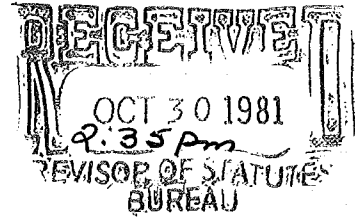


HSS 328

CERTIFICATE



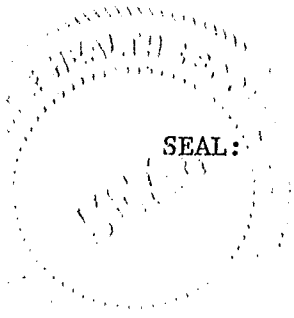
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to field supervision of adult offenders were duly approved and adopted by this department on October 30, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 30th day of October, A.D. 1981.



Donald E. Percy, Secretary
Department of Health and Social Services

2-1-82

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

Relating to rules concerning field supervision of adult offenders.

Analysis prepared by the Department of Health and Social Services:

These rules govern community and facility-based supervision, services, and programs for adult offenders who are on parole or probation. Further analysis is contained in the notes following sections of the rules.

Pursuant to the authority vested in the Department of Health and Social Services by section 227.014(2), Stats., the Department adopts rules interpreting ss. 46.03(6), 53.11, and 53.19, Stats., Ch. 57, Stats., ss. 161.47, 972.15, 973.09, 973.10, 975.08, 975.10 to 975.12, Stats., and Ch. 54, 1975 Stats., as follows:

Chapter 323 of the Wisconsin Administrative Code is adopted to read:

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF CORRECTIONS

Administrative Rules

Adult Field Supervision
Chapter HSS 328

October, 1981

Adult Field Supervision
Chapter HSS 328

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SUBCHAPTER I - GENERAL PROVISIONS

HSS 328.01 PURPOSE.

The purposes of this chapter are to provide rules for community and facility-based supervision, services, and programs for clients under control in order to assure public safety, promote social reintegration, reduce repetition of crime and carry out the statutory directives under s. 46.001, Stats. The following specific goals and objectives are relevant towards fulfillment of these purposes:

- (1) To supervise and control offenders to the extent necessary to meet public, staff, and offender safety responsibilities;
- (2) To provide opportunities for obtaining education, training, work experience, coping skills, and other programs and services to enable offenders to live constructive lives;
- (3) To provide access to community-based programs for probationers and parolees for whom such programs are desirable and necessary;
- (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 public and private agencies in activities for the purpose of prevention of crime and to provide alternatives to institutionalization; and

(6) To protect the health and rights of all persons involved in the division's programs and activities.

NOTE: Wisconsin corrections' statements of purpose and goals regarding community supervision affirm that all planning and decision-making are consistent with all laws relevant to the state's responsibility for the care and supervision of clients under its control and supervision.

S. 46.001, Stats., sets forth the broad purposes of the department. Several other statutory provisions set forth the department's specific responsibilities for the supervision of clients under its control. Those provisions are noted in the following sections, and are consistent with the purposes and goals under this section.

This section is in accord with the American Correctional Association's Manual of Standards for Adult Probation and Parole Field Services (1977) (hereinafter "ACA"), standard 3112.

6-8-28/412

HSS 328.02 APPLICABILITY.

This chapter applies to the department and all adult clients under its custody and supervision for correctional purposes. It implements ss. 46.001, 46.03, 46.036, 53.11, 53.14, 53.19, 53.31, 57.06(3), 57.072, 57.075, 57.12, 57.13, 57.135, 57.14, 161.47, 972.15, 973.04, 973.06, 973.08, 973.09, 973.10, 973.155, 975.08, 975.10, 975.11, 975.12, Stats., and ss. 54.01, 54.03-54.07, 54.10-54.11, 54.13, 54.15 and 54.16, 1975 Stats.

6-8-28/412

HSS 328.03 DEFINITIONS.

In this chapter:

- (1) "Absconding" means the failure of a client to make himself or herself available as directed by the agent.
- (2) "Administrator" means the administrator of the division or his or her designee.
- (3) "Agent" means that employee of the bureau of community corrections, division of corrections, department of health and social services, who may be assigned the responsibilities under this chapter.
- (4) "Bureau of community corrections" or "bureau" means the bureau of community corrections, division of corrections, department of health and social services.
- (5) "Client" means that person who is committed to the custody of the department.
- (6) "Collateral" means a family member, friend, employer, teacher, or any person who has contact with or information about a client.
- (7) "Commitment term" means that period of time during which the client is under the custody and supervision of the department.

- (8) "Compact administrator" means that person in Wisconsin or in a state other than Wisconsin who has been assigned the responsibilities under this chapter, or his or her designee.
- (9) "Compact coordinator" means that employee of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or his or her designee.
- (10) "Compact specialist" means an employee of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or designees.
- (11) "Conditions" means specific regulations imposed on the client by the court or department.
- (12) "Contacts" means those communications between an agent and a client or collateral.
- (13) "Department" means the department of health and social services.
- (14) "Director of the bureau of community corrections " or "director" means the director of the bureau.
- (15) "Discharge" means the successful completion of the term of supervision by a client.

- (16) "Division" means the division of corrections, department of health and social services.
- (17) "Extension" means the continuation of supervision of a client beyond the expiration of an order committing the client to the custody and supervision of the department.
- (18) "Field staff" or "staff" means the professional and paraprofessional workers of the bureau assigned the responsibility for the control, supervision, and provision of program services to clients.
- (19) "Field supervision" or "supervision" means the control and supervision of clients exercised by field staff.
- (20) "Interstate compact" or "uniform act for out-of-state supervision" or "compact" means an agreement entered into by Wisconsin and another state in the United States on territory of the United States, which provides the means for supervising clients between states as authorized under ss. 57.13, 57.135, and 57.14, Stats.
- (21) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions, for example, LSD, cocaine, marijuana, alcohol, or any controlled substance as defined in ch. 161, Stats.
- (22) "Physical custody" means actual custody of the person in the absence of a court order granting custody to the physical custodian.

- (23) "Referral" means the introduction of a client to an agency or service to obtain necessary or desired assistance.
- (24) "Region" means that subunit of the bureau of community corrections, composed of one or more counties.
- (25) "Regional chief" means that employee of the bureau of community corrections, division of corrections, department of health and social services responsible for the administration of a region or designee.
- (26) "Reporting" means that required contact between the agent and client determined by the rules or conditions of supervision.
- (27) "Revocation" means the removal of a client from probation or parole supervision in accordance with ch. HSS 31, Wis. Adm. Code.
- (28) "Rules" means those written departmental regulations applicable to a specific client under supervision.
- (29) "Secretary" means the secretary of the department of health and social services or his or her designee.
- (30) "Supervisor" means that employee of the bureau of community corrections, division of corrections, department of health and social services, responsible for the administration of field unit activities.
- (31) "Term" means the rules, regulations, and conditions of supervision.

(32) "TIME system" means the state's information system for communicating apprehension requests or arrest warrants to all appropriate law enforcement agencies.

(33) "Transfer" means the change of a client assignment to a new agent in accordance with this chapter.

(34) "Waiver" means the written relinquishment of known rights by a client.

6-8-28/412

SUBCHAPTER II - THE OFFENDER UNDER SUPERVISION.

HSS 328.04 FIELD SUPERVISION.

- (1) Parole and probation supervision is a mechanism of control and an attempt to guide offenders into socially appropriate ways of living. Field staff are to provide individualized supervision of clients in a manner consistent with the goals and objectives of this chapter. Specifically, field staff are to attempt to help the client be successfully reassimilated into the community, help the client adjust to and cope with community living, reduce crime, and protect the public.
- (2) An agent shall abide by the department's administrative rules. An agent's responsibilities upon receiving a client for control and supervision shall include:
 - (a) Obtaining information necessary for appropriate supervision and control of the client;
 - (b) Evaluating the client's needs and security risk and classify the client's supervision as maximum, medium, or minimum in accordance with sub. (4).
 - (c) Determine the short-term and long-term goals and objectives of the client's overall supervision consistent with court order or parole board assessment;

- (d) Establishing written rules of supervision that are supplemental to existing court-imposed or parole board conditions, and providing the client with a copy of them;
- (e) Informing the client of the possible consequences of not abiding by the rules and conditions of supervision;
- (f) Explaining the conditions and rules of supervision and the reporting requirements immediately upon reception to field supervision in a manner the client can understand;
- (g) Informing the client of the client complaint process under s. HSS 328.11;
- (h) Assisting the court in investigating the facts surrounding victim's loss to determine the amount of restitution owed by the client and recommending a reasonable payment schedule in accordance with s. HSS 328.07 when ordered by the court;
- (i) Providing individualized counseling designed to foster growth and development of the client as necessary;
- (j) Informing the client of local law enforcement registration requirements applicable to the client;

- (k) Monitoring the client's compliance with the conditions and rules of supervision to insure appropriate control of the client and the protection of the public;
- (l) Periodically reassessing the client's needs and risks, and reevaluating the client's supervision in light of meeting those needs;
- (m) Making appropriate referrals to other agencies for client services;
- (n) Maintaining complete and accurate case records for each client under supervision in accordance with s. HSS 328.30 and ch. HSS 307, Wis. Adm. Code.
- (o) Monitoring the client's progress where services are provided by another agency and evaluating the need for continuation of the services;
- (p) Recommending interstate compact services, transfer, extension, discharge, revocation, and any other appropriate actions under this chapter or otherwise, for the necessary care and control of the client and the protection of the public consistent with the purposes and goals under this chapter, and other administrative rules.

- (q) Conducting presentence investigations as requested by the court and preparing reports in accordance with ss. HSS 328.27 and 328.28;
- (r) Supervising persons committed under ss. 971.14, 971.17, 975.06, Stats., who are released in accordance with the agreement between the division and the division of community services;
- (s) Conducting periodic institution contacts with incarcerated offenders when necessary;
- (t) Reporting child abuse cases under s. 48.09 Stats., to the appropriate authority;
- (u) Reporting to a supervisor as directed on the status of all clients under supervision;
- (v) Maintaining an effective and cooperative working relationship with public and private client service agencies;
- (w) Reporting all violations of the criminal law by clients to a supervisor or appropriate law enforcement authority; and
- (x) Preparing parole plans in accordance with s. HSS 328.041.

(3) When probation or parole begins, an agent shall meet with a client to review or develop written rules and specific conditions of the client's supervision, or both. These rules require that the client shall:

- (a) Avoid all conduct which is in violation of state statute, municipal or county ordinances or which is not in the best interest of the public welfare or his or her rehabilitation;
- (b) Report all arrests or police contacts to an agent within 72 hours;
- (c) Make every effort to accept the opportunities and counseling offered by supervision;
- (d) Inform the agent of his or her whereabouts and activities as directed;
- (e) Submit a written monthly report and any other such relevant information as may be required;
- (f) Secure advance approval from an agent for a change of residence or employment, or in the case of emergency, notify an agent of the change within 72 hours;
- (g) Obtain the advance permission of an agent and a travel permit before leaving the state;

- (h) Obtain advance permission from an agent to purchase, trade, sell, or operate a motor vehicle;
 - (i) Secure advance approval from an agent to borrow money or purchase on credit;
 - (j) Purchasing, possessing, owning, or carrying any firearm or any other weapon only with the advance approval of an agent consistent with applicable statutes and administrative rules;
 - (k) Make himself or herself available for searches or tests ordered by the agent including but not limited to urinalysis, breathalyzer, and blood samples or search of residence or any property under his or her control;
 - (l) Follow any specific rules that may be issued by an agent to achieve the goals and objectives of this chapter. The rules may be modified at any time as appropriate.
- (4) Monitoring of a client by a representative of the department shall be done through one of three levels of supervision: maximum, medium, or minimum unless modified by the bureau director.
- (a) Maximum. Maximum supervision shall require a minimum of one face to face contact with the client by a representative of the department every 14 days. Home visits shall be made at least once every 30 days unless this requirement is waived by a

supervisor in writing, and collateral contacts shall be made by the agent as deemed appropriate. The client shall submit a monthly report which includes a verification of the client's residence and employment.

- (b) Medium. Medium supervision shall require a minimum of at least one face to face contact with the client by a representative of the department every 30 days. Home visits shall be made at least once every 60 days unless this requirement is waived by a supervisor and collateral contacts by the agent shall be made as deemed appropriate. The client shall submit a verification of the client's residence and employment as required.
- (c) Minimum. Minimum supervision shall require a minimum of one face to face contact with the client by a representative of the department every 90 days. Home visits by the agent shall be made as deemed appropriate. The client shall submit a periodic report, and shall verify his or her residence and employment once every month. Monthly reports may be mailed rather than submitted in person if a supervisor approves.
- (d) Reassessment. At any time, but no more than 6 months since the last reassessment, the agent shall determine whether the client shall be placed in a level of supervision consistent with the needs and risks of the client. The determination shall be based only upon the agent's assessment of the appropriate supervision

necessary to provide for the proper care and control of the client and the protection of the public subject to the written approval of a supervisor.

- (5) If a client fails to comply with the written conditions or rules of the his or her supervision, the following may result: modification of conditions or rules of supervision, extension, or revocation.

NOTE: The Wisconsin Statutes, ss. 46.001, 57.06, and 973.10, Stats., create departmental responsibility for the supervision, treatment, and control of clients that meets the needs of the public and each client under the supervision of the department. After a client has been placed on supervision, the responsibility for the client's probation or parole supervision, treatment, and control rests primarily with an agent.

This section states the agent's general and specific responsibilities and provides a means of satisfying them. Stated simply, an agent's responsibility is to help the client to live in a socially acceptable way and to protect the public. This section has been structured to provide sufficient flexibility to allow an agent to treat a client on an individualized basis, applying appropriate rewards and sanctions on the basis of a client's conduct. This section is designed to eliminate the arbitrary exercise of agent discretion while providing for sufficient flexibility to make necessary decisions so as not to tie his or her hands.

Subsection (1) delegates the responsibility for supervision to the field staff. To provide for uniformity of treatment for a client throughout a commitment term, supervision shall be consistent with the overall goals and objectives of supervision under this chapter. By providing for such uniformity, meaningful treatment may be rendered to the client.

Subsection (2) states the general responsibilities of the agent. This subsection is meant to complement the duties of the agent under this chapter and other administrative rules. Subsections (2)(a)-(d) stress important responsibilities since the gathering and analysis of information are crucial to providing necessary and meaningful supervision to clients.

Subsection (2)(e) provides for written rules of supervision to enable the department, through the agent, to provide for appropriate supervision, treatment, and control of the client. Subsection (3) notes the permissible subjects for the rules of supervision which should supplement any court imposed conditions. Only those rules necessary to provide for the necessary supervision, treatment, and control of the client and the protection of the public should be imposed.

