is consistent with the purpose and goals of the offender's supervision, applicable interstate compact provisions, and applicable civil commitment provisions. An offender may travel out of the state of Wisconsin only if he or she has submitted a written request and has received written authorization prior to the requested travel. The division may grant prior authorization for travel out of the state of Wisconsin as follows:

(a) Agent approval is required for travel not to exceed 15 days.

(b) Supervisory approval is required for travel exceeding 15 days.

(c) Travel permits may be used to authorize multiple trips to another state during a specific time period.

(2) An authorization for temporary out of state travel shall specify that the offender is responsible for all of the following:

(a) The costs incurred by the travel.

(b) Reporting as required.

(c) Returning to the state upon agent request at any time the offender is out of state.

(d) Waiving extradition.

(e) Carrying a travel permit.

(3) Offenders shall be allowed to travel to foreign countries only as follows:

(a) As authorized by the sentencing court.

(b) Upon verification of official military orders from the US Armed Forces or National Guard.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.14 Interstate transfer. (1) If the department determines that transfer to another jurisdiction is in the best interests of an offender and consistent with the goals of this chapter, an interstate transfer may be initiated.

(2) An offender from another state, who has requested supervision and is present in Wisconsin prior to formal acceptance, is subject to the provisions of this chapter.

(3) An offender subject to supervision in another state will be accepted for supervision in Wisconsin if one of the following applies:

(a) The offender meets the criteria established by the applicable interstate compact.

(b) The department consents.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.15 Voluntary return to a correctional facility. (1) An offender may request a voluntary return to a correctional facility for a period not to exceed one year.

(2) The request shall be in writing in a format prescribed by the department.

(3) The division shall inform the offender of all of the following:

(a) Upon return to the institution, the offender shall remain incarcerated until the agreed release date unless the department determines earlier release is appropriate.

(b) Offenders who were convicted prior to December 30, 1999, must waive parole consideration, good time, and entitlement to mandatory release.

(c) The department's rules applicable to inmates in correctional facilities shall apply to the offender during the period of incarceration.

(4) Upon approval of the request by the regional chief, the division shall forward the request to the administrator of the division of adult institutions for a decision.

(5) During the period of incarceration the agent shall maintain contact with the offender and facilitate a release plan.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.16 Discharge. (1) Offenders shall be informed of the individualized objectives and conditions of supervision required for discharge.

(2) When supervision has expired, the department shall do all of the following:

(a) For a felon, issue a certificate of discharge or a certificate of final discharge if the offender has discharged from all felony cases. A certificate of final discharge under this subdivision shall list the civil rights that have been restored to the offender and the civil rights that have not been restored to the offender.

(b) For a misdemeanant, notify the offender that his or her period of supervision has expired.

(c) For a probationer, the department shall notify the sentencing court that the period of probation supervision has expired.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.17 Early discharge. (1) The department may grant an offender early discharge when there is a reasonable probability that supervision is no longer necessary for the rehabilitation and treatment of the offender and for the protection of the public. The department shall consider all of the following in making its determination:

(a) The goals and objectives of supervision have been satisfied.

(b) For offenders on probation, the offender has served at least fifty percent of the term of probation.

(c) For offenders on parole, the offender has reached his or her mandatory release date or has been under supervision for two years.

(d) For offenders on extended supervision, all of the following shall apply:

1. An offender is not eligible for early discharge under this section if convicted of any of the following offenses: Class B felony offenses, or violations of ss. 940.03, 940.06, 940.11 (1), 940.235, 940.302, 940.31 (1), 940.32 (3), 941.21, 946.465, 948.03 (2) (a), or 948.40 (4) (a), Stats., or offenses against elderly or vulnerable persons as defined in s. 939.22 (20d), Stats., offenses related to ethical government, as defined in s. 939.22 (20m), Stats., or offenses related to school safety as defined in s. 939.22 (20s), Stats.

2. The offender has been supervised for a minimum of two years and the discharge is in the interest of justice.

3. The department shall notify the victim of the offender, as defined under s. 950.02 (4) (a), Stats., of its intent to discharge the offender from extended supervision.

