Subsection (6) (f) indicates that the client should be talked to before the search. Sometimes, talking will elicit information helpful in determining whether to search.

What a staff member observed, information from a reliable source, prior seizures of evidence from the client, and the experience of the staff member are all also relevant to the decision to search.

This section is in substantial compliance with *ACA* standard 3151 concerning searches of probationers and parolees. See 15 *Cal. Adm. Code* 2511 that provides as a condition of probation for warrantless searches of a client and a client's residence or property, at any time, without a finding of reasonable grounds to believe that the client possesses contraband.

Note: HSS 328.22. The department interprets ss. 57.06 (3) and 973.10 (1), Stats., to mean that if the department alleges that any rule or condition of supervision has been violated by a client, the department may take physical custody of the client for the investigation of the alleged violation. The investigation of whether revocation is warranted includes an investigation of alternatives to revocation. While it is thought best to rely on law enforcement authorities' expertise in taking persons into custody, this is not always practical and staff may exercise their authority at these times.

There are times when an agent may be incapable of obtaining custody of a client, without a risk of harm to the agent, another person, or property. In these difficult cases, an agent must exercise good judgment in attempting to take custody of the client where no assistance from law enforcement authorities is feasible. The agent must strike a balance between the need for immediate custody, the danger posed, and the chances of success of obtaining custody without harm to anyone.

Subsection (1) provides that a client must be taken into custody when the client's alleged violation involves assaultive or dangerous conduct. In addition, sub. (2) provides that a client may be taken into custody whether or not an alleged violation involves assaultive or dangerous conduct, if this is desirable for disciplinary purposes, for an investigation, or to prevent a possible violation by the client.

See the note to ch. HSS 31.

Note: HSS 328.23. This section provides the procedures to be followed when a client is to be transported to court, detention facility, or returned to the state of Wisconsin. This may be an especially stressful time for the client and the likelihood that he or she will act out is increased. To minimize the dangers to the client, staff, and community, it is desirable to handcuff the client while being transported and 2 field staff shall escort the client whenever feasible. In addition, travel plans shall be designed to take into consideration the client's medical, psychological, and security needs.

Note: HSS 328.24. Clients on discretionary or mandatory release parole who have their supervision revoked under ch. HSS 31, are entitled to a forfeiture hearing under this section. The hearing is held to determine the amount of good time credit a client should forfeit, if any, as a result of a violation.

To ensure a fair, effective, and reasonably speedy revocation and forfeiture process which does not hinder the correctional process, several important features have been incorporated into this section.

First, an agent must contact the registrar from the institution which has the client's record prior to the case review to determine the amount of time available for forfeiture. The amount of time may significantly affect the client's decision to waive his or her rights to a final revocation hearing under ch. HSS 31, the client's interest in proposing alternatives to revocation, as well as the supervisory staff member and hearing examiner's decision to pursue revocation. Hence, the amount of good time available for forfeiture must be included on the notice of the hearing.

Second, an agent shall recommend that a specific amount of time be forfeited. For the reasons stated above, this should be included in the notice of the final revocation hearing and the forfeiture hearing and the client's record.

Third, a final hearing must be held immediately after a final revocation hearing, or within a reasonable time after a secretary's decision to revoke a client's parole, unless it is waived by the parolee. Since a factual basis for the loss of good time credit has been adequately and fairly explored at a final revocation hearing, or by the secretary, and since a final written decision to revoke must exist prior to an effective forfeiture decision, additional procedures are unncessary. *Sillman v. Schmidt*, 394 F Supp. 1370 (W.D. Wis. 1975).

Fourth, the decision to forfeit a certain amount of time must be consistent with the goals and objectives of supervision under this chapter. The department must exercise good judgment in determining how much good time, if any, the parolee will forfeit. *Putnam v. Mc-*

Cauley, 70 Wis. 2d 256 (1975). (The decision in *Putnam* is not retroactive. *State ex. rel. Renner v. DHSS*, 71 Wis. 2d 112 (1976).) Only that much time should be forfeited as will achieve the goals and purposes of revocation.

See HSS 328.25 for a discussion of tolled time.

Note: HSS 328.25. Time is only "tolled" for clients whom the department decides have violated terms of their probation or parole sufficiently to warrant revocation. A client who commits a violation loses credit for having served time on his or her sentence for the days between the date of the violation, as determined by the agent, and the date of a decision to reinstate. For example, a client who absconds for 6 months, and is returned to custody for an additional 3 months before a decision on revocation is rendered, is tolled 9 months. However, the time the client is in custody between the violation and the reinstatement decision is credited back to the client. The client in the example would get back 3 months of the 9 months tolled, for an effective tolled time of 6 months. This effective tolled time is then added to the end of the client's period of commitment to the department. The client in the example would remain under the department's custody for 6 months longer than the court initially ordered. See ss. 57.072 and 973.155, Stats., for further explanation.