The explanation under subsection (2)(g) is necessary to avoid unnecessary misunderstandings and possible unintended infractions of the conditions or rules.

Subsection (2)(1) requires the agent to monitor a client's compliance with the terms of supervision. Monitoring provides a means of detecting violation of the

terms but also provides a means of caring for and controlling the client. The forms of monitoring provide for minimum numbers of required contacts to allow the agent to supervise, counsel, and reassess the needs of each client on an individual basis. Through this, the rules of supervision may be reviewed on an as-needed basis and adjusted in accordance with the client's conduct.

The requirement for quarterly reports under subsection (2)(p) may provide the agent with valuable information that he or she may use to best care for and treat the client.

Subsection (4) describes three levels of monitoring or supervising clients. Perhaps, though, the most valuable level of monitoring or supervising, is where the agent makes contact with the client, the client's caretaker (if any), or collateral whenever he or she feels the contact would be in the best interests of the client or is needed for the protection of society and to achieve the goals and objectives of supervision. This provides for the individualized supervision which may be crucial to provide meaningful supervision, treatment, and control for clients.

Subsection (5) notes that a client's failure to comply with the rules or conditions of the client's supervision may result in a modification of the terms, extension, revocation or an alternative to revocation. Problems or violations not necessitating serious action should be resolved between the client and agent and reported to a supervisor. See ch. HSS 31, Wis. Adm. Code.

For case law regarding rules of supervision see: Edwards v. State, 74 Wis. 2d 79 (1976) and Ramaker v. State, 73 Wis. 2d 563 (1976) regarding companions; Gibson v. DHSS, 86 Wis. 2d 517 (1978) regarding consumption of alcohol; and State v. Garner, 54 Wis. 2d 100 (1972) adopting the American Bar Association's Standards Relating to Probation (Approved Draft, 1970), standard 3.2, emphasizing that for conditions of supervision to be effective, they must meet the needs of the individual client.

This section is in substantial compliance with ACA, standards 3112, 3114-3115, 3117-3121, 3123-3126, 3128-3129, 3138-3140, 3145 and 3153. It is also in accord with the American Bar Association's Standards Relating to Probation (Approved Draft, 1970), standards 3.1, 3.2, and 3.3.

6-8-28/412

HSS 328.041 PREPAROLE PLANNING.

The plan should be prepared by the inmate and institution staff. After the inmate and institution have prepared a proposed preparole plan, the agent should investigate the plan, comment as to its appropriateness, and suggest modifications if necessary. The results of the investigation should be reported to the institution promptly.

NOTE: Preparole planning is important for parole determination and adjustment on parole. The plan should be prepared when parole is imminent. The failure to prepare one may delay parole. This should be avoided.

The plan provides for the offender's activities upon release. It should be as specific as possible. Typically, a proposal is made which the agent investigates and modifies, if modification is necessary.

6-8-28/412

HSS 328.05 FUNDS, PROPERTY, AND LOANS.

- (1) An agent may assist in the management of the financial resources of a client. When an agent manages money under this section, the agent shall specify the reason the client's money is being managed and the facts. This may be done only through a bank account in the client's name administered by the division in accordance with this section if:
 - (a) The client requests it; or
 - (b) The agent believes that management is necessary to control the client's funds and to teach mature money management so that the client may develop skills for a more successful reassimilation into the community upon discharge; or
 - (c) Reimbursement is necessary for the cost of purchased services provided to the client by the department; or
 - (d) The agent believes that management is necessary to ensure compliance with the client's existing financial obligations.
- (2) For the purposes of this section, "financial resources" of a client means any special benefits the client is eligible for, e.g., benefits from the social security or veteran's administration or railroad retirement fund, any income earned by the client, any money in a savings or checking account controlled by the client, any unearned income given to the client, e.g., from family or friends, and any

income the client receives through inheritances, grants, or income tax refund.

- (3) An agent may require the client to provide financial information to assist in the management of the client's financial resources, including but not limited to:
- (a) The amount and source of all the gross annual earned and unearned income of the client;
 - (b) The names of the people in the client's household dependent upon the income under par. (a);
 - (c) The names and addresses of all third party payors to, or on behalf of, the client such as insurance companies or medical assistance programs, and relevant policyholders and account claim numbers;
 - (d) The work-related expenses of the client;
 - (e) Any outstanding court obligations or judgments against the client;
 - (f) The social security number of the client, and any other claim numbers for special benefits for which the client may be eligible; and
 - (g) Federal or state income tax returns.

- (4) All financial resources of a client managed by an agent shall be deposited directly into the client's account upon receipt.
- (5) An agent shall maintain a personal receipt book, provided by the division, containing sequentially numbered receipt forms. If an agent receives money (cash, a check, or money order) on behalf of a client from anyone, the agent shall immediately issue that person a receipt indicating the date the money was received, the name of the person, the name of the client and the amount of money received. No temporary receipts shall be issued and all receipts voided shall be marked "VOID" and retained in proper sequence in the receipt book. Checks or money orders paid to the order of the agent may be accepted by the agent and shall be restrictedly endorsed to the order of the department. If the agent receives cash on behalf of a client, it shall be converted to a money order payable to the department within one working day of its receipt. Any employee of the bureau who is assigned a receipt book shall comply with this subsection.
- (6) An agent shall transmit all collections received on behalf of clients to the division cashier for deposit into the client's account at the close of the work week within which it was collected. Any employee of the bureau who is assigned a receipt book shall comply with this subsection.
- (7) An agent shall maintain a personal remittance sheet book and sequentially numbered remittance sheet forms. When an agent transmits collections received on behalf of clients to the division cashier, a remittance sheet stating the issued receipt numbers, the dates the

money was received, the names of the clients who are to have the money credited to an account, and the amount of money credited to each client's account, shall accompany the collections. All voided receipts shall be recorded on the remittance sheet. The agent shall not submit personal checks drawn on his or her account. Any employee of the bureau who is assigned a receipt book shall maintain remittance sheets and shall comply with this subsection.

- (8) An agent's supervisor shall audit the agent's management of a client's financial resources semianually, at the termination or upon transfer of his or her employment as an agent (or bureau employee), and when a receipt book is filled.

- (9) An agent shall file a disbursement order with the division cashier drawn on the client's savings account when payments towards the client's bills are due or when the client, with the agent's permission, wishes to withdraw money. A disbursement order shall state the name of the person or agency to receive the money, the amount of money to be disbursed, the purpose for the disbursement, and shall include an itemized account of how the money is to be spent (if applicable). No money shall be disbursed unless the order is signed by the client and the agent. A disbursement order requesting a disbursement of \$250.00 or more shall not be honored by the division cashier unless it contains the signature of the agent's supervisor. A disbursement order may be filed with the division cashier authorizing the payment of a client's bills, e.g., rent, on a routine basis.

- (10) An agent and the division cashier shall maintain accurate and complete itemized records of all disbursements from or deposits to a client's account. An agent shall record this information on a ledger sheet contained in the client's record. The division cashier shall maintain the official division record.
- (11) An agent may seek a wage assignment against a client if it is necessary to assure timely collection of restitution and court costs and to control the client's earnings.
- (12) All funds in a client's savings account administered by the division cashier shall be disbursed to the client through the agent upon the client's discharge.
- (13) The division may establish a fund to provide emergency loans to clients for the purchase of basic living necessities such as clothing, transportation, food, or rent, when all local resources to meet the client's needs have been exhausted. A client may request a loan at any time. An emergency loan shall not exceed that amount determined by the law and shall not be extended unless an agent's supervisor approves of the loan in writing. The amount of the loan, a reasonable repayment schedule, and the client and agent's signatures must be included on a loan agreement before the money may be disbursed to the client. The repayment schedule must be explained to the client in accordance with the client's needs in advance of obtaining the client's signature on the loan agreement.

- (14) One year after a client absconds, any funds remaining in the client's savings account administered by the division may be transferred to the fund under sub. (13) and used to extend loans to clients. Within 5 years after such a transfer, any person upon proof of ownership may have such funds repaid to them in accordance with the law.
- (15) Agents shall not receive or store any property for a client except as provided under s. HSS 328.16.

NOTE: Experience teaches that it may be advisable to have an agent who is responsible for a client under supervision manage that client's financial resources. A client residing in a family home as well as a client in alternate residential care may benefit from the example of an agent's mature money management. Client's may acquire the necessary skills of financial management illustrated by the agent which may assist them in successful reassimilation into the community upon discharge.

The agent's decision to manage a client's funds is discretionary. If the client has outstanding court obligations, or if the client must reimburse the department for purchase of services, agent management of funds may be advisable. The agent may manage a client's funds if requested to do so by the client, or if the agent believes that control of the client's funds is necessary due to the client's inability to handle money properly. An agent may decide to manage all or part of a client's financial resources. The reasonable needs of a client should dictate whether agent money management is necessary.

In order to protect the important interests of the client, agent, and department several safeguards ensuring proper money management have been incorporated into

this section. Subsection (1) provides that an agent may manage client funds only through an account administered by the division. Subsections (4)-(14) set forth procedures to be followed from the time the agent or division receives funds on behalf of a client to the time the client is discharged and receives the balance of funds remaining in his/her division account.

Subsection (2) defines what is meant by the financial resources of a client. Basically, any funds accessible to the client and any special benefits such as those from the social security or veterans' administration constitute a client's resources.

Subsection (3) provides the agent with the authority to obtain important financial information from the client for use in managing the client's resources. Such information may be helpful in disclosing the client's eligibility for benefits not previously received, such as social security, medical assistance, or welfare benefits, that may prove valuable to the client and his or her family.

Subsections (4)-(15) are straightforward in detailing the agent (or other bureau employee) and division responsibilities upon receipt of money on behalf of clients. A few comments may be helpful, however. To avoid confusion regarding misappropriation of client funds, all funds received by agents or the division must be strictly accounted for, which means that receipts must be issued properly, cash should be converted to money orders promptly after receipt, funds should be transmitted to the division within a reasonable period of time after receipt in an accountable fashion, and withdrawals from the account must be preceded by staff approval and if applicable, itemization of how the funds are to be spent.

Provisions have been included in this section for audits of accounts managed by agents (or other bureau employee), for extending loans to clients (in accordance with s. 57.075, Stats.), for prohibiting joint accounts, for disbursement of funds or property after a client has absconded (in accordance with s. 46.07, Stats.), and for disbursement of funds to the client upon discharge. All of the provisions under this section seek to prevent misuse of the client's funds and protect the agent, employee, and division from undue liability for fund management. It should be emphasized that teaching a client sound money management techniques is an important endeavor and the agent cannot reasonably be expected to undertake this challenge without reasonable assurances that his or her interests are adequately considered and provided for. This section seeks to provide such assurances and enables the agent to concentrate on illustrating skills which are essential for successful community living.

This section is in substantial accord with ACA, standard 3132.

See s. HSS 328.07, Wis. Adm. Code, regarding restitution.

6-8-28/5Htp

HSS 328.06 TEMPORARY TRAVEL.

(1) A client may request and receive authorization to travel out of the state of Wisconsin.

(a) Agent approval is required for a time not to exceed 15 days to:

1. Seek employment;
2. Seek educational or vocational opportunities;
3. Seek future living accommodations;
4. Go on vacation;
5. Seek medical advice or care;
6. Satisfy special job requirements; or
7. Do other things consistent with the purposes and goals under this chapter; or

(b) Supervisory approval is required for a time exceeding 15 days to:

1. Satisfy day-to-day job requirements;
2. Obtain ongoing vocational or educational training;
3. Obtain ongoing medical treatment;
4. Visit another state prior to acceptance by that state under the terms of the uniform act for out-of-state supervision;
or
5. Do other things consistent with the purposes and goals under this chapter.

(2) An authorization under sub. (1) may specify that the client:

(a) Shall only be permitted to leave the state for specific time periods each day for 15 days or longer, for example, during working hours;

(b) Shall be responsible for the costs incurred by the travel;

(c) Shall report according to specific terms;

(d) Shall be required to return to the state upon his or her agent's request at any time the client is out of state; and

(e) Shall carry a travel permit.

(3) If the agent and supervisor disagree as to whether authorization to travel should be granted, the agent may appeal directly to the regional chief for resolution of the matter. The regional chief shall review the recommendation and client's record and may discuss the matter with the agent, supervisor, and client and shall decide whether to authorize the travel.

(4) An authorization to travel approved pursuant to sub. (1) shall be in writing, shall state the reasons for its authorization, and shall state any additional specific rules of supervision in effect while the client is out of state. After an explanation of the additional rules of supervision is given to the client, the client's signature shall be

obtained on the travel permit and a copy shall be given to the client prior to departure.

- (5) Any additional rules of supervision in effect while the client is out of state shall supplement the existing conditions and rules of supervision and a violation of them may result in a modification or revocation of the client's supervision in accordance with this chapter or ch. HSS 31, Wis. Adm. Code, or both.
- (6) A supervisor may modify authorization to travel if the client receives written notification of the change prior to its effective date.
- (7) Records relevant to out-of-state travel requests and authorizations shall be maintained in the client's record.
- (8) The state visited by a client while on authorized travel shall be notified prior to the client's presence in that state.
- (9) Authorization to travel to foreign countries shall not be granted to clients.

NOTE: HSS 328.06 provides for authorized out-of-state travel by clients. Only those clients convicted of an offense and eligible for interstate travel under the uniform act for out-of-state parolee supervision may be eligible for travel authorization. This does not apply to nonconviction cases. Clients on temporary travel are subject to return to Wisconsin upon demand.

Authorization is permitted for two types of travel. One authorizes a client to leave the state for a maximum of 15 days. Typically, this would be authorized

to allow a client to visit relatives during holidays, attend a funeral, or seek educational or vocational opportunities. Another authorizes a client to leave the state for period in excess of 15 days. This type of travel authorization may be granted to include a "blanket permit." A blanket permit is most often used in the border counties of Wisconsin where clients reside in Wisconsin but may be employed or obtaining schooling across the Wisconsin border. It may also be useful to issue such permits to allow clients to shop and go about other routine daily business in border areas. Those clients whose job requires them to be out-of-state routinely, such as an interstate truck driving job, should be issued this type of permit to allow fulfillment of job requirements without undue problems. Special restrictions may be placed on either type of permit governing hours or places of travel.