(2) Offenders serving a life sentence are eligible for discharge as provided by s. 973.013 (2), Stats.

(3) The department may not discharge an offender on lifetime supervision under s. 939.615, Stats.

(4) Notwithstanding sub. (1) and (2), the department may grant an early discharge if extraordinary circumstances exist.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

Subchapter III — Enforcement Options and Related Matters

DOC 328.18 Use of force. Whenever feasible, staff shall rely on law enforcement authorities to exercise force against offenders. When such assistance is not available, staff may use force subject to this section.

(1) Non−deadly force may be used by staff against offenders only if the user of force reasonably believes it is immediately necessary to realize one of the following objectives:

(a) To prevent death or bodily harm to oneself or another.

(b) To prevent unlawful damage to property, including damage that may result in death or bodily harm to oneself or another.

(c) To prevent an offender from fleeing the control of a staff member.

(d) To change the location of an offender.

(2) Staff may use deadly force only to prevent death or great bodily injury to oneself or another.

(3) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

(4) The use of excessive force is forbidden. Only as much force may be used as is reasonably necessary to achieve the objective.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.19 Mechanical restraints. (1) An employee may use mechanical restraints authorized by the department to restrain an offender only in accordance with the following:

(a) To protect staff or others from an offender who poses an immediate risk of flight or physical injury to others.

(b) To protect an offender who poses an immediate threat of physical injury to self.

(c) To take an offender into custody.

(d) To transport an offender while in custody.

(2) Mechanical restraints may not be used under any of the following circumstances:

(a) As a method of punishment.

(b) In a manner that intentionally causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the offender.

(c) To restrain an offender to a vehicle.

(3) Staff shall monitor an offender in restraints at regular intervals until the restraints are removed or custody of the offender is transferred.

(4) Offenders should be released from restraints to perform bodily functions and for meals when the removal does not jeopardize safety and security.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.20 Incapacitating agents. An employee may possess and use only those incapacitating agents and delivery systems approved by the department.

(1) AUTHORIZED USE OF INCAPACITATING AGENTS. An employee who is on duty may possess or use incapacitating agents only under the following conditions:

(a) After successfully completing a department approved training program for use of incapacitating agents.

(b) While acting in self−defense or defense of a third person.

(2) CONTAMINATION RESPONSE. An employee using incapacitating agents shall provide an exposed person an opportunity for necessary medical attention.

(3) DOCUMENTATION. The employee using incapacitating agents shall document its use according to department policy and procedure.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.21 Firearms or other weapons. No employee of the division may possess or use a firearm or other weapons while on duty, except as permitted under s. DOC 328.23.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.22 Search and seizure; pat−down. (1) GENERAL POLICY. A search of an offender, the offender's living quarters or property, or seizure of the offender's body contents may be made at any time, but only in accordance with this section. Strip searches or body cavity searches are prohibited. For purposes of this section, the mouth is not a body cavity.

(2) JUSTIFICATION. A search or seizure is appropriate and consistent with the goals and objectives of supervision under any of the following circumstances:

(a) When an employee has reasonable grounds to believe the offender possesses contraband or evidence of a rule violation on or within his or her person or property.

(b) With the consent of the offender, when a search or seizure is necessary to verify compliance with the rules.

(c) When ordered by the court.

(3) REASONABLE GROUNDS. In deciding whether there are reasonable grounds to believe that an offender has used, possesses or is under the influence of an intoxicating substance, that an offender possesses contraband, or that an offender's living quarters or property contain contraband or evidence of a rule violation, an employee may consider any of the following:

(a) The observations of employees.

(b) Information provided by informants. In evaluating the reliability of the information and the informant, the employee shall consider the following:

1. The detail, consistency, and corroboration of the information provided by the informant.

2. Whether the informant has provided reliable information in the past and whether the informant has reason to provide inaccurate information.

(c) The activity of the offender.

(d) Information provided by the offender.

