

(4) Custody decisions during revocation proceedings shall be made pursuant to s. DOC 331.04 (5).

(5) A client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained in an institution pending revocation proceedings.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. (4) and (5), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (1), eff. 10-18-85; am. (1) and (3), cr. (4), Register, April, 1986, No. 364, eff. 5-1-86; renum. (6) to be (5) under s. 13.93 (2m) (b) 1, Stats., Register, April, 1986, No. 364.

DOC 328.23 Transporting clients in custody. (1) A field staff member may transport a client to jail, institution, court, or other detention facility.

(2) A client may be handcuffed or otherwise appropriately restrained when being transported by field staff. When a client is being taken into custody, it is usually desirable to restrain the client.

(3) Two field staff members shall transport a client whenever feasible, and the client shall be informed of the reasons why he or she is being transported prior to such transport.

(4) If a client is to be transported to Wisconsin from another state, an agent and the agent's supervisor shall determine:

- (a) Whether the client is available for transport;
- (b) Whether an on-site hearing should be held prior to transport;
- (c) Whether extradition matters are resolved;
- (d) Which staff members shall transport the client.

(5) Relevant records relating to transport of a client shall be maintained in the client's record.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

Subchapter IV Records and Reports

DOC 328.27 Presentence investigation report. (1) PURPOSE. The primary purpose of the presentence investigation report is to provide the sentencing court with accurate and relevant information upon which to base its sentencing decision. The report is also important in the correctional process. It is used for such things as determining levels of supervision, classification, program assignment, parole planning and decision making and in the overall correctional treatment of offenders.

(2) COURT ORDER. Upon order of the court, an agent shall prepare a presentence investigation report. It shall contain the information provided for under this section unless the court orders otherwise.

(3) CONTENT. (a) *Information.* A presentence report should contain the following information relating to the client:

1. Present offense
2. Prior criminal record
3. Prior correctional institution record
4. Victim's statement
5. Family information
6. Personal history

(b) *Summary and conclusions.* A presentence report shall contain information about the offender's present situation. If the agent concludes the offender has immediate problems that require attention this shall be stated together with the facts and reasons for the conclusion. Pending charges may be included in this subsection.

(c) *Agent's recommendation.* Unless the court otherwise directs, the agent's recommendation for sentencing shall be included in the presentence report. The conclusions of the agent shall be reported together with the reasons for the conclusions and the facts upon which they are based.

(d) *Tentative plan.* Unless waived by the supervisor, a tentative treatment plan addressing the specific conclusions arrived at under par. (b). The plan shall contain the offender's response,

unless the supervisor waives this requirement. The treatment plan shall include any recommendations about restitution.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

DOC 328.28 Modified presentence investigation report. (1) Upon order of the court, field staff may prepare a presentence investigation report that contains only the information that the court orders, notwithstanding s. DOC 328.27.

(2) Upon order of the court, department staff may present the report orally in open court or in the judge's chambers. Defense counsel, district attorney, and client may be present.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

DOC 328.29 Sources of information for presentence investigation report. (1) (a) All sources of information relied upon for an investigation and report shall be identified in writing in the presentence report unless otherwise ordered under s. DOC 328.28. All sources shall be informed of this requirement.

(b) No pledge of confidentiality may be given to any person by the agent in return for facts included in the report except in accordance with sub. (2).

(2) When a person who supplies information used in a presentence report may be in danger if identified, the agent should request that the judge conceal the identity of that person under s. 972.15 (3), Stats.

(3) Arrest records that did not lead to conviction and not confirmed by the client may not be used as a source of information in a presentence investigation and report, except that adjudications under s. 161.47, Stats., and ch. 54, Stats. (1975), misdemeanor expunction, and pending charges may be included.

(4) An attempt shall be made to interview the offender during the preparation of the report under ss. DOC 328.27 and 328.28.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. (3), renum. (4) and (5) to be (3) and (4), Register, April, 1986, No. 364, eff. 5-1-86.

DOC 328.30 Recordkeeping. (1) OLEORESIN OF CAPSICUM. For the purpose of this section, "oleoresin of capsicum" means the oleoresin extracted from fruits of plants of the genus capsicum. The oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) AUTHORIZED USE OF OLEORESIN OF CAPSICUM. An employe may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a), Stats., while on duty, only under the following conditions:

(a) After successfully completing a department approved training program for oleoresin of capsicum or, if applicable, after successfully updating training according to department policy and procedure.

(b) While acting in self-defense or defense of a third person, as allowed under ss. 941.26 (4) (c) 1. and 939.48, Stats.

(c) Toward an offender, another person or an animal.

(3) PROHIBITED USE. An employe may not use oleoresin of capsicum under any of the following:

(a) Against another employe, except for training purposes.

(b) Toward an offender merely because the offender refuses to follow orders.

(c) Merely to cause bodily harm or bodily discomfort.

(4) APPROVED PRODUCTS. An employe shall carry and use only products and delivery systems approved by the department.

(5) MEDICAL CARE. An employe shall immediately provide medical attention to the person exposed to oleoresin of capsicum.

(6) DOCUMENTATION. The employe using oleoresin of capsicum shall document its use according to department policy and procedure.

(7) FIREARMS OR OTHER WEAPONS. No employe may carry or use a firearm or other weapons while on duty, except as permitted under s. DOC 328.20 (2).

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. (1) (h), Register, April, 1986, No. 364, eff. 5-1-86; r. and recr., Register, April, 1997, No. 496, eff. 5-1-96.