Subsection (4) requires that authorizations to travel be in writing. They shall include the reasons for the travel and they shall state any additional rules of supervision (see subsections (2)(a)-(d)) effective while the client is out of state. The client must sign the authorization to acknowledge an understanding of the additional terms of supervision to avoid any misunderstanding or unintended infractions of the rules. These additional rules supplement the existing rules and conditions and a violation of them may result in a modification or revocation of the client's supervision.

Subsection (8) requires that a state be notified of a client's presence in it. This is mainly a courtesy gesture for those clients with travel permits of short duration, but for those clients transferring to another state under the uniform act for out-of-state supervision notification and approval is necessary in advance of any travel. See HSS 328.09 and note.

HSS 328.07 RESTITUTION.

- (1) In all cases where a court orders the department to assist in determination of restitution, the agent shall establish the pecuniary loss to the victim and make a recommendation as to appropriate payments by the offender.
- (2) Whenever a court requires a probationer to pay restitution, the surcharge required by statute shall be computed at the statutory percentage of every dollar ordered for restitution.
- (3) Collections and audits shall be conducted in accordance with s. HSS 328.05.
- (4) The division may accept any collections paid in anticipation of an order of restitution and hold it for the client making such payment.
- (5) The department may establish uniform procedures to assist staff in assessing restitution.
- (6) Payments to victims shall be made as soon as possible after money is received, but no amount less than \$10 shall be paid unless it is the final payment.

(7) Money collected by the division shall be disbursed under the following priority schedule:

(a) Payments for fines connected with the case;

(b) Payments for restitution, interest, and the surcharge;

(c) Payments for court costs;

(d) Payments for attorney fees; and

(e) Payments for unrelated amounts.

(8) Where an agent determines that an offender who has been ordered to pay restitution is not making the payments and is unable or refuses to meet the schedule established, the agent shall notify the court and may make a recommendation for modification of conditions, or any other recommendation authorized under this chapter.

(9) If restitution has not been paid at least 90 days before the probation expiration date, the agent shall notify the court of the status of any unpaid restitution and may make a recommendation for modification of conditions, or any other recommendation authorized under this chapter.

- (10) Recommendations by an agent under this section shall be submitted to the court together with the reasons for making the recommendations and the facts upon which the recommendations were based.

NOTE: Under s. 973.09(1m), Stats., the court may order the department to document the nature and amount of a victim's pecuniary loss. Subsection (1) recognizes this. This determination may be made before conviction, if the court so orders pursuant to s. 973.09(1m), Stats. Although the department does not ordinarily investigate an offender's background, possible restitution obligations, and ability to pay until after conviction under s. 972.15, Stats., the court may order a determination of pecuniary loss at any time under s. 973.09(1m). Under this section, a determination may be ordered prior to conviction pursuant to a plea agreement and the department must prepare it. Restitution documentation may be included in the presentence report.

Subsection (5) provides the department with the authority to establish specific procedures to help evaluate an offender's ability to pay or amount of restitution owed, for example. These are not published in this section because they are subject to rapid change, due to inflation and other factors.

Subsection (8) requires the agent to notify the court if an offender is not making payments and will be unable to make payments. The agent may make a recommendation for adjustment or waiver of the payments under subsection (4) criteria.

Subsection (9) is required under s. 973.09(3)(d), Stats. A court may authorize the department to discharge a probationer only if there is "substantial reason"

for doing so. Consequently, the agent should not recommend discharge unless there is substantial reason to believe that discharging the offender is appropriate. For clients with outstanding restitution obligations, the agent should recommend discharge only where there is indication of inability to pay, absent other relevant factors.

6-8-28/57/ca

HSS 328.08 INTRASTATE TRANSFER.

- (1) CRITERIA. A client may request transfer to another geographical area if transfer is consistent with the goals and objectives of supervision for the client, and the:
 - (a) Client's family has moved to the area and the transfer is considered advisable to maintain or strengthen familial ties; or
 - (b) Client has obtained verified residence, employment, or schooling in the area.

- (2) RECOMMENDATION. An agent may recommend a transfer and, if that agent obtains supervisory approval, shall prepare a transfer summary and recommendation, which should be sent with the client file directly to the designated receiving office.

- (3) INVESTIGATION. A transfer is authorized only after the receiving agent investigates the transfer request, obtains supervisory approval, and then acknowledges the transfer in writing. Any rejection of the transfer by the receiving agent must have the receiving agent's supervisor's written approval of the reasons for the rejection and shall be provided to the agent in writing and communicated to the client. The agent shall notify the receiving agent as soon as possible of the client's anticipated arrival in the designated area.

- (4) INITIAL MEETING. The client and new agent shall meet within 10 working days after the receiving agent has been notified of the client's arrival to the new area to discuss the goals and objectives of the client's supervision and confirm an understanding of the rules and conditions of the client's supervision. Any modification of the rules of supervision shall be explained to the client prior to their effective date and the client shall be given a copy of them.
- (5) RETURN. If the transfer plan is not implemented within 60 days of arrival for reasons other than the client's misconduct, the client may be transferred back to the prior geographical area and agent.
- (6) RECORDS. Records relevant to a client's transfer shall be maintained in the client's record.

NOTE: A number of factors enter into the decision to release an inmate in an institution to supervision, or to place a client under supervision, in a particular geographical area. Chief among those are the inmate's home, opportunities for schooling, employment, training, treatment, and community receptivity to the inmate. A supervision plan is designed to conform to the client's needs and to allow implementation within a particular geographical area. Given the period of time that a client may be under supervision, and the importance of achieving the goals and objectives of supervision, there should be some provision for modification of the plan that includes the opportunity to transfer between geographical areas.

This section provides for transfers of clients as well as transfers of inmates for implementation upon their return to the community when the inmate requests modification of his or her geographical placement.

There may be changes of circumstances that warrant or necessitate a client's transfer to a new area if the goals and objectives of supervision are to be reasonably achieved. Most common are those where the client's family has moved to another area, or where the client has sought and obtained schooling, employment, or training opportunities in another area of benefit to the client that may not be available under present supervision. A transfer may occur, however, only if it is consistent with the goals and objectives of supervision for the client. An agent and the agent's supervisor should balance the benefits to the client offered by the present supervision with those anticipated by a transfer before initiating the transfer process. A transfer should never be used for disciplinary purposes.

The receiving agent may reject a proposed transfer but that agent's supervisor must authorize the rejection in writing. The reasons for the rejection must be provided to the sending or requesting agent in writing and communicated to the client. Again, a client may appeal a rejection under the client complaint process.

Subsection (4) requires the agent and client to meet following the transfer. This contact is necessary to establish a mutual understanding of the rules and conditions of the client's supervision, to restate its goals and objectives, and to avoid misunderstandings and possible unintended infractions of the terms of supervision in the future. This meeting also provides an opportunity for the agent and client to establish a foundation for a personal relationship which, as noted under HSS 328.15, may prove to be an important factor in the client's supervision.

Subsection (5) provides that the client may be returned to the previous area and agent for supervision if the transfer plan cannot be implemented within a set

time for reasons other than the client's misconduct. In this event, the previous agent should automatically assume responsibility for the client and the client's supervision.

Subsection (6) provides for complete and accurate recordkeeping regarding a client's transfer. See chapter HSS 307 for a discussion of the necessity and advantages of such recordkeeping. See s. HSS 328.30 for information regarding a transfer summary.

6-8-28/5Htp

HSS 328.09 UNIFORM ACT FOR OUT-OF-STATE SUPERVISION (INTERSTATE TRANSFER).

The policy of the division is to cooperate with other jurisdictions which are signatories to the uniform act for out-of-state probationer and parolee supervision to provide for the welfare and protection of clients and of the public with respect to: the cooperative supervision of clients on probation or parole; the return, from one state to another, of clients who have absconded or escaped; and additional measures for the protection of clients and of the public, which two or more of the party states may undertake cooperatively. The following provisions interpret the compact:

- (1) WISCONSIN CLIENTS IN OTHER STATES. An inmate scheduled to be paroled or client may request the assistance of a social worker or agent to help seek out or prepare a sound transfer plan providing for residence, schooling, employment, or training in another state. The agent or social worker shall assist with all reasonable requests and shall counsel the inmate or client about opportunities which may exist in other states. The social worker or agent may suggest that a client seek authorization for temporary travel under s. HSS 328.06, to another state to seek or confirm opportunities that would substantiate a request for a transfer.

- (a) A client on supervision may transfer to another state after obtaining prior consent of that state in accordance with this section if:

1. The client is a resident of that state; or

2. The client's family resides in that state; or
3. Transfer is recommended by the parole board or court; and
4. A client has feasible plans to obtain residence, schooling, employment, or vocational training in another state.

(b) A client may not transfer to another state if his or her intent is to avoid supervision, or if equal opportunities for residence, schooling, employment, training, or constructive familial relationships exist in Wisconsin.

1. Wherever possible, a client's financial obligations, e.g., restitution, court costs, support, or paternity, shall be paid before a client is allowed to transfer to another state.
2. If payment in full cannot be made prior to a transfer, an agent shall prepare a written agreement to be signed by the client, establishing a payment schedule, stating the amounts to be paid, and how and when they are to be paid.
3. All payments, unless stated otherwise in a court order, shall be paid by money order or certified check payable to the department. Failure to pay according to the schedule may result in revocation or return to Wisconsin for judicial review of the order.

- (c) A client on supervision may apply for a transfer to another state. An inmate in a correctional institution may apply for a transfer at any time under this section but a transfer cannot be implemented until his or her release to supervision.
- (d) A client may apply for a transfer to another state by completing an application for compact services which acknowledges that any differences in the course and character of supervision in the other state or by the compact are accepted by the client and notes any reasons why the transfer would benefit him or her and would improve his or her opportunities to make a successful adjustment into the community. The client and agent must approve of, and sign, the application before the client is permitted to transfer. An agent may assist a client in completing the application.
- (e) When an application has been completed and signed in accordance with par. (d), the agent, after receiving supervisory approval, shall send it to a compact specialist along with an authorization to travel, a description of the client's proposed living arrangements in the other state including the names of those persons the client will reside with, their address and telephone number, and any additional relevant information concerning the client's current social pattern, pending supervisory problems, or reasons for the transfer request and the following documents on the client:
1. Last periodic summary;
 2. Conditions and rules of supervision;

3. Most current investigation summary;
4. Institution face sheet (if parolee);
5. Judgment and commitment order;
6. Extension order (if any);
7. Court orders (if any);
8. Fingerprints and photograph (if parolee);
9. Description of offense and sentencing; and
10. Financial obligations.

- (f) A Wisconsin compact specialist shall review the materials submitted pursuant to par. (e), prepare a written request for the interstate transfer based upon the information provided, and send the request with the materials to the receiving state's compact administrator.
- (g) No transfer is complete until a written response from the receiving state's compact administrator is received which approves of the transfer. The Wisconsin compact specialist may make inquiries into the status of a client's application by periodically contacting the compact administrator in the receiving state.
- (h) If a receiving state compact administrator rejects a client's application for compact services, the client shall not be transferred to that state under the compact. If the receiving state compact administrator approves a client's application, a compact specialist shall notify the client's agent of the

acceptance, send written notice to the client confirming his or her transfer, and send a written acknowledgement of the other state's acceptance of the client's supervision along with a request for periodic progress reports on the client to the compact administrator.

(i) After supervision of a client has been accepted by a compact administrator, the client may be transferred to the other state. The following provisions shall apply to a client's supervision and the client shall be informed of them prior to transfer:

1. The client shall report to a specific probation and parole office as directed by the sending or receiving agent after arrival in the other state;
2. New rules and terms of supervision consistent with the other state's practices and the compact may apply to the client while he or she is in the other state and any differences will be explained to the client by the new agent;
3. The client's Wisconsin agent shall maintain responsibility for the client's case and any copies of correspondence between the client and agent shall be routed through the Wisconsin compact coordinator;
4. The client may be returned to active Wisconsin supervision at any time upon request of the other state;

5. The compact specialist may request and obtain the return of the client to Wisconsin at any time upon requisition for good cause, such as an absconding or escape, unless criminal proceedings against the client are pending in the other state and the client is detained there; and
 6. In the event the client absconds while under another state's supervision, active case responsibility shall be assumed by a Wisconsin agent who shall immediately issue an apprehension request and violation warrant in accordance with s. HSS 328.14.
- (j) If a client under the supervision of another state in accordance with this subsection violates the conditions or rules of his or her supervision, revocation may occur.
1. An alleged violation without subsequent criminal charges shall be followed by an on-site hearing in conformity with the other state's practices which shall be documented.
Revocation may be pursued only if there is probable or reasonable cause to believe that the violation occurred. If such proof is found, the Wisconsin compact specialist shall be notified and he or she may request that the client be returned to Wisconsin for a final revocation hearing in accordance with ch. HSS 31, Wis. Adm. Code.

2. An alleged violation or a subsequent verified criminal conviction for the misconduct may be followed by revocation. The client shall be notified in writing that a detainer has been filed and that the conviction is sufficient to establish probable cause to believe the client committed the alleged violation. The client shall be given an opportunity to waive his or her rights to a final revocation hearing, to elect to wait until he or she is returned to Wisconsin to have a final revocation hearing, or to submit a written statement that shall be considered in the revocation decision. If possible, the client shall be returned to Wisconsin following the conviction, if the decision is to revoke.

(k) A compact coordinator shall maintain an accurate and complete record of all clients under supervision receiving compact services.

(2) OUT-OF-STATE CLIENTS IN WISCONSIN.

(a) For the purposes of this subsection and sub. (3), "client" means an offender from a state other than Wisconsin who has been convicted and placed on probation or parole in that other state.

(b) A client may request compact services by submitting an application to the Wisconsin compact administrator. The application shall be referred to the appropriate compact

specialist for assignment to a Wisconsin agent who shall complete an investigation of the request and recommend approval or rejection of the transfer within 30 days of its receipt by him or her.

1. If the application is rejected, the Wisconsin agent shall notify the Wisconsin compact specialist, state the reasons for the rejection, and return all of the application materials to the Wisconsin compact specialist. Rejection of an application requires supervisory approval. The Wisconsin compact specialist shall return all of the application materials to the compact administrator with an explanatory letter rejecting the application.
 2. If the application is accepted, the Wisconsin agent shall notify the Wisconsin compact specialist of the acceptance and the reasons for it. The Wisconsin compact specialist shall notify the compact administrator of the sending state of the acceptance and the reasons for it.
- (c) All provisions under this chapter, unless otherwise noted under this section, shall apply to clients. An agent shall respond to requests for periodic reports or other information from the client's sending state and route responses through the Wisconsin compact specialist.