Section 57.072, Stats., as well as 54.13, Stats. (1975), provide for a tolling of time on a client's probation or parole during the period of time between the effective date of a client's violation and the date that the client's supervision was reinstated or revoked.

The tolling statute is in the nature of a credit statute. Tolled time is time not credited against a client's sentence. Before the client may be deprived of "credit" toward the succesful completion of conditional release for the period between the commission of a violation and the time the department decides the disposition, the department must afford the client due process hearings and the department must enter a final determination regarding the alleged violation. *Locklear v.State*, 87 Wis. 2d 392 (Ct. App. 1978).

Therefore, time may only be officially tolled by a hearing examiner or the secretary.

S. 54.13, Stats. (1975), requires the supervisory staff member conducting the revocation case review to determine the period of tolled time. For these clients sentenced under ch. 54, Stats. (1975), the hearing examiner does not make the decision on tolled time.

Note: HSS 328.26. Reinstatement is an alternative to continuing a client's supervision, or revocation of that client's supervision, after a finding or admission that the client violated the rules or conditions of supervision.

Subsections (2) and (3) provide the only procedures for reinstatement. A client who has been given notice of revocation proceedings under ch. HSS 31 may be reinstated by the hearing examiner or secretary. Reinstatement in lieu of any pending revocation proceedings is also possible. But here, it is important to provide the client wishing to admit committing the violation with complete information regarding the consequences of such an action, e.g., the exact period of time that will be tolled and may be forfeited if reinstatement is ordered. It is only when the client is aware of the consequences of an admission and request for reinstatement that it may be knowingly and intelligently given. In addition, an admission and request must not be coerced. Only voluntary admissions and requests for reinstatement may be accepted.

The secretary may make the final decision regarding reinstatement to provide for a uniformity and fairness in decision making.

See s. HSS 328.25 regarding tolled time.

Note: HSS 328.27. The American Bar Association's *Standards Relating to Probation* (Approved Draft, 1970), standard 2.2 and commentary provide the following about the presentence report.

The primary purpose of the presentence report is to provide the sentencing court with succinct and precise information upon which to base a rational sentencing decision. Potential use of the report by other agencies in the correctional process should be recognized as a factor in determining the content and length of the report, but should be subordinated to its primary purpose. Where the presentence investigation discloses information useful to other correctional agencies, methods should be developed to assure that these data are made available for their use.

The original function of presentence reports was solely to assist the courts in resolving the issue of whether to employ probation in a given case. Over the years, however, many new and important uses for the information gathered by the report have been found. The total use to which presentence reports are now put encompasses the entire range of correctional programs.

Even in cases where probation will not be the disposition, for example, the presentence report assists the court in determining the appropriate type of sentence and, if it is to be impris-

onment, its duration. It is then used by prison officials in many instances, primarily at the early stages of the development of a sound institutional program. It may also prove helpful to prisons in arranging visits, checking letters, and sometimes in maintaining family ties and meeting family difficulties in the community. Its utility continues to the parole decision and beyond, where it is employed along with other materials to assist in the parole decision itself and is used by the parole officer to develop a proper supervisory role. Information in the report may also, of course, serve a useful function as a source of pertinent information for systematic research.

This is directly applicable to the report in Wisconsin. The importance of the report hardly needs emphasis, in the light of the uses to which it is put.

Subsection (2) requires an agent to prepare a presentence report under s. 972.15, Stats. Typically, this is done after conviction, but the court can order and approve a presentence report prior to conviction where there is a guilty plea. *Rosado v. State*, 70 Wis. 2d 280 (1975). The agent may also provide a presentence for nonconviction cases under s. 161.47, Stats. HSS 328.28 provides for a modified presentence investigation report which is a short form report.

Subsection (2) does not specify the particular agent who must prepare the report. The assignment of agents is an internal management responsibility of the department. In many counties the agent who prepares the report is responsible for the supervision of the client on parole or probation.

Subsection (3) requires background information relating to the offense charged to be included in the presentence report. This is common practice throughout the United States. Readins are also listed in the report. It is essential that these be identified specifically for several reasons. It is essential that the offender admit only crimes that were actually committed. No one is helped if the information is inaccurate or incomplete. Otherwise, police may rely on wrong information and terminate investigation of crimes that have not actually been solved. The offender may later be charged with a crime thought to have been readin, unless it is adequately identified and courts and correctional officials may be misled by inaccurate lists of readins.

The source of this information may be the victim, the offender, or any other appropriate source. Common sources of information other than the victim and the offender are accomplices, witnesses, court transcript, criminal complaint and police reports. All sources of information must be identified under HSS 328.29, but the agent cannot promise confidentiality because a presentence is a court record. Under s. 972.15 (3), Stats., however, the judge may conceal the identity of any person.

The agent preparing the report under sub. (3) should rely on factual data, rather than opinions or perceptions. Many sources, including the victim and the offender, may state their own conclusions. The agent's job is to identify the facts upon which a source's conclusions are based. Facts aid the judge, who must ultimately decide their relevance, and the agent, who decides his or her opinion of the appropriate disposition of the offender under sub. (3) (b).

