

## Chapter DOC 328

### ADULT FIELD SUPERVISION

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Note: Chapter HSS 328 was renumbered Chapter DOC 328 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, April, 1990, No. 412. Some sections in this chapter have explanatory material which can be found in the appendix following the last section in this chapter.

### Subchapter I General Provisions

**DOC 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. 301.001, 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 department's programs and activities.

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

**DOC 328.02 Applicability.** This chapter applies to the department and to all adult clients under its custody and supervision for correctional purposes. It implements ss. 301.001, 301.03, 302.11, 302.14, 302.19, 302.31, 304.06 (3), 304.072, 304.075, 304.12, 304.13, 304.135, 304.14, 161.47, 941.29, 971.14, 971.17, 972.15, 973.04, 973.06, 973.08, 973.09, 973.10, 973.155, 975.06, 975.08, 975.10, 975.11, 975.12, and ss. 54.01, 54.03 to 54.07, 54.10, 54.11, 54.13, 54.15 and 54.16, (1975) Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. Register, April, 1986, No. 364, eff. 5-1-86.

**DOC 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 designee.

(3) "Agent" means that employe of the division of probation and parole, department of corrections, who may be assigned the responsibilities under this chapter.

(4) "Division of probation and parole" or "division" means the division of probation and parole, department of corrections.

(5) "Client" means a person who is committed to the custody of the department for correctional purposes and is under field supervision of the department, except that in s. DOC 328.09 (3) and (4) "client" has the meaning prescribed in s. DOC 328.09 (3) (a).

(6) "Collateral" means a family member, friend, employer, teacher, or any person who has contact with or information about a client.

(7) "Commitment term" or "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 designee.

(9) "Compact coordinator" means that employe of the division of probation and parole, department of corrections who has been assigned the responsibilities under this chapter, or designee.

(10) "Compact specialist" means an employe of the division of probation and parole, department of corrections, 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 corrections.

(14) "Discharge" means the successful completion of the term of supervision by a client.

(15) "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.

(16) "Field staff" or "staff" means the professional and para-professional workers of the division 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 or territory of the United States, which provides the means for supervising clients between states as authorized under ss. 304.13, 304.135 and 304.14, 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 division of probation and parole composed of one or more counties.

(25) "Regional chief" means that employe of the division of probation and parole, department of corrections 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. DOC 331.

(28) "Rules" means those written departmental regulations applicable to a specific client under supervision.

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

(30) "Supervisor" means that employe of the division of probation and parole, department of corrections, responsible for the administration of field unit activities.

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

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

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

(34) "Working day" means any day, Monday through Friday, except a legal holiday.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; emerg. am. (14), eff. 10-18-85; am. (5), (7) and (14), r. (31), renum. (32) to (34) to be (31) to (33), cr. (34), Register, April, 1986, No. 364, eff. 5-1-86.

## Subchapter II Offender Under Supervision

**DOC 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 reaccommodated 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 commission assessment;

(d) Establishing written rules of supervision that are supplemental to existing court-imposed or parole commission 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. DOC 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. DOC 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. DOC 328.30 and ch. DOC 307;

(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. DOC 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 department and the department of health and social services, 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 preparole plans in accordance with s. DOC 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) Obtain advance permission from an agent to purchase, possess, own or carry a firearm or other weapon. An agent may not grant a client permission to possess a firearm if the client is prohibited from possessing a firearm under s. 941.29, Stats., or federal law.

(k) Make himself or herself available for searches ordered by the agent, including but not limited to body contents searches as defined in s. DOC 328.21 (4) (a), or search of the client's residence or any property under the client's 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.

(m) Refrain from the abuse of alcohol and the possession or use of any non-prescribed controlled substance.

(4) Monitoring of a client by a representative of the department shall be done through one of 3 levels of supervision: maximum, medium, or minimum unless modified by the administrator.

(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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. (3) (j), Register, March, 1983, No. 327, eff. 4-1-83; am. (3) (k), cr. (3) (m), Register, May, 1995, No. 473, eff. 6-1-95.

**DOC 328.041 Prepare parole planning.** The plan should be prepared by the inmate and institution staff. After the inmate and institution have prepared a proposed parole 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.

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

**DOC 328.042 Notice to law enforcement of inmate release to supervision.** Before releasing an inmate to field supervision, the department shall notify the municipal police department and the county sheriff in the area where the individual will reside, as required under s. 304.06 (1), Stats., unless the municipal police department or the county sheriff's office has submitted to the department a written statement waiving the right to be notified.

History: Cr. Register, April, 1986, No. 364, eff. 5-1-86.