- (d) If a client allegedly violates the conditions or rules of supervision and the Wisconsin agent with supervisory approval recommends return to the other state, the compact specialist shall be notified and he or she shall inform the sending state compact administrator of the facts underlying the alleged violation and request that state's preferred disposition either to proceed with a probable cause hearing in accordance with this chapter or immediately return the client to that state.
- (e) An apprehension request for a client who absconds may be issued. The sending state shall be notified. If the client is not located after a reasonable period of time, the request shall be cancelled and the client's record along with an explanatory letter indicating the facts regarding the absconding, the client's adjustment prior to absconding, and any pending criminal charges against the client shall be forwarded by the Wisconsin agent with a recommendation for termination of compact services to the compact specialist for transmittal to the sending state compact administrator.
- (f) An agent may recommend a client's discharge before expiration of the commitment term but the discharge may be granted only by the other state in accordance with its established procedures.
- (g) A client shall be returned to his or her home state at any time upon request of the sending state unless criminal proceedings are pending in Wisconsin against the client which prevent the client's return.

(3) REQUESTS FROM OTHER STATES FOR PRESENTENCE OR RECORD CHECK

INVESTIGATIONS. The Wisconsin compact coordinator shall receive all requests from other states for presentence or record check investigations of clients and refer them to a Wisconsin compact specialist who shall assign the investigation to a Wisconsin agent. The Wisconsin agent shall complete the investigation within 30 days of its receipt by him or her and submit a written report to the compact specialist for transmittal to the compact administrator requesting the investigation.

(4) RETURN OF PAROLE AND PROBATION VIOLATORS. The secretary may deputize a person from another state to assist in returning a client to Wisconsin if the client has violated the rules and conditions of parole or probation. Any deputation shall be in writing.

NOTE: Wisconsin and several other states are parties to the uniform act for out-of-state probationer and parolee supervision. The compact and supplementary provisions are found under ss. 57.13, 57.135, and 57.14, Stats. The parties have agreed to cooperate to provide for the welfare and protection of clients and the public with respect to the areas noted in the introduction to this section. This section interprets the compact so that the goal of providing for the welfare and protection of clients and the public may be achieved.

The compact provides clients the opportunity to live, work, or obtain training outside of the state of their conviction when such an arrangement is consistent with the goals of supervision under this chapter.

Subsection (1) provides the procedures and criteria for transfer of a Wisconsin client to another state. The criteria for transfer are that the client be a resident of, or that the client's family resides in, that other state, or that the client desires to transfer elsewhere, and that the client has plans to obtain employment and training there or that transfer is recommended. The plans should be firmly established prior to transfer, but lack of a verified plan need not necessarily disqualify the client for a transfer. Subsection (1)(a).

If an agent reasonably believes that a client is requesting a transfer to avoid supervision, or that equal opportunities for the client exist in Wisconsin, a transfer should not be recommended. Subsection (1)(b)1. Other states are often reluctant to accept clients with outstanding financial obligations. The general practice in Wisconsin is to require that all obligations are paid in full prior to a transfer. However, circumstances may dictate that a transfer is nonetheless desirable and the procedures under this subsection should be followed. The agent's failure to recommend a transfer is grievable by a client under the client complaint process.

Subsections (1)(i)1-6 present the important terms of a transfer which must be explained to a client prior to transfer so that misunderstandings and unintended infractions of the terms and rules may be avoided. The provisions for the immediate return of a client to Wisconsin who has absconded or escaped are consistent with the waiver of extradition provisions under the compact.

Subsection (1)(j) provides the procedures to be followed subsequent to an alleged violation of the terms or conditions of supervision by the client. If criminal charges against the client are not pending, an on-site hearing should be held to determine if there is probable cause to believe the client violated

the terms or rules and a final revocation hearing may be held in accordance with this chapter upon return of the client to Wisconsin. If criminal charges are pending, the client may be detained in the other state and his or her probation or parole may be revoked later upon verified notice of the conviction.

Subsection (4) interprets the secretary's authority to deputize persons under s. 57.14, Stats., to assist the return of probation and parole violators to Wisconsin.

This section is in substantial accord with ACA, standards 3154-3157.

6-8-28/5Htp

HSS 328.10 EXTENSION OF PROBATION.

- (1) GENERAL. Extension is the only means to continue the duration of control by the department over clients on probation beyond the expiration of their commitment term. Only the court that committed a client may grant an extension of the commitment term.
- (2) GROUNDS FOR EXTENSION. Extension of a client's probation is governed by s. 973.09(3)(a), Stats.
- (3) MANDATORY NOTICE TO COURT. An agent shall notify the committing court and client of the status of the client's failure to comply with an order for restitution at least 90 days prior to the expiration of the client's probation term.
- (4) AGENT'S RECOMMENDATION. An agent may recommend that a court grant an extension of the commitment term or that financial obligations be modified. If the court or district attorney requests information regarding a client's possible extension, the agent may report the following to the client and court or district attorney as appropriate:
 - (a) The background of the client's case, including:
 1. The name and age of the client;
 2. A brief description of the client's committing offense;
 3. The description of the sentence, including:

- a. Whether the sentence was withheld or imposed with the execution of the sentence stayed;
- b. The terms and conditions of probation; and
- c. Any other prior extensions.

(b) An accounting of the payments received, including:

1. The original amount of restitution, interest, surcharge, attorney's fees, or court costs ordered;
2. The amount paid to date; and
3. The outstanding balances.

(c) An employment record, including:

1. The specific jobs held since the client's conviction, including the salaries earned and the dates of employment;
2. The specific job presently held, including the salary earned and dates of employment; and
3. Future job prospects.

(d) Other specific sources and amounts of income:

1. Since conviction;
2. At the present time; and
3. Anticipated future income.

- (e) A description of the competing specific financial demands on the client, including:
 - 1. Self-support or support of dependents (if any); and
 - 2. Other financial obligations.

 - (f) Any written waiver of court hearing under sub. (7) signed by the client; and

 - (g) A statement as to whether the client has demonstrated a good faith effort in meeting the obligations.

 - (h) A brief description of the client's conduct under supervision; and

 - (i) Any other relevant or helpful information showing good cause for an extension.
- (5) CRITERIA FOR RECOMMENDATION AND APPROVAL. An agent shall recommend extension if the agent or supervisor believes that further supervision under an extension is necessary to achieve the goals and objectives of supervision under this chapter.
- (6) HEARING. If the department requests extension of a client's probation, the client shall be so notified and informed of the right to a court hearing.

(7) WAIVER. A client may knowingly, intelligently, and voluntarily waive the client's right to a court hearing in writing. The waiver shall state that:

- (a) The client has read the notice, or has had it communicated to him or her, and understands the notice under sub. (6);
- (b) The client acknowledges that there is good cause for the extension;
- (c) The client consents to an extension of the supervision for the specific period of time stated in the notice; and
- (d) The client was given an opportunity to consult with an attorney before signing the waiver.

(8) RECORDS. Relevant records of actions or decisions regarding a client's extension shall be maintained in the client's record.

NOTE: S. 973.09(3)(a), Stats., provides that the committing court for good cause and by order, may extend a client's probation for a stated period of time or modify the terms and conditions of a client's probation.

The department may request extension of a client's probation in accordance with this section. Extension is most commonly sought when a client fails to pay court-ordered restitution or costs, or fails to satisfy a condition deemed important for the client's rehabilitation, care, or control.

An agent may recommend and a supervisor may decide to seek extension of a client's probation. If a client has made a good faith effort to satisfy the conditions of probation but lacked the ability to do so, extension may not be advisable or permissible. Huggett v. State, 83 Wis. 2nd 790 (1978).

If extension is sought by the department, the information under subsection (4) along with the supervisor's decision, shall be provided to the court. Also, if extension is sought by the district attorney, the information under subsection (4) shall be provided to that party upon request. See s. 973.09(3)(c), Stats.

If the court grants a hearing, the client should be given prior adequate notice by the court and an opportunity to waive the right to a hearing under subsection (7). The department shall not accept a waiver it believes is not knowingly, intelligently, or voluntarily given. Some courts prefer that a waiver be made only in open court. In those courts the division complies with the court's preference.

This section is in accord with ACA, standard 3136. See Huggett v. State, 83 Wis. 2nd 790 (1978) and ch. HSS 31 and s. HSS 328.17, Wis. Adm. Code.

6-8-28/5Htp

HSS 328.11 CLIENT COMPLAINT PROCESS.

- (1) PURPOSE. The division shall afford clients an opportunity for administrative review of certain types of decisions through the client complaint process.
- (2) OBJECTIVES. The objectives of the client complaint process are:
 - (a) To allow clients to raise questions in an orderly fashion regarding decisions affecting their supervision;
 - (b) To encourage communication and cooperation between clients and staff; and
 - (c) To resolve problems that arise under supervision in an orderly and uniform fashion.
- (3) SCOPE. The client complaint process may be used by any client to review a decision which affects the client personally.
- (4) EXCEPTIONS. The client complaint process may be used to challenge any decision affecting a client except those concerning:

- (a) Revocation;
- (b) Custody and detention;
- (c) A violation of a criminal law or ordinance;
- (d) A denial of use or possession of firearms pursuant to the federal gun control act of 1968;
- (e) Special conditions or terms of supervision imposed by a court or the parole board; or
- (f) Discharge prior to the completion of the term of supervision.

(5) FILING A COMPLAINT.

- (a) A client may initiate a review of a decision by filing a complaint with the agent.
- (b) The agent shall attempt to informally resolve the complaint. Any resolution agreed to by the agent and the client shall be documented in the client's record.
- (c) If the complaint is not resolved as provided under par. (b), the client may file a written request for review directed to the agent's supervisor.
- (d) A written request for review shall be filed with the supervisor within 5 working days of the decision giving rise to the complaint, except that a supervisor may for good cause accept a complaint after that time.

(6) SUPERVISOR'S INVESTIGATION AND DECISION.

- (a) Upon receipt of a written request for review, the supervisor shall notify the agent of its receipt. The agent shall be given an opportunity to respond to the complaint in writing within 5 working days of notice to the agent.
- (b) The supervisor shall review the complaint and agent's response and may interview the client and others to investigate the complaint within 10 working days of receipt of the complaint.
- (c) Within 5 working days after the supervisor's investigation is completed, the supervisor shall issue a written decision, stating the reasons for it. Copies of the decision shall be sent to the client and the agent.
- (d) If no decision is issued, the client may appeal under sub. (7).

(7) APPEAL OF SUPERVISOR'S DECISION.

- (a) The client or agent may appeal the supervisor's decision in writing within 5 working days to the regional chief, stating the reasons for the appeal and requesting further review.

(b) The regional chief shall review the client's complaint and the supervisor's decision and may investigate the complaint and issue a written decision stating the reasons for it within 10 working days of receipt of the appeal. Copies of the decision shall be sent to the client, the client's agent, and supervisor.

(8) APPEAL OF THE REGIONAL CHIEF'S DECISION.

(a) If the client, agent, or supervisor disagrees with the decision of the regional chief, he or she may within 5 working days of receipt of the decision, appeal in writing to the director of the bureau of community corrections.

(b) The bureau director or designee shall review all relevant written material including the client's complaint, the supervisor's and regional chief's decisions, and shall issue a written decision stating the reasons for it within 10 working days of receipt of the appeal. The client, agent, supervisor and regional chief shall receive copies of the decision. If the bureau chief is unable to decide within 10 days, he or she shall so state and notify the parties of the reason. In such cases a decision shall be rendered within 10 working days of notification. If the bureau director fails to decide, the regional chief's decision shall be final.

(c) The bureau director's decision regarding the complaint shall be final.

- (9) EFFECT OF APPEAL ON DISPUTED DECISION. During the period required under this section to investigate any complaint or review any decision, the affected parties shall comply with the decision under dispute.
- (10) EXPEDITED APPEAL. If resolution of a complaint under the periods of time provided for under this section would moot the complaint, the complaint process shall be expedited.
- (11) PENALTIES. No penalties to a client shall result from the mere filing of a complaint by the client.

NOTE: Many decisions are made which affect a client while he or she is under supervision. This section provides for a client complaint process which the client may use to seek review of many of those decisions.

Subsection (3) defines the scope of the process, and the exceptions to it are noted under subsection (4). These areas are exceptions to the process because there are independent means to challenge these types of decisions, which are not within the agent's or supervisor's authority to decide.

A client may informally raise a complaint with his or her agent. If the complaint is not resolved informally between them, more formal means for resolution may be initiated. Subsection (5). A complaint should be filed with

the supervisor as soon as it becomes apparent that the issue cannot be resolved informally. This is so that disputes can be resolved swiftly so as not to impede the supervisory process and so that investigations may be conducted when evidence (if any) is still available, and memories of the dispute are vivid.

Subsections (6)-(8) provide the procedures for review and appeal. Relatively short periods for decision-making have been incorporated into the process to facilitate a speedy resolution to client concerns, and to cause the least potential interruption in a client's supervision.

In order to provide for a continuation of services and supervision throughout the review process, disputed decisions remain in effect until the process reaches completion. Subsection (9).

A client may not be penalized for using the complaint process. If the review process is to have any integrity and merit the confidence of persons using it, penalties shall not result from its use.

This section is in substantial compliance with the American Correctional Association's Manual of Standards for Adult Probation and Parole Field Services (1977), standard 3152. For discussions of the value of a complaint system, see the notes to ch. HSS 310, Wis. Adm. Code.

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HSS 328.12 PURCHASE OF SERVICES.

- (1) If a client requires assistance or materials that cannot feasibly be provided through any other available resource, the department may provide such assistance through individual or group service contracts with service agencies.
- (2) The division shall follow department established, specific policies and procedures consistent with the goals and objectives of this chapter and s. 46.036, Stats., for the provision of such assistance to clients. Such guidelines should set priorities for the types of assistance which may be provided by the department.
- (3) (a) A client may request and an agent may arrange for assistance to be provided to the client. Documentation of the provision of service shall be maintained in the client's record and it shall include the reasons why the assistance is needed and the agent's attempts to provide the necessary assistance through other sources. It shall be reviewed by the agent's supervisor.

(b) Appropriate staff may audit the provision of services to a client where a purchase of services contract has been entered into.
- (4) Assistance to clients may be provided after receiving departmental approval pursuant to the procedures under sub. (2). Purchase of service funds may be used in service of clients by contracting with

other service agencies. Approval of the contract is necessary before such services may be provided.

NOTE: Occasionally, a client may require assistance in the form of services or materials that cannot be provided through available state or local resources. For instance, a client who wishes to become a carpenter may be admitted to an apprenticeship program, but may need his or her own tools to proceed with the program. If the agent concludes that the tools should be provided and that there is no way of providing the client with the tools through available resources, the agent may recommend, consistent with the policies and procedures under subsection (2), that the department provide the tools.