(e) The experience of the employee with that offender or in a similar circumstance.

(f) Prior seizures of contraband from the offender.

(4) INFORMING THE OFFENDER. Whenever possible before a search or seizure is conducted, an employee shall inform the offender of all of the following:

(a) A search or seizure is about to occur.

(b) The reason for the search or seizure.

(c) The method for conducting the search or seizure.

(d) The place where the search or seizure is to occur.

(e) The consequences of not complying with the search or seizure.

(5) PAT DOWN. A pat−down may be conducted at any time an employee has a reasonable concern that an offender may possess a weapon or other object which may be used as a weapon. After a pat−down, if the employee has reasonable grounds to believe that the offender may be in possession of a weapon or contraband, the employee may proceed with a personal search of the offender.

(6) PERSONAL SEARCH. (a) Any staff member may conduct a personal search of an offender.

(b) Every personal search shall be documented in the offender's case record.

(7) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) An agent shall obtain supervisory approval prior to any search under this subsection.

(b) The employee who conducted the search shall complete a written report of every search of an offender's living quarters or property. The report shall state all of the following:

1. The identity of the offender whose living quarters or property was searched.

2. The identity of any employee who conducted the search and any other persons present during the search.

3. The date, time, and place of the search.

4. The reason for conducting the search.

5. Any items seized pursuant to the search with documentation of chain of custody.

6. Whether any damage was done to the premises or property during the search.

(c) During searches an employee may read business records and personal mail of offenders. The employee may not read any privileged legal materials, including any communication between an offender and an attorney, or any materials prepared in anticipation of a lawsuit.

(d) An employee may not forcibly enter any property to conduct a search.

(8) SEIZURE OF BODY CONTENTS. (a) Only licensed or certified medical staff may take a blood or stool sample.

(b) When the agent or supervisor requires the collection of a urine specimen to be observed, an employee of the same sex as the offender shall observe and collect the urine specimen.

(c) Any trained employee may conduct breathalyzer tests or collect hair or other physical material samples.

(d) A report of a test on a specimen of an offender's urine, breath, blood, stool, hair, fingernails, saliva, semen, or other iden-

tifying physical material produced by the offender may be presented as evidence in a revocation hearing. The expert who made the findings need not be called as a witness in a hearing or proceeding under this chapter, ch. DOC 331, or ch. HA 2.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.23 Contraband. (1) Any employee who reasonably believes that an item in an offender's possession is contraband may seize the item, whether or not the employee believes a violation of the offender's rules or conditions of supervision has occurred. Any items seized must be documented with chain of custody.

(2) The supervisor shall dispose of seized contraband after all proceedings in which it may be required have been completed. Disposition shall be as follows:

(a) All confiscated currency, whose true owner cannot be determined, shall be placed in the general fund.

(b) Checks and other negotiable instruments shall be returned to the maker. If it is not possible to determine an address for the maker of the check, the check shall be destroyed.

(c) U.S. bonds and other securities shall be held in the department's cashier's office, and upon proof of ownership, the item shall be returned to the owner.

(d) Property items shall be returned at the offender's expense to the owner if the owner is known unless the owner transferred the property in an unauthorized manner. Property items which an offender is not permitted to possess and which are not illegal may be transferred to another person at the offender's expense. Property items of inherent value which were not returned to the owner shall be sold through the department's purchasing officer and money received shall be placed in the general fund.

(e) Intoxicating substances, such as alcohol or controlled substances, shall be disposed of in accordance with division policy.

(f) Firearms not required for use as evidence shall be disposed of in accordance with s. 968.20, Stats.

(g) Any item originally assigned as property of the state shall be returned to service.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.24 Absconding. (1) If an offender absconds, an employee shall issue an apprehension request.

(2) If an offender committed under s. 961.47 (1), Stats., absconds and is not located within 90 days, an employee shall request that the committing court issue a capias ordering apprehension of the offender, vacating the order committing the offender to the custody of the department, or relieve the department of further responsibility for the offender. Following court action, the agent shall cancel the apprehension request.