**DOC 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 department 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 re-assimilation 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 department, 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 employe of the division 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 department cashier for deposit into the client's account at the close of the work week within which it was collected. Any employe of the division 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 department 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 employe of the division 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 semiannually, at the termination or upon transfer of his or her employment as an agent (or division employe), and when a receipt book is filled.

(9) An agent shall file a disbursement order with the department 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 department cashier unless it contains the signature of the agent's supervisor. A disbursement order may be filed with the department cashier authorizing the payment of a client's bills, e.g., rent, on a routine basis.

(10) An agent and the department 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 department cashier shall maintain the official department 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 department cashier shall be disbursed to the client through the agent upon the client's discharge.

(13) The department 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 department 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. DOC 328.16.

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

**DOC 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. DOC 331, 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) Authorization to travel to foreign countries shall not be granted to clients.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. (8), renum. (9) to be (8), Register, April, 1986, No. 364, eff. 5-1-86; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

**DOC 328.07 Financial obligations.** (1) If in determining restitution to be paid by a probationer, a court orders the department under s. 973.09 (1m) (b), Stats., to document the nature and amount of the crime victim's pecuniary loss, the agent shall ascertain that loss and may recommend an appropriate payment schedule to the court. As used in this subsection, "pecuniary loss" has the meaning prescribed in s. 973.09 (1r) and (8), Stats.

(2) The agent may at any time accept money paid by a probationer pursuant to a court order under s. 973.09 (1m) (a), Stats., and shall transmit that money to the department cashier for deposit in the probationer's account.

(3) The procedures specified under s. DOC 328.05 (5) to (8) and (10) apply to payments under this section.

(4) The department cashier shall disburse money paid by a probationer as soon as possible after it is received, but need not make a disbursement of less than \$10 unless it is for a final payment.

(5) Before disbursing money paid by a probationer, the department cashier shall deduct the surcharge required under s. 973.09 (1) (b) and (1m) (d), Stats., from each payment.

(6) The department cashier shall disburse payments made by the probationer in the following order:

(a) Payment of restitution, and interest on restitution if applicable.

(b) Payment of fines and related payments in the order specified under s. 973.05 (2), Stats.

(c) Payment of court costs.

(d) Payment of attorney fees.

(7) Notwithstanding the disbursement of payments schedule provided for in sub. (6), if a probationer is subject to more than one order under s. 973.09, Stats., and if the financial obligations under any order total \$50 or less, the department may pay the obligations under that order first.

(8) When the department notifies the sentencing court under s. 973.09 (1m) (e) or (3) (b), Stats., that a probationer has not made the payments ordered, the agent may recommend that the court extend the commitment term of the probationer or modify any condition of probation. That recommendation shall be accompanied by a statement of the facts upon which it is based.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and rec. Register, October, 1983, No. 334, eff. 11-1-83.

**DOC 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.

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

**DOC 328.09 Out-of-state supervision and interstate transfer.**

(1) **COOPERATION WITH OTHER JURISDICTIONS.** The department shall cooperate with other jurisdictions that have signed the uniform act for out-of-state probation and parole supervision to provide for the welfare and protection of clients and the public by means of the cooperative supervision of clients on probation or parole, the return from one state to another of clients who have absconded or escaped, and any additional measures for the protection of clients and the public which 2 or more of the party states may undertake cooperatively in accordance with s. 304.13, Stats.

(2) **WISCONSIN CLIENTS IN OTHER STATES.** (a) An inmate scheduled to be paroled or a client under field supervision may request the assistance of a social worker or agent to help 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 that may exist in other states. The social worker or agent may suggest that a client seek authorization under s. DOC 328.06 for temporary travel to another state to seek or confirm opportunities that would substantiate a request for a transfer.

(b) 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 has family residing in that state, or transfer is recommended by the parole commission or court;

2. A client has feasible plans to obtain residence, schooling, employment or vocational training in another state; and

3. The client has not been committed to the department under s. 971.17, Stats. Persons committed to the department under s. 971.17, Stats., are not covered by the interstate compact and therefore may not live, work or be trained or educated in another state.

(c) Wherever possible restitution, court costs, back child support and other financial obligations of a client shall be paid before the client is allowed to transfer to another state.

(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. Both the client and the agent shall approve 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 for transfer to another state has been completed and signed in accordance with par. (d), the agent, after receiving supervisory approval, shall send it to a compact specialist.

(f) A 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) 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.

**(3) OUT-OF-STATE CLIENTS IN WISCONSIN.** (a) *Definition.* For the purposes of this subsection and sub. (4), "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) *Application for compact services.* 1. 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.

2. 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.