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HSS 328.13 VOLUNTARY RETURN TO AN INSTITUTION.

- (1) A client on parole may request a return to a correctional institution in writing only after the client has been informed by an agent:
 - (a) That if he or she goes back to the institution a return to parole status may be determined only by the parole board or he or she may have to remain there until he or she reaches his or her mandatory release date under s. HSS 302.21, Wis. Adm. Code;
 - (b) That he or she must waive good time in accordance with s. HSS 302.26, Wis. Adm. Code, to return to or remain in an institution beyond the mandatory release date;
 - (c) That all the department's administrative rules applicable to inmates in correctional institutions shall apply to the client upon return; and
 - (d) Of the procedures to be used to return the client to a particular institution.
- (2) An agent shall discuss a request and the client's record with a supervisor. If the agent and supervisor agree in writing that the client knowingly, voluntarily, and intelligently requests return and that such return is consistent with the goals and objectives of this chapter, the client may be returned to an institution. If the agent

and supervisor disagree, the regional chief shall make the decision in writing.

- (3) An agent shall arrange for a client's return to an institution.
- (4) An agent and supervisor are responsible for following the client's case and shall appropriately assist the client when he or she is eligible for release.
- (5) Relevant records relating to the voluntary return of a client to an institution shall be maintained in the client's record.
- (6) In an emergency, the provisions of this section requiring a written decision prior to return are inapplicable.

NOTE: This section provides for the voluntary return of a client to a correctional institution. It is anticipated that the use of this provision will be rare. However, there may be circumstances, for instance, where a client offers to return to an institution for medical, dental, or other services where such return may be consistent with the goals of supervision under this chapter. Only knowing, voluntary, and intelligently rendered requests may be approved. Requests shall never be coerced and a parolee may only be returned if it is consistent with the goals of supervision under this chapter.

If the client's concerns can be adequately provided for in the community, return to an institution should not occur.

HSS 328.14 ABSCONDING.

- (1) If a client absconds, a field staff member shall issue an apprehension warrant to be entered in the TIME system or to be sent to the local apprehending authority. If the local apprehending authorities are contacted, they shall be instructed not to forward any information regarding the absconding to the TIME system.
- (2) An apprehension warrant shall include all relevant and necessary information and should satisfy all of the requirements of the TIME system.
- (3) A violation report shall be prepared for a client who absconds, in accordance with s. HSS 31.03(1)(d), Wis. Adm. Code.
- (4) An agent shall make reasonable attempts to locate a client who has absconded which may include a letter to the last known address. Certified letters may be used.
- (5) An agent shall prepare a request for a violation warrant not later than 30 days after an agent becomes aware that a client has absconded unless a supervisor decides that a warrant shall not be prepared.
- (6) As soon as is feasible after a client is located, a field staff member or department representative shall meet with the client to discuss the facts underlying the absconding, the possible consequences of it, any extenuating or mitigating circumstances, and shall evaluate the factors contributing to the absconding.

- (7) An agent shall request in writing that the apprehension warrant be cancelled as soon as the client is located.
- (8) A client shall be continued on supervision if revocation proceedings are not initiated against the client following an absconding, subject to s. 57.072(1), Stats. Any modification of the rules of supervision made subsequent to the client's absconding shall be discussed with the client prior to their effective date and the client shall be given a copy of them.
- (9) Upon notification that a client who has absconded is in custody out of the state of Wisconsin, an agent shall request that the client be detained, and the regional chief or designee shall forward a violation warrant to the detaining authority noting that extradition is requested. Cancellation of the apprehension warrant shall be requested. If the client is on parole, an institution shall be advised of the client's whereabouts and the institution staff shall arrange for extradition. If the regional chief approves of the return of a client on probation, the agent and the supervisor shall arrange for the client's return to Wisconsin.
- (10) Relevant records relating to a client's absconding shall be maintained in the client's record.
- (11) (a) If a client who has not been convicted of an offense, e.g., a client committed under s. 161.47(1), Stats., or ch. 54, Stats. (1975), absconds, an agent shall issue the apprehension warrant.

- (b) If the client is not located within 90 days, an agent shall request that the committing court issue a capias ordering apprehension of a client, vacate the order committing the client to the custody of the department, or relieve the department of further responsibility for the client. Following court action the agent shall cancel the apprehension warrant.

NOTE: This section provides the procedures to be followed by field staff after a client absconds. Following initial attempts to locate the client, staff should notify the proper authorities after an absconding and place the responsibility for apprehension on local or state law enforcement authorities. This is reasonable in that it allows staff to concentrate on supervising clients while it utilizes an existing system best equipped for the apprehension of absconders.

Subsection (1) states that the agent must contact either local or state authorities if a client absconds. If it is reasonable to assume that the client is in the local community, the TIME system need not be informed of the absconding. To ensure that the TIME system is not inadvertently informed of a client's absconder status, the agent shall specifically state that information regarding this status shall not be transmitted to the TIME system.

Subsection (2) states that all relevant and necessary information should be included on the apprehension request. Only information likely to be of assistance in locating and apprehending the client should be included.

Subsection (3) states that a violation report shall be prepared for a client while he or she is on absconder status. The agent may make additions to the report after consulting with the client pursuant to subsection (6).

An agent must make reasonable attempts to locate a client who has absconded. If the client is still in the local community, the agent may be able to locate and persuade the client to return peacefully to supervision without the need for local law enforcement authority intervention or detention. Initiation of a more serious action such as revocation may be avoided if resolution of the client's status can be achieved peacefully between the client and agent. Reasonableness should dictate when the agent should attempt to resolve the issue and under no circumstances should it be attempted if it would place the agent or others in danger of harm. Subsection (4). See HSS 328.22 on custody and detention.

Subsection (5) requires an agent to prepare a violation warrant within a reasonable period of time after a client has absconded unless a supervisor decides that the warrant should not be prepared, for instance, because the client will probably show up soon as indicated by previous conduct. If it is reasonable to assume, based on the information provided, that the client absconded and will not show up shortly, the warrant should be issued.

Subsection (6) states that a field staff member or department representative and client shall meet as soon as is feasible after the client has been apprehended. This meeting is important for both staff and the client to assess the consequences of the client's conduct. Timeliness is important, and a determination to continue with supervision, detain the client in custody, or initiate revocation proceedings should be made as soon as possible so that undue interruption of the client's supervision may be avoided. If supervision is continued, any modification of the rules of supervision subsequent to the absconding must be explained to the client and the client must receive a copy of them. Subsection (8).

Subsection (7) provides that an apprehension request or violation warrant should be cancelled by the agent once the client is located. See s. HSS 328.22 on custody and detention.

Subsection (9) provides the procedures that an agent should follow to detain a client out of state and to transport the client back to Wisconsin. Extradition of clients on parole requires joint action by field and institution staff. See HSS 328.23 on the transporting of clients.

Subsection (10) requires that the agent maintain accurate records of an absconding in the client's record. See chapter HSS 307 for a discussion on the importance of such recordkeeping.

Subsection (11) provides the procedures for handling nonconviction absconders. Upon the agent's request under subsection (11)(b), the committing court should issue a *capias* and assume responsibility for the client and the client's return for further court action.

This section is in substantial accord with ACA, standard 3147.

HSS 328.15 ETHICS, RELATIONSHIPS, GIFTS, AND GRATUITIES.

- (1) Field staff may not have personal relationships with clients and their families. There shall be no nonprofessional contacts.
- (2) Field staff shall not provide permanent or temporary housing for clients or their families.
- (3) Field staff shall not accept any gifts or gratuities from clients or their families.
- (4) Field staff shall maintain the confidentiality of each client's status or other information about the client with any person not having a sufficient need to know it, in accordance with the departmental rules.
- (5) Field staff shall not require a client to pay money for noncompliance with conditions other than court imposed mandatory requirements.

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HSS 328.16 CONTRABAND.

- (1) In this chapter, "contraband" means:
 - (a) Any item which the client may not possess under the rules or conditions of the client's supervision; or
 - (b) Any item whose possession is forbidden by law.

- (2) Any field staff member who reasonably believes that an item is contraband may seize the item, whether or not the staff member believes a violation of the client's rules or conditions of supervision has occurred. The client shall be issued a receipt for the item seized and the supervisor shall be notified in writing of the circumstances of the seizure. Property which is not contraband shall be returned to the owner, if feasible, and a receipt shall be obtained, or disposed of in accordance with this section and a report of the disposal kept.

- (3) 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 division's cashier's office, and upon proof of ownership, the item shall be returned to the owner.
- (d) Property shall be returned to the owner if the owner is known, or sent at the client's expense to another, in accordance with the nature of the property, unless the owner transferred the property in an unauthorized manner. Otherwise, items of inherent value shall be sold through the department's purchasing officer and money received shall be placed in the state's general fund. Items of inconsequential value, that is, having a value of \$5.00 or less, shall be destroyed.
- (e) Intoxicating substances, such as alcohol, narcotics or dangerous drugs, shall be disposed of by the client's agent after obtaining supervisory approval or given to a law enforcement agency for use as evidence or for disposal.
- (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.

- (4) If a client believes that property should be returned or sent out at his or her direction, and a decision to dispose of it in a different manner has been made, the client may file a complaint under s. HSS 328.11. The property shall not be disposed of until the complaint is resolved.

NOTE: This section provides for the definition, seizure, and disposition of contraband applicable to clients under field supervision. A client's rules or conditions of supervision may prohibit the use or possession of certain materials and in order to provide for adequate and meaningful supervision, field staff must be given the authority to seize and dispose of contraband properly.

See HSS 328.21 for allowable searches and seizures by field staff.

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HSS 328.17 DISCHARGE.

- (1) The division shall inform a client of the individualized objectives and conditions of the client's supervision so that the client may be aware of the effort and achievement required of him or her, and to encourage discharge of the client at the earliest possible time consistent with the client's progress in satisfying the objectives and conditions and the protection of the public.

- (2) A client shall be discharged upon the issuance of a discharge certificate by the secretary at the expiration of the term noted on the court order committing the client to the custody and supervision of the department unless:
 - (a) The court has subsequently modified the term and extended or reduced it;

 - (b) The department recommends, and the governor grants:
 1. A discharge for a client serving a life sentence who has been on parole for at least 5 years with such terms as the governor thinks appropriate; or

 2. A discharge for a client who has served the minimum term of punishment prescribed by law for the offense for which the

~~client was sentenced with such terms as the governor~~
thinks appropriate;

- (c) There is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the client or for the protection of the public that the department retain custody, and discharge is merited; or
 - (d) The client is fully pardoned.
 - (e) In these instances, the client shall be discharged at the date of expiration of the modification of the term or earlier if the client receives a discharge from the governor or department, or a pardon.
- (3) (a) A probationer may be discharged pursuant to sub. (2)(c) if:
- 1. The client has maintained a minimum status on supervision for a reasonable period of time;
 - 2. The client has satisfied all of the goals and objectives, and conditions and rules of the client's supervision and all financial obligations have been paid in full or remitted by a court;

3. The client has served at least one year on probation for a felony conviction, if applicable;
4. The client has served at least 6 months on probation for a misdemeanor conviction, if applicable; and
5. The client's commitment term expires more than 60 days after a discharge under sub. (2)(c); or

(b) A parolee may be discharged pursuant to sub. (2)(c) if:

1. The client has maintained a minimum status on supervision for a reasonable period of time;
2. The client has satisfied all of the goals and objectives, and conditions and rules of the client's supervision;
3. The client has reached his or her mandatory release date; and
4. The client's commitment term expires more than 60 days after a discharge under sub. (2)(c); or

- (c) In unusual circumstances consideration may be given to an administrative discharge.
- (4) (a) A client's agent may recommend the client's discharge under sub. (2)(b) or (c) after a review of the client's record, or a client may request a discharge.
- (b) The agent's written recommendation shall address all of the requirements under sub. (3) and may describe the client's plans for discharge. The recommendation shall be forwarded along with the client's record to the agent's supervisor for review.
- (c) After a review of the client's record, the agent's recommendation and discussions with the agent and any other person with information which may be relevant to making the decision, which may include the client, the supervisor shall decide within a reasonable period of time whether to forward the recommendation and record to the regional chief for review. If the supervisor disagrees with the recommendation of the agent, the reasons for the decision not to forward the recommendation and record shall be stated in writing and sent to the agent. The recommendation and materials should be returned to the agent.

- (d) If the agent disagrees with the decision of the supervisor, the agent may appeal directly to the regional chief for review of the recommendation. The agent's recommendation, the supervisor's statement, and the client's record shall be forwarded to the regional chief for review.
- (e) After a review of the client's record, the agent's recommendation, the supervisor's statement, if any, and discussions with the agent, supervisor, and any other person with information which may be relevant to making the decision, which may include the client, the regional chief shall decide within a reasonable time whether to recommend discharge for the client. A written statement of the regional chief's decision and the reasons for it shall be sent to the client's agent and supervisor. A recommendation to discharge a client under sub. (2)(b) shall be sent to the governor.
- (5) Relevant records of a client's discharge shall be maintained in the client's record.

NOTE: This section provides the criteria for the discharge of clients. All clients are discharged at the expiration of the term noted on the court's order committing the client to the legal custody of the department unless the term has been extended by subsequent court action or unless a discharge at an earlier

time is merited because of an action by a court, the governor, or department.

Any action by the department must be made in accordance with this section. The department may grant discharge under subsection (2)(c) or may recommend that the governor grant a discharge under subsection (2)(b).

Subsection (1) sets forth the department's policy regarding discharges for clients. The policy reflects a conscious regard for the necessity of making the individualized objectives of a client's supervision known to the client at the commencement of field supervision. This is indicative of the department's desire to provide for candidness in supervision which may result in a client's discharge if the client satisfies the objectives. Discharge prior to the expiration of a commitment term is an award for successful progress while under supervision. It encourages acceptable conduct that may provide for a client's more successful reassimilation into the community upon discharge.

Subsection (2) states that each client must be discharged at the expiration of the term on the order committing the client to the legal custody of the department. An earlier release may occur as noted above. Hansen v. Schmidt, 346 F. Supp. 284 (E.D. Wis. 1972).

Subsection (3) states the prerequisites for discharge under subsections (2)(b) and (c). The decision to discharge at that time is discretionary. The client must have maintained a successful minimum status on supervision for a reasonable time, have satisfied the conditions and rules, have completed the supervision

plan, and must not present a danger to the public; or the department must determine that for the sake of administrative ease that a client should be discharged. The latter should occur infrequently. But, there may be circumstances such as those noted under subsection (3)(c), that warrant discharge. The goals and objectives of supervision under this chapter may not be served by continuing the supervision of an incapacitated person, or a person serving a relatively long sentence elsewhere. The department has the discretion to discharge in these rare instances.