(3) Once the offender is apprehended and becomes available, an employee shall conduct a violation investigation and make a determination regarding disposition. The employee shall also cancel the apprehension request.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.25 Tolled time. (1) The department may toll all or any part of the period of time between the date of the violation and the date of an order of revocation or reinstatement is entered, subject to sentence credit for time the offender spent in custody pursuant to s. 973.155 (1), Stats. If the offender is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the offender did in fact violate the rules or conditions of his or her supervision.

(2) A division of hearings and appeals administrative law judge or the secretary shall determine the amount of time to be tolled.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.26 Reinstatement. (1) The department may reinstate an offender upon the offender's request and written admission of a violation of the rules or conditions of supervision sufficient to warrant revocation.

(2) (a) The request under sub. (1) shall acknowledge both of the following:

1. The date of the violation.

2. The offender's awareness that the period between the date of violation and the date of reinstatement or revocation may be tolled.

(b) An offender's request for reinstatement and written admission shall be submitted to the regional chief to determine whether reinstatement is appropriate.

(c) A copy of the regional chief's decision, including the reasons for it, shall be sent to the offender and the original returned to the agent.

(d) If the regional chief determines that reinstatement should not occur, the revocation process may be initiated in accordance with s. DOC 331.03.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.27 Custody and detention. Whenever feasible, an employee shall rely on law enforcement authorities to take an offender into custody. When law enforcement assistance is not available, the employee shall decide whether to disengage and issue an apprehension request or take the offender into custody in accordance with this section.

(1) CUSTODY ORDER. An agent shall order an offender into custody if the offender is alleged to have been involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

(2) DETENTION. An offender may be taken into custody and detained for one of the following purposes:

(a) For investigation of an alleged violation of a rule or condition of supervision.

(b) After an alleged violation to determine whether to commence revocation proceedings.

(c) For disciplinary purposes.

(d) To prevent a possible violation by the offender.

(e) Pending placement in a program as an alternative to revocation.

(3) LENGTH OF DETENTION. An offender may be detained in accordance with one or more of the following:

(a) Except as provided in sub. (6) and (7), an agent may authorize the detention of an offender under sub. (1) or (2) for a maximum of 5 working days.

(b) A supervisor may approve additional detention for a maximum of 5 working days.

(c) A regional chief may approve detention for an additional 5 working days.

(d) The administrator may authorize detention beyond the foregoing time limits.

(e) An offender detained under sub. (2) (c) may be detained with supervisory approval for only a maximum of 5 working days.

(f) This subsection does not apply to detentions pending final revocation which are authorized by an agent's immediate supervisor under s. DOC 331.05 (7) when a preliminary hearing is not held pursuant to s. DOC 331.05 (2).

(4) CUSTODY DECISIONS. Custody decisions during revocation proceedings shall be made in accordance with s. DOC 331.05 (7).

(5) DETENTION IN A STATE CORRECTIONAL FACILITY. The department may detain an offender on parole, extended supervision, or on felony probation with an imposed and stayed sentence in a state correctional institution including a probation and parole holding facility pending revocation proceedings.

(a) For placement of an offender in a state correctional facility other than a probation and parole holding facility, the regional chief shall make a detention request to the director of the bureau of offender classification and movement in the division of adult institutions. The request shall include both of the following:

1. Court case information that permits legal admission for detention under this subsection.

2. Reason for requested detention in a state correctional institution rather than a county facility.

(b) The director of the bureau of offender classification and movement shall review the request and determine whether admission for detention in a state correctional institution will be authorized.

(6) CUSTODY OF AN OFFENDER ON LIFETIME SUPERVISION. The department may take an offender on lifetime supervision into custody under sub. (1) or (2) (a) for as long as reasonably necessary to investigate a possible violation of a condition or regulation of lifetime supervision. The department may hold an offender in custody for a maximum of 72 hours following completion of the investigation in order to refer the offender to the appropriate prosecuting agency for commencement of prosecution under s. 939.615 (7), Stats.