The correctional record of the offender is relevent to the purposes of the presentence report. Subsection (3) requires this. Again, the agent should try to provide as much factual background as possible.

Also under sub. (3), the agent should obtain information about the offender's family. The American Bar Association commented that this and information about the offender's environment are most important. American Bar Association's Project on Minimum Standard for Criminal Justice, *Standards Relating to Probation* (Approved Draft 1970), standard 2.3 and commentary. This subsection combines factual data with opinions from the family relating to the offender and possible facts influencing the offender's involvement in crime. These opinions should not be treated as professional opinions, but are beneficial in gaining an understanding of the offender. This will aid the judge, the agent and the division in assessing the offender's needs in future decisions. The offender is given the opportunity to express an opinion under HSS 328.29.

Subsection (3) (b) permits the agent to summarize, evaluate, and report conclusions the agent has about the subject of the presentence investigation and report. This summary should include a brief summary of the present situation, a risk and need assessment and agent's impressions, the agent's recommendation for sentencing, and the agent's recommendation for a tentative treatment plan.

Under sub. (3) (c), the agent's recommendation for disposition is required. All that is intended is a simple, straightforward statement of the agent's recommendation. For example, the agent may recommend probation with conditions, probation with work release, confinement, fine, a Huber sentence or a combination of these.

Subsection (3) (d) requires a treatment plan with input from the offender. When confinement is recommended, the plan should still include a general treatment recommendation con-

sistent with the resources available in the institutions. If probation is recommended, the plan should state the proposed residence, occupation, means of support, restitution payments, and other important elements of the plan.

Note: HSS 328.28. This section permits staff to prepare a modified presentence investigation report in accordance with an order of the court. Although the division may compile supplemental information for its own records, the presentence report is prepared under order of the court. Therefore, the division must supply the court with the information it lawfully orders. Examples of where a modified presentence report may be prepared are cases where an offender has been convicted for the second time within a very short period of time. In such cases the court may feel that only minimal additional information is required. Another example arises frequently in cases where the offense is obviously not severe enough to warrant incarceration or a high level of supervision on probation.

Subsection (2) permits staff to present a report orally in open court or in the judges chambers. The justification for an oral report is based upon an interpretation of s. 972.15, Stats., that the division must respond to a lawful court order. Such orders are routinely issued in some counties. Again, though the division may compile supplemental information for its own purposes under s. HSS 307.21, the information reported to the court must be in the scope and manner the court directs. If the report is presented orally in chambers out of the presence of the offender, no record of the presentence investigation report exists.

It is sometimes desirable to have a modified report. It is obviously unrealistic to attempt to force the presentence report into a standard mold suitable for all cases. The depth of analysis and information which is required for an intelligent disposition of one offender simply is not going to be required for another; a two-week investigation and a detailed canvassing of community resources will be both unnecessary and inappropriate for many offenders, while at the same time essential for others.

For many cases, particularly misdemeanors and other less serious offenses, information produced by a brief investigation will not only be sufficient for an intelligent disposition, but will significantly increase the information on which most courts must now act. Some cases, to be sure, will immediately reveal themselves as inappropriate for such brief and superficial treatment; the difficulties of other cases will emerge in the early stages of investigation. The point, in any event, is that a sound system of initial screening - perhaps coupled with participation by the court in the selection of the cases which deserve more intensive treatment - can substantially increase the efficiency of the probation service and its capacity to perform the essential function of aiding the court at the sentencing stage.

American Bar Association's Project on Minimum Standards for Criminal Justice, *Standards Relating to Probation* (Approved Draft 1970), standard 2.3 and commentary.

Note: HSS 328.29. This section restates the fact that the presentence investigation and report identifies sources of information. Since only the court has the power to conceal identity, this section prohibits division staff from giving a pledge of confidentiality. Where, however, important information would be given only under a pledge of confidentiality, it may be included in an admissions investigation and report submitted only to the department. Although its use in court is forbidden, it may be beneficial to the department for use in correctional treatment. Disclosure of such information is forbidden under HSS 307.50.

Note: HSS 328.30. HSS 328.30 discusses the types of records which are necessary to ensure meaningful, individualized care and treatment for clients. The recordkeeping system required under this section should help assure that field staff will have complete and accurate records for all clients under supervision. The records required are those which are essential for supervision planning which are consistent with a client's needs, for assessing the client's progress in terms of the plan, for signaling when changes in the plan may be beneficial, and for providing adequate information and direction to agents, supervisors, and other staff who may in the future assume responsibility for a client.

Subsection (1) enumerates the various kinds of entries that should be made by agents in a client's case record. Sub. (2)-(7) describe the specific types of records and information required in the entries. Most are self-explanatory. See the bureau of community services' field manual, for further direction to agents in the preparation of these specific entries.