A client's agent may be best able to detect when the client may merit discharge under subsection (2)(c). Therefore, the agent may recommend the discharge of a client. The agent's recommendation must address the relevant criteria noted under subsection (3) and be submitted to a supervisor for review.

A supervisor must assess the recommendation in accordance with subsection (4)(c). If the supervisor agrees that discharge is merited, the supervisor shall forward the recommendation and materials noted to the regional chief for a final recommendation regarding discharge.

If the supervisor believes that discharge is not merited, the reason for the decision must be noted and the agent may appeal the decision directly to the regional chief. The recommendations of the agent and supervisor must be presented to the regional chief before a decision regarding a recommendation for discharge under subsection (2)(c) may be made. Subsections (4)(c) and (d).

A regional chief's decision to recommend discharge under subsection (2)(b) should be forwarded to the governor for final action. Subsection (4)(e).

Subsection (5) requires the department to maintain all relevant records relating to discharge in the client's record including those records generated under subsection (4).

This section is in accord with the American Bar Association's Standards Relating to Probation (Approved Draft, 1970), standards 4.1 and 4.2.

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SUBCHAPTER III - USE OF FORCE AND RELATED MATTERS.

HSS 328.18 USE OF FORCE.

Whenever feasible, the field staff shall rely on law enforcement authorities to exercise force against clients. When such assistance is not practical, field staff may use force subject to this section.

- (1) In this subchapter, the following definitions apply:
 - (a) "Bodily injury" means physical pain or injury, illness, or any impairment of physical condition.
 - (b) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.
 - (c) "Force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way. It includes the use of mechanical and physical power or strength. Only so much force may be used as is reasonably necessary to achieve the objective for which it is used.
 - (d) "Great bodily injury" means bodily injury which creates a high probability 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.

- (e) "Non-deadly force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.
 - (f) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though it may be erroneous.
- (2) Corporal punishment of clients is forbidden. This prohibition allows no exceptions and applies to public and private programs.
- (3) Non-deadly force may be used by field staff against clients only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:
- (a) To prevent death or bodily injury to oneself or another;
 - (b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another;
 - (c) To prevent a client from fleeing the control of a field staff member;
 - (d) To change the location of a client; or

(e) To prevent unlawful damage to property.

(4) Non-deadly force may be used to apprehend a client or take a client into custody only in the following manner:

(a) Staff should exhaust all efforts to persuade clients to voluntarily be taken into the custody of field staff prior to using force;

(b) If the client refuses, staff may exercise minimal physical force necessary to apprehend the client. Minimal force should be exercised in the following way:

1. If possible, staff should not attempt to physically handle the client until sufficient staff are present to evidence a show of force;
2. The client should again be asked to voluntarily be taken into custody;
3. If the client refuses, the client may be firmly grasped by one or more staff; and
4. The client shall then be handcuffed behind his or her back or restrained by other appropriate methods;

- (c) After apprehension, the client and staff should be checked for injury and treated by a physician if necessary. If injury resulted, the regional chief shall be notified and a summary report shall be submitted to the regional chief detailing the cause and extent of the injury and the treatment provided for it; and
- (d) If force is used, a written report describing the apprehension including the names of all people who observed the exercise of force shall be submitted to the regional chief, and shall be included in the client's record.
- (5) Deadly force may not be used by field staff against clients except to prevent death or great bodily injury to oneself or another.
- (6) Deadly force may not be used by field staff 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.
- (7) The use of excessive force is forbidden.
- (8) In an emergency, field staff may be used at an institution. In such circumstances, staff shall abide by the use of force rules under ch. HSS 306, Wis. Adm. Code.

NOTE: HSS 328.18 provides for rules regarding the use of force by field staff against clients. Whenever possible, the exercise of force against clients should be left to law enforcement authorities who are better trained to deal with these situations. Also, while it is true that staff are responsible for the control of clients and the protection of the public, they have an additional responsibility for the care and rehabilitation of clients that may be compromised by the use of force. To preserve the delicate balance between care and control, force may be exercised by staff only when assistance from law enforcement officials is not feasible. It is anticipated that the use of force by staff against clients would be rarely needed. However, this section states the only purposes for which non-deadly and deadly force may be used by field staff against clients.

Subsection (1) defines the terms used throughout this section. Many are patterned after similar provisions under the Wisconsin Criminal Code, s. 939.22, Stats.

Subsection (2) states the existing departmental policy which forbids corporal punishment. Most jurisdictions forbid it. S. 53.08, Stats.; N.Y. Corr. Law s. 9137 (Supp. 1974). It serves no proper correctional objective and has been declared to be cruel and unusual punishment in at least one jurisdiction. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968).

The rules relating to the use of force against clients in the community must differ from those governing others in the community. Clients might create situations that must be controlled before substantial danger to others arises, and in order to provide for the protection of the public, staff must be given substantial responsibility that may require the use of force.

Subsection (3) notes the purposes for which non-deadly force may be used against clients. Clients are not authorized under this section to use force against staff at any time. Force may be used only when the user of it reasonably believes it to be necessary. This is an objective standard. Mere subjective belief is insufficient to justify the use of force. The belief must be a reasonable one. Furthermore, it must be immediately necessary to realize the objectives stated under subsections (3)(a)-(e). If means other than force can be used before there is an immediate need for force, those means should be used.

S. 939.48, Stats., permits the use of force in the community to prevent "an unlawful interference" with oneself or another. This section does not require that the user of force reasonably believe that in so doing he or she is preventing an unlawful interference with another. A typical situation in which a staff member would be authorized to use force in defense of another is if there was a fight between or among clients. The staff member should be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a supervisory setting, staff should have the authority to prevent disturbances without worrying about who is wrongfully fighting and who is simply defending himself or herself. After the disturbance is ended, an investigation should reveal who started the fight. Such situations might be so volatile that it is thought better to rely on the rule that excessive force may not be used as a limiting factor.

Subsection (3)(b) authorizes the use of force to prevent damage to property if it might reasonably lead to injury to another. An objective standard is again relied on. While the authority in this subsection may sometimes overlap with that granted in subsection (3)(a), it is better to be clear that authority extends to situations in which the danger to oneself or others is less immediate but not so remote that force can be safely dispensed with.

Subsection (3)(c) authorizes the use of non-deadly force to prevent clients from fleeing. It is the responsibility of field staff to help prevent the flight of clients to avoid supervision and the use of force is sometimes necessary to fulfill this responsibility. While this is not always appropriate, however, this section provides for it.

Subsection (3)(d) authorizes the use of force to change the location of a client. Sometimes a client may refuse to cooperate when the client is taken into custody. The client may have to be physically moved from one place to another. Of course, in most situations, it is better to try to persuade the client to move before relying on force. This practice should be followed where appropriate. It should be emphasized that rather than rely on force to enforce the conditions or rules of supervision, it is more desirable to rely on the threat of disciplinary action. This may make the use of force unnecessary. The few instances when it does not are ones in which revocation proceedings may have been initiated and the client refuses to return to an institution and force may then be used.

More difficult questions than whether force may be used in a particular situation are how much force can be used and whether deadly force can be used.

As a general rule, only so much force as is reasonably necessary to achieve the objective is authorized and the use of excessive force is forbidden. Thus, if an absconding or a fight can be stopped simply by field staff wrestling an individual to the ground and holding him or her, that is the amount of force authorized. Of course, how much force is necessary requires the exercise of judgment in accordance with a standard of reasonableness.

Deadly force may only be used in extreme situations. Its use is limited first by its definition, i.e., it must be reasonably necessary to achieve the objective. If there are other ways to achieve the objective than through the use of deadly force, its use would not be reasonably necessary to achieve the objective. These same limitations apply to the use of deadly force to achieve the objectives identified under subsection (5), though its use in such situations may be necessary and is authorized.

This section is in substantial accord with ACA, standard 3150, which provides for the use of the minimum physical force necessary and only in instances of justifiable self-protection, for the protection of others, for the prevention of property damage, and for the prevention of escapes, in accordance with appropriate statutory authority.

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HSS 328.19 MECHANICAL RESTRAINTS.

- (1) Mechanical restraints are limited to handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints, and leather and plastic restraints. These may be used to restrain and transport a client, but only in accordance with this section.

- (2) Mechanical restraints may only be used in the following circumstances:
 - (a) To protect staff or others from a client who poses an immediate risk of flight or physical injury to others, unless restrained;

 - (b) To protect a client who poses an immediate threat of physical injury to himself or herself, unless restrained;

 - (c) When taking a client into custody; or

 - (d) To transport a client.

- (3) Mechanical restraints shall never be used:
 - (a) As a method of punishment;

 - (b) About the head or neck of the client;

- (c) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the client; or
 - (d) To restrain a client to a moving vehicle.
- (4) When a client is placed in restraints, a staff member shall transport the client to a detention facility, a mental health or medical facility, or to the appropriate law enforcement authorities.
- (5) A staff member shall observe a client in restraints at least once every 15 minutes until the restraints are removed, or the client is admitted to a detention facility, mental health facility, or medical facility.
- (6) If feasible, clients should be released from restraints to perform bodily functions and for meals.
- (7) Except when restraints are used to take a client into custody or transport a client, a report shall be maintained in the client's record of each time the client is placed in restraints. It shall include:
- (a) The client's full name, number, and the date the client was placed in restraints;

- (b) The name of the staff member who placed the client in restraints;
 - (c) The reason for placing the client in restraints; and
 - (d) A statement indicating when, and under what circumstances, the restraints were removed.
- (8) Field staff shall have access to mechanical restraining devices which shall be periodically examined. Any excessively worn or defective restraining devices shall be removed from the supply. Only commercially manufactured restraining devices may be used.

NOTE: HSS 328.19 regulates the use of restraints by field staff. Whenever possible, staff should rely on law enforcement officials to administer restraining devices. However, this is not always feasible and experience teaches that granting limited authority to staff to use restraints is advisable. Handcuffs are the most common restraint used by staff. The more serious forms of restraints are rarely used by staff. This policy is substantially in accord with existing departmental policy.

The use of restraining devices by staff is permitted in certain situations: to protect others from a client, to protect a client from himself or herself, to take a client into custody, and to transport a client. The use of restraints for punishment or for any other reason is not permitted. Subsection (2).

Subsections (2)(a) and (b) permit the use of restraints when the danger created by a client is so imminent and serious that physical restraint, perhaps for a period of several hours, is necessary. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. Subsections (2) and (3) are designed to ensure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of clients and staff.

Subsection (3) applies to the use of restraints for all purposes. This particular subsection addresses situations in which devices might improperly be used to restrain clients.

When restraints are used, injury and unnecessary anxiety may be avoided if the staff member explains to the client why restraints are being imposed. When possible, this is to be done before placing the client in restraints.

Clients placed in restraints typically need counseling, time to calm down, and periodic monitoring to ensure that the client is not being injured by the restraints. Subsection (5) provides for such monitoring. Typically, a client in restraints would be in the presence of a staff member at all times but this provision assures minimum monitoring to ensure the client's safety.

Subsection (6) provides for the removal of the restraints for meals and to perform bodily functions when feasible. This is to preserve the client's dignity, consistent with the safety of the client and others.

Subsection (7) provides for reports that are to be kept when a client is placed in restraints. Given the seriousness of this measure, it is important that records be kept to ensure compliance with the rules and to permit review of the use of restraints by higher-level staff. This should prove helpful too if further rules need to be developed regarding restraints.

Subsection (8) states that a supply of restraining devices may be maintained by staff. This section applies to devices owned by the department or field staff. They must be periodically reviewed and damaged devices must be discarded. This is to ensure adequate protection of the client and others.

6-8-28/412

HSS 328.20 CHEMICAL AGENTS AND FIREARMS.

(1) Chemical agents shall not be used by field staff against clients.

(2) Field staff shall not carry firearms or other weapons during their working hours.

NOTE: HSS 328.20(1) prohibits the use of chemical agents by field staff against clients. An example of chemical agents commonly used are mace, CS gas, and CN gas. Because chemical agents pose a risk of injury to staff as well as to clients and others their use is best left in the hands of more experienced and well-trained law enforcement authorities.

Subsection (2) forbids staff to carry firearms or other weapons during the hours they work. Like chemical agents, these pose a risk of injury to staff, clients, and others. Equally important is the risk that carrying a weapon may pose to the client-agent relationship. A firearm represents an agent's policing responsibilities and could inhibit the capacity of the agent to help the client.

6-8-28/57/ca

HSS 328.21 SEARCH AND SEIZURE.

- (1) A search of a client, client's living quarters, or property may be made at any time, but only in accordance with this section.

- (2) (a) Field staff may conduct only two types of searches of clients:
 1. A personal search is a search of a client's person, including, but not limited to, the client's pockets, frisking the client's body, an examination of the client's shoes and hat, and an inspection of the client's mouth.

 2. A strip search is a search in which the client is required to remove all of his or her clothes. Permissible inspection includes examination of the client's clothing and body and visual inspection of his or her body cavities. A strip search may only be conducted in a clean and private place. A strip search shall be conducted by any staff member of the same sex as the client being searched.

- (b) A personal search of a client may be conducted by any field staff member:
 1. If the staff member has reasonable grounds to believe that the client possesses contraband; or

2. At the direction of a supervisor; or

3. In the circumstances defined under par. (c).

(c) A strip search may be conducted:

1. Before a client enters and after a client leaves the security enclosure of a correctional institution, jail, or detention facility; or

2. If the staff member is satisfied that there are reasonable grounds to believe the client possesses contraband; or

3. When a client is taken into custody.

(3) A written report or written record entry of all strip searches shall be filed with a supervisor. This report shall state:

(a) The identity of the client searched;

(b) The identity of the staff member who conducted the search and the supervisor, if any, who approved it;

(c) The date, time, and place of the search;

- (d) The reason for the search;
 - (e) Any items seized pursuant to the search; and
 - (f) The identity of any other staff members present when the search was conducted.
- (4) A search of a client's living quarters or property may be conducted by field staff if there are reasonable grounds to believe that the quarters or property contain contraband. Approval of the supervisor shall be obtained unless exigent circumstances require search without approval.
- (a) There shall be a written record of all searches of a client's living quarters or property. This record shall be prepared by the staff member who conducted the search and shall be filed with the agent's supervisor. If the search was conducted without the supervisor's approval because of exigent circumstances, a report stating what the exigent circumstances were shall be part of the record and shall be filed with the supervisor within 48 hours of the search. The report shall state:
 - 1. The identity of the client whose living quarters or property was searched;

2. The identity of the staff member who conducted the search and the supervisor, if any, who approved it;
 3. The date, time, and place of the search;
 4. The reason for conducting the search. If the search was a random one, the report shall so state;
 5. Any items seized pursuant to the search; and
 6. Whether any damage was done to the premises or property during the search.
- (b) If any items are damaged pursuant to the search of a client's living quarters or property, the client shall be informed in writing what those items are.
- (c) In conducting searches, field staff shall disturb the effects of the client as little as possible, consistent with thoroughness.
- (d) During searches, staff shall not read any legal materials, communication between the client and an attorney, or any materials prepared in anticipation of a lawsuit. This does not include business records.
- (e) If the client whose living quarters or property is being searched is not present, the agent may not forcibly enter the premises. A

search should normally be conducted in the presence of another person.