(7) DETENTION OF OFFENDER ON EXTENDED SUPERVISION. (a) The department may confine an offender on extended supervision beyond the time limits provided under sub. (3) as a sanction when both of the following occur:

1. The offender admits to the violation in writing.

2. The regional chief or designee approves of the sanction.

(b) The sanction may be served within a county jail if the sheriff approves.

(c) Confinement under the sanction will not exceed 90 days.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.

DOC 328.28 Psychotropic medication as a condition of supervision. The purpose of this section is to provide a process for imposing a condition of supervision that requires compliance with prescribed psychotropic medications.

(1) PSYCHOTROPIC MEDICATION AS A CONDITION OF SUPERVISION. Psychotropic medication may be made a condition of supervision only when one of the following applies:

(a) Following commitment proceedings during which the offender has been found not competent to refuse psychotropic medication.

(b) With the consent of a guardian who is able to authorize treatment of the offender with psychotropic medication.

(c) Following a department hearing under this section, approving a condition requiring the offender's compliance with prescribed psychotropic medication.

(d) When the offender waives a department psychotropic medication hearing under this section.

(e) When ordered by a court of law.

(2) CRITERIA FOR REQUESTING A HEARING. An agent shall request approval for a hearing from a regional chief to determine the need for requiring psychotropic medication as a condition of supervision when all of the following apply:

(a) The use of psychotropic medication is medically indicated.

(b) The offender refuses to take psychotropic medication.

(c) The offender does not waive the hearing.

(3) NOTICE OF HEARING. The offender shall receive written notice of the hearing at least 24 hours in advance. The notice shall include all of the following:

(a) The basis for the allegations that use of psychotropic medication is medically indicated and necessary.

(b) The date, time, place, and purpose of the hearing.

(c) The right to be represented by an advocate.

(d) The right to be heard and present evidence and relevant witnesses.

(e) The right to cross−examine department witnesses.

(f) The right to a written decision within 10 working days of the hearing, including the reason for the decision.

(4) ACCESS TO DEPARTMENTAL OFFENDER HEALTH CARE RECORDS. Department employees directly involved in the decision regarding psychotropic medication as a condition of supervision shall have access to the minimum necessary amount of protected health care information to enable them to make an informed decision relating to whether compliance with psychotropic medications should be required as a condition of supervision.

(5) PSYCHOTROPIC MEDICATION HEARING. When an offender does not waive the hearing and refuses to take prescribed psychotropic medication, the department shall hold a hearing. The hearing may be conducted in person or by telephone.

(a) The department has the burden of proof to establish, by a preponderance of the evidence, that treatment with psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

(b) The hearing examiner is not bound by common law or statutory rules of evidence other than attorney−client privilege. The hearing examiner shall admit all evidence, including testimony, which has reasonable probative value and is not unduly repetitious or cumulative.

(c) The hearing examiner shall do all of the following:

1. Administer oaths or affirmations.

2. Take an active role in questioning witnesses and eliciting testimony as necessary.

3. Regulate the course of the hearing.

4. Keep summary notes of the hearing.

5. Render a written decision whether to impose a condition of supervision requiring compliance with prescribed psychotropic medication upon a finding that psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

(6) APPEAL OF DECISION. The offender may appeal a decision ordering compliance with prescribed psychotropic medication to the secretary within 10 days of the written decision. The decision of the hearing examiner shall remain in effect while the appeal is pending.

(7) ANNUAL REVIEW. A hearing examiner shall review the decision ordering compliance with prescribed psychotropic medication on an annual basis.

(a) A different hearing examiner from the examiner who made the original determination may perform the annual review.

(b) The hearing examiner under par. (a) shall give the offender notice of the date of the annual review, what evidence is being considered, and the offender's right to respond.

(c) The hearing examiner may continue the order requiring compliance with prescribed psychotropic medication if evidence since the time of the last review shows that psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

History: CR 10−126: cr. Register June 2013 No. 690, eff. 7−1−13.