APPENDIX

Note: HSS 328.01. 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.

Note: HSS 328.04. 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) (l) 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 sub. (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 3 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.

HSS 328 Appendix

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.

Note: HSS 328.041. 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.

Note: HSS 328.05. 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. Clients 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 employe) 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 preceeded 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 employe), 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, employe, 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 regarding restitution. financial obligations

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 2 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 sub. (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.

Note: HSS 328.08. 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 ch. HSS 307 for a discussion of the necessity and advantages of such recordkeeping. See s. HSS 328.30 for information regarding a transfer summary.

Note: HSS 328.09. 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. Sub. (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. Sub. (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.

Note: HSS 328.10. 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. 2d 790 (1978).

If extension is sought by the department, the information under sub. (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 sub. (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 sub. (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. 2d 790 (1978) and ch. HSS 31 and s. HSS 328.17, Wis. Adm. Code.

Note: HSS 328.11. 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 sub. (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. Sub. (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.

Note: HSS 328.12. 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 sub. (2), that the department provide the tools.

HSS 328 Appendix

Note: HSS 328.13. 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.

Note: HSS 328.14. 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 asconds. 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 sub. (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. Sub. (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. Sub. (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 ch. 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 sub. (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.

Note: HSS 328.16. 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.

Note: HSS 328.17. 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 sub. (2) (c) or may recommend that the governor grant a discharge under sub. (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 sub. (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 sub. (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 sub. (2) (c). Therefore, the agent may recommend the discharge of a client. The agent's recommendation must address the relevant criteria noted under sub. (3) and be submitted to a supervisor for review.

A supervisor must assess the recommendation in accordance with sub. (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 a 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 sub. (2) (c) may be made. Sub. (4) (c) and (d).

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

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

Note: HSS 328.18. 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.

HSS 328 Appendix

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 sub. (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 sub. (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 sub. (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.

Note: HSS 328.19. 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. Sub. (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.

Note: HSS 328.20. 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.

Note: HSS 328.21. This section provides for searches of clients, clients' living quarters and property by field staff. Although it is preferable to have searches and seizure 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 reasonble 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.

HSS 328 Appendix

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 reasonbleness 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 2 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 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 unnecesary. 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 sub. (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 sub. (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.

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

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

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. Sub. (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. Sub. (2).

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

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

Note: HSS 328.24. Clients on discretionary or mandatory release parole who have their supervision revoked under ch. HSS 31, 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 unncessary. *Sillman v. Schmidt*, 394 F Supp. 1370 (W.D. Wis. 1975).

Fourth, the decision to forfeit a certain amount of time must be consistent with the goals and objectives of supervision under this chapter. The department must exercise good judgment in determining how much good time, if any, the parolee will forfeit. *Putnam v. McCauley*, 70 Wis. 2d 256 (1975). (The decision in *Putnam* is not retroactive. *State ex. rel. Renner v. DHSS*, 71 Wis. 2d 112 (1976).) Only that much time should be forfeited as will achieve the goals and purposes of revocation.

See HSS 328.25 for a discussion of tolled time.

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

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

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

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

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

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

Subsections (2) and (3) provide the only procedures for reinstatement. A client who has been given notice of revocation proceedings under ch. HSS 31, 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.

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

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

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

Even in cases where probation will not be the disposition, for example, the presentence report assists the court in determining the appropriate type of sentence and, if it is to be 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. Readins are also listed in the report. It is essential that these be identified specifically for several reasons. It is essential that the offender admit only crimes that 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 sub. (3) should rely on factual data, rather than opinions or perceptions. Many sources, including the victim and the offender, may state their own conclusions. The agent's job is to identify the facts upon which a source's conclusions are based. Facts aid the judge, who must ultimately decide their relevance, and the agent, who decides his or her opinion of the appropriate disposition of the offender under sub. (3) (b).

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

Also under sub. (3), the agent should obtain information about the offender's family. The American Bar Association commented that this and information about the offender's environment are most important. American Bar Association's Project on Minimum Standard for Criminal Justice, *Standards Relating to Probation* (Approved Draft 1970), standard 2.3 and commentary. This subsection combines factual data with opinions from the family relating to the offender and possible facts influencing the offender's involvement in crime. These opinions should not be treated as professional opinions, but are beneficial in gaining an understanding of the offender. This will aid the judge, the agent and the division in assessing the offender's needs in future decisions. The offender is given the opportunity to express 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 sub. (3) (c), the agent's recommendation for disposition is required. All that is intended is a simple, straightforward statement of the agent's recommendation. For example, the agent may recommend probation with conditions, probation with work release, confinement, fine, a Huber sentence or a combination of these.

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

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

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

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

For many cases, particularly misdemeanors and other less serious offenses, information produced by a brief investigation will not only be sufficient for an intelligent disposition, but will significantly increase the information on which most courts must now act. Some cases, to

be sure, will immediately reveal themselves as inappropriate for such brief and superficial treatment; the difficulties of other cases will emerge in the early stages of investigation. The point, in any event, is that a sound system of initial screening - perhaps coupled with participation by the court in the selection of the cases which deserve more intensive treatment - can substantially increase the efficiency of the probation service and its capacity to perform the essential function of aiding the court at the sentencing stage.

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

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

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

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

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