- (5) Field staff shall strive to preserve the dignity of clients in all searches conducted under this section.
- (6) Whenever feasible, before a search is conducted under this section, the client shall be informed that a search is about to occur, the nature of the search, and the place where the search is to occur.
- (7) In deciding whether there are reasonable grounds to believe a client possesses contraband, or a client's living quarters or property contain contraband, a staff member should consider:
 - (a) The observations of a staff member;
 - (b) Information provided by an informant;
 - (c) The reliability of the information relied on; in evaluating reliability, attention should be given to whether the information is detailed and consistent and whether it is corroborated;
 - (d) The reliability of an informant; in evaluating reliability, attention should be given to whether the informant has supplied reliable information in the past, and whether the informant has reason to supply inaccurate information;

- (e) The activity of the client that relates to whether the client might possess contraband;
- (f) Information provided by the client which is relevant to whether the client possesses contraband;
- (g) The experience of a staff member with that client or in a similar circumstance;
- (h) Prior seizures of contraband from the client; and
- (i) The need to verify compliance with rules of supervision and state and federal law.

NOTE: This section provides for searches of clients, clients' living quarters and property by field staff. Although it is preferable to have searches and seizures conducted by law enforcement authorities, that may not always be feasible or advisable, and it is deemed important to give field staff the authority to conduct reasonable searches at reasonable times. Experience teaches that these searches may be necessary because contraband, including drugs and weapons, may be discovered during these searches. These searches are thought to deter the possession of contraband.

Contraband, particularly weapons, may be used to threaten, injure, or kill another. That weapons be kept out of the hands of clients is critical for the safety of others. Contraband must also be kept out of the hands of clients so

they may be better able to participate in jobs, schooling or training, and other programs effectively.

While the discovery of contraband is important, this is not to say that the authority to search should be without control. Consideration should be given to the possible effects of a search on a client's rehabilitation, or family and peer relationships. Rehabilitation as well as the control of a client is the responsibility of field staff and searches should be conducted so as not to unreasonably upset delicate personal relationships. This section attempts to give due regard to client concerns about their privacy.

The Wisconsin Supreme Court in State v. Tarrell, 74 Wis. 2d 647 (1976), discussed the fourth amendment rights of adult probationers. The court at 652-54 stated:

The courts recognize that probationers do retain some fourth amendment rights.¹ "It is not the law that a person convicted of a previous offense loses his constitutional guaranties." State v. Mier, 254 Wis. 180, 184, 35 N.W.2d 196, 198 (1948). Concomitantly, this court has recognized that there are constitutional limitations on conditions of probation.² The question is what is the extent of this protection.

The fourth amendment requirement is that searches and seizures be reasonable. In State v. Bell, 62 Wis.2d 534,

539-40, 215 N.W.2d 535, 539 (1974), this court noted that the United States Supreme Court

"...has stated that the ultimate standard set forth in the fourth amendment is reasonableness. Cady v. Dombrowski (1973), 413 U.S. 433, 93 Sup. Ct. 2523, 37 L.Ed.2d 706.

This court has consistently adhered to the view that reasonableness is to be determined by the facts and circumstances presented in each case. State v. Pires (1972), 55 Wis.2d 597, 201 N.W.2d 153; State v. Davidson (1969), 44 Wis.2d 177, 170 N.W.2d 755; Edwards v. State (1968), 38 Wis.2d 332, 156 N.W.2d 397. The fundamental rule applicable to searches and seizures is that warrantless searches are per se unreasonable under the fourth amendment except under certain well-defined circumstances. Johnson v. United States (1948), 333 U.S. 10, 13, 14, 68 Sup. Ct. 367, 92 L.Ed. 436; Coolidge v. New Hampshire (1971), 403 U.S. 443, 454, 455, 91 Sup. Ct. 2022, 29 L.Ed.564."

Discussing this fundamental rule that warrantless searches are unreasonable, in State v. Elam, 68 Wis.2d 614, 621, 229 N.W.2d 664, 668 (1975), this court quoted from Coolidge v. New Hampshire, supra:

"'Thus the most basic constitutional rule in this area is that "searches conducted outside the judicial process,

without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." The exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek exemption ... that the exigencies of the situation made that course imperative.""

[1-4] If there is to be an exception to the requirements of the fourth amendment granting probation agents a limited right to search or seize a probationer without a warrant, the foundation for this exception lies in the nature of probation itself. Probation, like parole, "is an integral part of the criminal justice system and has as its object the rehabilitation of those convicted of crime and the protection of the state and community interest." State ex rel. Niederer v. Cady, 72 Wis.2d 311, 322, 240 N.W.2d 626, 633 (1976). While probation is a privilege, not a matter of right,³ once it has been granted this conditional liberty can be forfeited only by breaching the conditions of probation. A sentencing judge may impose conditions which appear to be reasonable and appropriate. Sec. 973.09, Stats. A sentence of probation places the probationer "in the custody of the department" subject to the conditions of probation and rules and regulations of the Department of Health & Social Services. Sec. 973.10. All conditions, rules and regulations must be imposed with the dual goal of

rehabilitation of the probationer and protection of the public interest. The imposition of these conditions, rules and regulations demonstrates that while a probationer has a conditional liberty, this liberty is neither as broad nor as free from limitations as that of persons who have not committed a crime. The expectations of privacy of a person on probation cannot be the same as the expectations of privacy of persons not on probation. It is only the reasonable expectations of privacy which the fourth amendment protects.⁴ Conditions of probation must at times limit the constitutional freedom of the probationer. Necessary infringements on these freedoms are permissible as long as they are not overly broad and are reasonably related to the person's rehabilitation. By the very nature of probation, limitations on the liberty and privacy of probationers are imposed. These limitations are the bases for an exception to the warrant requirements of the fourth amendment. "[S]ome forms of search by probation officers are not only compatible with rehabilitation, but, with respect to those convicted of certain offenses, ... are also essential to the proper functioning of a probationary system." United States v. Consuelo-Gonzalez, *supra* at 265.

The application of a less stringent standard for the agent's search or seizure is appropriate, therefore, because of the nature of field supervision.

Subsection (2) regulates personal and strip searches of clients. Such searches may not be conducted without controls. Subsections (2)(a)1 and 2 define the two

types of searches. The less intrusive and more common search is a personal search. Strip searches should be conducted infrequently. Body cavity searches, except an inspection of the client's mouth, shall not occur.

Subsection (2)(b) states the circumstances in which a personal search may be conducted. If a staff member has reasonable grounds to believe a client possesses contraband, an immediate search is permissible and may be necessary to prevent disposal of the contraband. Such searches are not conducted to harass clients but may be approved after reflection by a supervisory staff member. Random searches should not be conducted frequently, but are thought to be of substantial deterrent value. Subsection (2)(b)3 permits personal searches in lieu of strip searches, where strip searches are permitted.

Strip searches, by their nature, are unpleasant and degrading to both staff and clients. All wish that such searches were unnecessary. It would be unreasonable, however, to permit random strip searches.

Subsection (2)(c) identifies the circumstances in which such searches are permitted. The rule is written to limit the use of strip searches in two principal ways. First, the rule identifies the specific situations in which clients may be strip searched. All of these situations are ones in which contraband may be moved most frequently or where the danger created by the presence of contraband is so great as to require the authority to exist for strip searches. The other limitation is to permit such searches only if there are reasonable grounds for the search.

In Bell v. Wolfish, 441 U.S. 520 (1979), the United States Supreme Court held that strip searches, including visual body cavity inspections, were permissible

any time a pretrial detainee had contact with a member of the public. This principle is applied in this section, as well as in other situations where the likelihood of contraband being moved or the danger created by the contraband is such that, in the judgment of correctional officials, a search should be permissible.

Subsection (2)(c) states that a strip search may be made if there are reasonable grounds to believe that the client possesses contraband. This is a less than probable cause standard, but more than mere suspicion. It is the same standard as in subsection (2)(b)1.

Subsection (4)(e) indicates the conditions for a search when the client is not present. The agent may enter in any way that does not do damage to the property. Subsection (4) requires supervisor approval unless the search is conducted in exigent circumstances. Examples of exigent circumstances are where drugs or other contraband would be destroyed if the premises were not searched; or if it were feared that the parolee had a gun and might use it; an immediate search would be necessary to seize it before that could occur.

Subsection (5) states the policy that the dignity of clients should be preserved when searches are conducted. Searches are unpleasant for everyone involved. Recognition of this and attempts to preserve dignity may have a humanizing influence on the process.

Subsection (6) also regulates the manner of conducting searches. It requires that the client be informed that a search is about to occur, its nature, and the place it is to be made unless it is a random search. By informing the client

orally, the staff member may enlist the client's cooperation and make the search easier on all concerned.

Of course, it is not possible to give advance notice of a random search. This would defeat its purpose. However, it is important that clients who are likely to be searched pursuant to subsections (2)(c) and (2)(b)3 be aware that such searches may be conducted.

Subsection (7) indicates what should be considered in determining if there are reasonable grounds for a search. Errors and abuse of search authority may be due to inadvertence and poor judgment. This section seeks to avoid abuses and errors.

Often, very general information is not reliable because its lack of detail suggests it is hypothetical or incomplete. Specificity on the other hand, usually suggests a more reliable grasp of the relevant facts. Consistency of information is also important. If a report is internally inconsistent, this makes it less reliable. Subsection (7)(c) requires attention to the specificity and consistency of information. Of course, specificity or the lack of it is helpful in evaluating information.

Subsection (7)(d) requires attention to the reliability of the informant, if one exists. Has the person supplied accurate information in the past? Does he or she have a reason to mislead? These are helpful questions to ask in evaluating an informant's reliability.

Subsection (7)(e) suggests that attention must be paid to the activity of any client who may be involved with the subject of the search. If a client acts in

a way that is consistent with the possession of contraband by another client, this bears on the decision whether to search the client suspected of possessing contraband.

Subsection (7)(f) indicates that the client should be talked to before the search. Sometimes, this will elicit information helpful in determining whether a search should be made.

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 determination to be made by the supervisor.

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

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HSS 328.22 CUSTODY AND DETENTION.

Whenever feasible, staff shall rely on law enforcement authorities to take a client into custody. When such assistance is not practical, field staff shall take clients into custody in accordance with this section.

- (1) A client shall be taken into custody and detained if the client has a record of prior assaultive or dangerous conduct and is arrested for any reason or is involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

- (2) A client may be taken into custody and detained:
 - (a) For investigation of an alleged violation by the client;
 - (b) After an alleged violation by the client to determine whether to commence revocation proceedings;
 - (c) For disciplinary purposes; or
 - (d) To prevent a possible violation by the client.

- (3) An agent may authorize the detention of a client under subs. (1) or (2)(a)(b) and (d) for a maximum of 5 working days. A supervisor may approve of subsequent detention for a maximum of 5 working days and the regional chief may approve of detention for an additional 5 working days. Detention beyond the foregoing time limits must be authorized by the director. A client detained under sub. (2)(c) may only be detained with supervisory approval for a maximum of 5 working days for disciplinary purposes.

(4) The following subsection applies to custody decisions during revocation proceedings only.

- (a) At a case review under s. HSS 31.03(2)(a), Wis. Adm. Code, a supervisory staff member shall decide whether a client shall be detained pending further revocation proceedings. This detention decision shall supercede any decision under sub. (3). If a client waives his or her rights to a case review or if a review need not take place, the client shall remain in custody status in accordance with subs. (1)-(3).
- (b) A client shall only be detained if a supervisory staff member reasonably concludes under s. HSS 31.03(2)(a), Wis. Adm. Code, that revocation proceedings shall be pursued and that the client's detention is advisable and consistent with the goals and objectives under this chapter.
- (c) Detention is advisable and consistent with the goals and objectives of this chapter if any of the following apply:
1. The client is believed to be dangerous;
 2. There is a likelihood that the client will abscond.
 3. The client is likely to engage in criminal behavior pending revocation;
 4. The client is likely to engage in an activity in noncompliance with the rules and conditions of supervision;
- or

5. The length of the term to be served upon revocation is great.

(d) A detained client is not eligible for partial release from detention, e.g., release during working hours.

(5) The custody decision made pursuant to sub. (4) shall remain in effect until the date that the decision of the hearing examiner under s. HSS 31.03(3)(h), Wis. Adm. Code, takes effect and becomes final. If the final hearing examiner's decision is to reinstate the client or to not revoke the client's supervision, and the department requests review of that finding, the custody decision made pursuant to sub. (4) shall remain in effect pending a decision by the secretary. The secretary may alter the custody decision at any time if the public interest warrants it.

(6) 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.

NOTE: The department interprets sections 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.

There are two situations where a client must be taken into custody: when a client has a prior record of assaultive or dangerous conduct and is arrested, and when the client's alleged violation involves assaultive or dangerous conduct. Subsection (1). In addition, a client may be taken into custody after an alleged violation by the client regardless of its nature or the client's prior record, for disciplinary purposes, for an investigation, or to prevent violations by a client. Subsection (2).

Subsection (4)(a) requires the supervisory staff member under HSS 328.24(2) to decide whether to detain a client pending the outcome of the revocation process. The criteria for this decision are provided under subsection (4)(b). If the client's release from custody pending the outcome of the revocation process is inconsistent with the goals of supervision under this chapter, the client should be detained.

A client may not be detained without limit. In State ex rel. Sims v. Sielaff, 563 F. 2nd 821 (7th Cir. 1972), the court held that a client's right to release pending revocation should be determined according to the speedy trial standards of Barker v. Wingo, 407 U.S. 514 (1972). The relevant but not exclusive factors are:

1. The length of the delay;
2. The reasons for the delay (e.g., whether attributable to the revokee or the state);
3. The assertion of the right to a speedy hearing, and
4. Possible prejudice.

The court recognized the difficult balancing test required. It is upon the state to justify the delay, except where the delay is due to the client's own actions. Even then, the state has the duty to proceed expeditiously. A client in custody elsewhere on other convictions or unrelated cases suffers no deprivation of protected liberty sufficient to invoke the due process right to an immediate hearing on the issue of revocation. "The linchpin of [Moody v. Daggett, 429 U.S. 79 (1976)] is that no process is due a parolee facing revocation until his life, liberty, or property interests are impaired by the revocation proceedings." Sims at 826.

The criteria under this section for taking a client into custody and detaining the client, along with the reasonable time limits imposed under ch. HSS 31 for the revocation process should not unfairly deprive a client of his or her conditional liberty under supervision. When through the actions of the client, his or her attorney, or the department, the time periods under ch. HSS 31 are exceeded, the Barker factors to consider the reasonableness of the delay and further detention must be taken into account.

See the note to ch. HSS 31, Wis. Adm. Code

HSS 328.23 TRANSPORTING CLIENTS IN CUSTODY.

- (1) A field staff member may transport a client to a 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.

NOTE: 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 two 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.

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SUBCHAPTER IV - MATTERS RELATING TO REVOCATION

HSS 328.24 GOOD TIME FORFEITURE HEARINGS FOR PAROLED CLIENTS.

- (1) AMOUNT OF TIME AVAILABLE FOR FORFEITURE. (a) Prior to a client's case review under s. HSS 31.03(2), Wis. Adm. Code, an agent shall contact in writing the registrar of the institution which has the client's record and advise the registrar of the client's alleged date of violation and request the registrar to provide the amount of client's total good time that is available for forfeiture upon revocation of a parolee's supervision.
- (b) The agent shall notify the hearing examiner's office of the amount of good time available for forfeiture prior to a final revocation hearing.
- (2) AGENT'S RECOMMENDATION. (a) An agent shall recommend that a specific amount of good time be forfeited upon revocation of a client's supervision. This amount of time shall be expressed in terms of whole days, months, or years, or any combination thereof. The amount of time shall not be expressed in terms of fractions or percentages of time periods. Reasons for the recommendation, including the factual basis for it, shall be given with it.
- (b) An agent should consider the following prior to making a forfeiture recommendation:

1. The client's institution conduct record;
2. The nature and severity of the original offense;
3. The client's conduct and behavior while on parole;
4. The amount of time left before mandatory release (if the client is a discretionary release parolee); and
5. Whether forfeiture would be consistent with the goals and objectives of field supervision under this chapter.

(c) If an agent's supervisor approves of the agent's recommendation, it shall be included in the client's chronological history along with a supervisor's comments on the recommendation.

(3) HEARING. (a) General. A hearing shall be held before an impartial hearing examiner who shall determine, based upon the evidence presented, what amount of good time shall be forfeited following revocation of a client's parole supervision unless the client waives his or her rights to the hearing in accordance with par. (c). This hearing may be held in conjunction with the final revocation hearing.

(b) Notice. A client and the client's agent shall be given written notice of the client's right to:

1. A hearing to be held in accordance with this section;
2. Receive a written decision stating the reasons for it based upon the evidence presented; and

3. The right to have the decision reviewed in accordance with par. (h). The notice shall include the date, time, and place of the hearing.

- (c) Waiver. A client may knowingly, voluntarily, and intelligently waive his or her right to a hearing under this section in writing. Forfeiture is then decided pursuant to par. (k).
- (d) Time. A hearing shall take place either:
1. Immediately following a final revocation hearing under s. HSS 31.03(3), Wis. Adm. Code; or
 2. Within a reasonable period of time after the secretary issues a decision under s. HSS 31.03(4), Wis. Adm. Code, revoking the client's parole, if a client waived his or her rights to a final revocation hearing.
- (e) Procedure. The hearing shall be conducted in accordance with par. (a). If the recommendation has been decided upon, it shall be read aloud and the client and agent may speak and respond to questions from the hearing examiner. A verbatim record of the hearing shall be kept.
- (f) Decision. 1. After the hearing, the examiner shall consider only the record of the final revocation hearing, if any was held, any record kept under ch. HSS 31, Wis. Adm. Code, the revocation

decision and the reasons for it, testimony at the hearing, and the client's record.

2. The examiner shall recommend:
 - a. Whether good time should be forfeited; and
 - b. If good time should be forfeited, the specific number of whole days, months, or years, or any combination thereof, that shall be forfeited. The amount of time forfeited shall not be expressed in terms of fractions or percentages of time periods.
3. Good time shall not be forfeited unless the examiner finds that nonforfeiture would be inconsistent with the goals and objectives of supervision under this chapter. The specific goal or objective and the reason it would be inconsistent with the continuation of supervision shall be expressly stated in the decision. No more good time shall be forfeited than is necessary to achieve the goals and objectives of supervision under this chapter.
4. The examiner shall issue a written decision, based upon the evidence presented and the client's record, indicating the forfeiture or nonforfeiture of the client's good time.

(g) Order. The examiner's written order stating the decision and the reasons for it shall be delivered within 10 working days after the hearing to the client and the division's representative and agent. The time limits start on the day after the end of the hearing and include the date of delivery. If a hearing was held under par. (d)1., this order shall be incorporated into the order under s. HSS 31.03(3)(g), Wis. Adm. Code.

(h) Effect of order and request for review.

1. An order pursuant to a hearing under par. (d)1 shall take effect and be reviewed in accordance with s. HSS 31.03(3), Wis. Adm. Code.
2. An order pursuant to a hearing under par. (d)2 or (c) shall take effect and be final 10 days after the date it was delivered unless the client or the division requests a review of the forfeiture decision by the secretary within that time. Written notice of the request shall be sent to the secretary and other party.
3. The registrar at the institution where the client is to be received following revocation shall be notified by the hearing examiner as soon as possible after the forfeiture decision becomes final and shall receive a copy of the order within 10 working days of its effective date.

- (i) Materials submitted for review. All materials submitted to aid the secretary in review of the forfeiture decision must be received by the secretary within 10 working days after the request for review is received by the secretary. An extension of this time limit may be granted by the secretary.
- (j) Secretary's decision. 1. The secretary shall review the record of the hearing, the revocation decision and the reasons for it, the client's record, and all materials submitted for review under par. (i).
2. The secretary shall decide to modify or affirm the examiner's forfeiture decision based upon the evidence presented.
3. The secretary's written decision, stating the reasons for it, shall be delivered to the client and the agent within 10 days after the date that all materials under par. (i) are due. The secretary may extend the time limit.
4. The secretary shall inform the client and agent in writing of any extension of the time limit. Specific reasons for the extension shall be included in the notice of extension.
- (k) Procedure when hearing waived.
1. If a client waives his or her right to a hearing under this section, copies of the waiver and revocation decision shall

be sent to the hearing examiner for review within a reasonable time after the revocation decision becomes final.

2. An agent shall recommend a forfeiture of good time in accordance with sub. (2)(a) and (b).
3. The waiver may result in an informal interview with a hearing examiner who shall consider the client's record, the revocation decision and the reasons for it, and any evidence or testimony presented at the final revocation hearing.
4. The hearing examiner shall decide whether good time should be forfeited and, if so, the amount of time to be forfeited. A forfeiture of time shall be expressed in terms of whole days, months, or years, or any combination thereof. The amount of time shall not be expressed in fractions or percentages of time periods. Paragraph (f)3 applies to the hearing examiner's decision.
5. The hearing examiner's written decision shall state the reasons for it based upon the evidence presented and the client's record and the decision shall be delivered to the client and agent within 10 days of receipt of the waiver and revocation decision pursuant to par. (k)1 and 2.

(4) RECORDS. Relevant records relating to the forfeiture of good time shall be maintained in the client's record.

NOTE: Clients on discretionary or mandatory release parole who have their supervision revoked under ch. HSS 31, Wis. Adm. Code, 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, Wis. Adm. Code, 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 unnecessary. 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. McCauley, 70 Wis. 2nd 256 (1975). (The decision in Putnam is not retroactive. State ex. rel. Renner v. DHSS, 71 Wis. 2nd 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.

6-8-28/5Jtp

HSS 328.25 TOLLED TIME.

- (1) For the purposes of this chapter, "tolled time" means the period of time between the date of a client's violation and the date the client is reinstated or revoked.
- (2) The period of a client's probation or parole ceases to run during tolled time in accordance with s. 57.072, Stats. If a client is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the client did in fact violate the rules or conditions of his or her supervision. In this case, the reinstatement order shall credit time spent in custody as service of the supervision period.
- (3) The amount of time to be tolled is officially determined by a hearing examiner or the secretary's decision in accordance with HSS 328.24.

NOTE: 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.

Sections 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. Tolloed time is time not credited against a client's sentence. Before the client may be deprived of "credit" toward the successful 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. 2nd 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.

HSS 328.26 REINSTATEMENT. Reinstatement may only occur in accordance with this section.

- (1) DEFINITION. For the purposes of this chapter, "reinstatement" means the return of a client to field supervision after either:
 - (a) A client's personal written admission of a violation of the rules or conditions of supervision; or
 - (b) A finding by a hearing examiner or the secretary under ch. HSS 31, Wis. Adm. Code, that the client committed a violation of the rules or conditions of supervision sufficient to warrant revocation.

- (2) ADMISSION. (a) A client may knowingly, intelligently, and voluntarily make a written admission, signed and witnessed, of a violation of the rules or conditions of supervision sufficient to warrant revocation, and request reinstatement. The request must acknowledge:
 1. The date of the violation;

 2. That the client is aware that the period between the date of violation and the date of reinstatement or revocation shall be tolled, i.e., the period of the client's commitment term ceases to run during this period of time; and

3. That the client is aware that a specific stated amount of good time may be forfeited as a result of the violation if reinstatement is approved by the secretary.
- (b) A staff member may accept a client's written admission and request and shall submit it with the report under s. HSS 31.03(1)(d), Wis. Adm. Code, to a supervisory staff member.
- (c) The supervisory staff member shall decide whether to accept the admission and request, recommend reinstatement, and forward the admission, request, and recommendation to the secretary for approval, or proceed with revocation proceedings. Reinstatement shall only be recommended when it is consistent with the goals and objectives of supervision under this chapter. The recommendation shall include a statement of the reasons for it.
- (d) The secretary shall decide within 5 working days of receipt of an admission and request and a staff member's recommendation whether to order reinstatement. A copy of the secretary's decision, stating the reasons for it, shall be sent to the client and the supervisory staff member.
- (e) If the secretary decides that reinstatement shall not occur, the revocation process may be initiated in accordance with ch. HSS 31, Wis. Adm. Code.

- (3) FINDING OF VIOLATION BY HEARING EXAMINER. A hearing examiner may, under ch. HSS 31, Wis. Adm. Code, order a client reinstated after finding that the client committed a violation of the rules or conditions of supervision. Reinstatement shall only be ordered when it is consistent with the goals and objectives of supervision under this chapter. The order shall include a statement of the reasons for it.
- (a) The date of a client's violation and the date that the client was reinstated shall be stated on the hearing examiner's order of reinstatement.
- (b) Good time may be forfeited by a hearing examiner's decision and order for reinstatement.
- (c) A hearing examiner's order for reinstatement is subject to approval by the secretary in accordance with ch. HSS 31, Wis. Adm. Code.
- (4) Relevant records relating to a client's reinstatement shall be maintained in the client's records.

NOTE: 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, Wis. Adm. Code, 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 he or she committed 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, Wis. Adm. Code, regarding tolled time.

6-8-28/57/ca

SUBCHAPTER V - RECORDS AND REPORTS

HSS 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.

NOTE: 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 imprisonment, 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. Readings 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 he or she has 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 subsection (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 sources 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 subsection (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 subsection (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 were 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 his or her 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 subsection (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 consistent 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.

6-8-28/27k

HSS 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.HSS 328.27.
- (2) Upon order of the court, division staff may present the report orally in open court or in the judge's chambers. Defense counsel, district attorney, and client may be present.

NOTE: 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.

HSS 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.HSS 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) A presentence investigation prepared for a court is subject to the provisions of ss.HSS 307.21(2) and 307.50(2)(a), Wis. Adm. Code.
- (4) 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.
- (5) An attempt shall be made to interview the offender during the preparation of the report under ss.HSS 328.27 and 328.28.

NOTE: 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(c).

6-8-28/19k

HSS - 328.30 RECORDKEEPING.

(1) A case record of each client shall be maintained by the department.

That record shall include:

- (a) An initial entry summary;
- (b) Chronological log entries;
- (c) Periodic case planning summaries prepared in accordance with the department's case classification policies;
- (d) Case transfer summaries, if any;
- (e) Supervisory contact summaries;
- (f) Records of administrative decisions;
- (g) Reports from community-based residential facilities, if any;
- (h) A record of all disclosures of information to social welfare or law enforcement agencies, or to third parties;
- (i) The client's court order and any court imposed conditions and obligations;

- (j) Copies of the client's presentence investigation report prepared under ss. HSS 328.27 or 328.28.
 - (k) The rules and conditions of the client's supervision and the reasons for them;
 - (l) Relevant information regarding institutional experience; and
 - (m) Information relating to parole planning, parole decisions and conditions; and
 - (n) Other information as required.
- (2) The initial entry summary shall be included in the client's record within 30 days after a client has been assigned to an agent.
 - (3) The agent shall maintain a chronological log of all case-related contacts.
 - (4) The agent shall prepare a case transfer summary as the last entry in the case record when the client's supervision is transferred.
 - (5) The agent shall record all relevant information regarding administrative decisions including those relating to a client's

alternate care, absconding, revocation, transfer, discharge, and extension. The record shall contain documentation of the reasons for each decision.

- (6) The agent shall enter in the client's record all reports received from alternate care facilities, educational institutions, or contracting agencies which provide services to the client.
- (7) Additional entries to the client's record should be made at any other time, if the agent or supervisor determines the entry is necessary or helpful in describing a client's progress or adjustment under supervision.

NOTE: 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. Subsections (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.

Case records are to be maintained in accordance with chapter HSS 307, Wis. Adm. Code. See that chapter for further elaboration on the necessity of good recordkeeping.

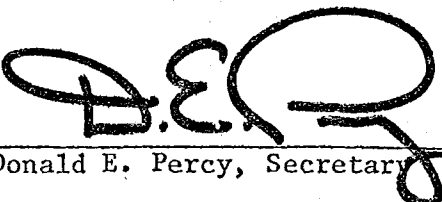
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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Dated: 10.30.81

Department of Health and Social Services

Seal:



Donald E. Percy, Secretary