3. 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) *Alleged violation of conditions or rules of supervision.* 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 notice of that state's preferred disposition for the department either to proceed with a probable cause hearing in accordance with this chapter or immediately return the client to that state.

(d) *Absconding clients.* 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 canceled 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.

**(4) REQUESTS FROM OTHER STATES FOR PRESENTENCE OR RECORD CHECK INVESTIGATIONS.** The compact coordinator shall receive all requests from other states for presentence or record check investigations of clients and refer them to a compact specialist who shall assign the investigation to an agent. The 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.

**(5) 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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. Register, April, 1986, No. 364, eff. 5-1-86.

**DOC 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 shall provide relevant information.

**(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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (4) (intro.), r. (4) (a) to (i), Register, April, 1986, No. 364, eff. 5-1-86.

**DOC 328.11 Client complaint process.** **(1) PURPOSE.** The department 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, 18 USC 921 to 928 and s. 941.29, Stats.

(e) Special conditions or terms of supervision imposed by a court or the parole commission; 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) **APEAL 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) **APEAL 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 administrator of probation and parole.

(b) The administrator or designee shall review all relevant written material, including the client's complaint and 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 be sent copies of the decision. If the administrator is unable to decide within 10 working days, he or she shall notify the parties of this and of the reason for it. In this case a decision shall be rendered within 10 working days of that notification. If the administrator fails to decide, the regional chief's decision shall be final.

(c) The administrator'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.

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

**DOC 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 department shall follow department of health and social services 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 of health and social services.

(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.

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

**DOC 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 commission or he or she may have to remain there until he or she reaches his or her mandatory release date under s. DOC 302.21;

(b) That he or she must waive good time or entitlement to mandatory release in accordance with s. DOC 302.30 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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (b), Register, February, 1987, No. 374, eff. 3-1-87.

**DOC 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. DOC 331.03 (1) (d).

(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. 304.072 (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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

**DOC 328.15 Ethics, fraternization, gifts and gratuities.** No agent or other department employe may have a nonprofessional relationship with an inmate, a client, or a resident who is under the supervision or custody of the department, except as permitted by the secretary at the request of the employe.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. Register, April, 1986, No. 364, eff. 5-1-86.

**DOC 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 department'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. DOC 328.11. The property shall not be disposed of until the complaint is resolved.

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

**DOC 328.165 Use of a non-prescribed controlled substance.** (1) **USE OF MEDICATION.** A client who intentionally takes into the body any non-prescribed controlled substance is guilty of a violation of supervision. A client who takes into the body medication prescribed for the client and who takes the prescribed medication according to directions is not guilty of a violation of supervision.

(2) **USE OF ALCOHOL.** A client who is affected by a specific rule issued by an agent under s. DOC 328.04 (3) (L) prohibiting the use of alcohol and who intentionally takes alcohol into the body is guilty of a violation of supervision.

(3) **TEST REPORT, EXPERT WITNESS, AND REFUSAL TO PROVIDE SPECIMEN.** A report of a test on a specimen of a client's urine, breath, saliva, blood, hair or stool conducted in accordance with s. DOC 328.21 shall be presented as evidence in a revocation hearing. The expert who made the findings need not be called as a witness in a hearing or proceeding under this chapter or ch. DOC 331 or HA 2. A client who refuses to provide a specimen of urine, breath, saliva, blood, hair or stool as requested in accordance with s. DOC 328.21 is guilty of a violation of supervision.

(4) **CONFIRMATORY TESTS.** (a) The results of a test conducted on a urine specimen shall be verified by a confirmatory test if all of the following conditions are met:

1. The urine test is the sole evidence of use of an intoxicating substance.

2. The agent will recommend revocation of probation or parole as a result of the urine test report.

3. The client does not admit the use of an intoxicating substance.



4. The client requests a confirmatory test before the preliminary hearing or, if no preliminary hearing is held, before the final revocation hearing.

(b) An agent shall ensure the confirmatory test is performed no later than 30 days from the first test.

(c) An agent may request a confirmatory test with supervisory approval.

(d) A client may request a confirmatory test under par. (a) 4.

(e) In this subsection, a confirmatory test means a second test of a different kind which is used to verify the first test.

(5) **CONFIRMATORY TEST FEE.** A client shall be responsible for paying a fee for a confirmatory test, except in the following situations:

(a) If an agent requests a confirmatory test, the division shall pay for the confirmatory test.

(b) If the client is indigent, the division shall pay for the confirmatory test.

(c) If the client is partially indigent, the client shall pay a partial fee under the fee schedule developed by the department and the division will pay for the balance of the confirmatory test.

(d) The agent shall provide the client with a copy of the fee schedule.

(6) **INDIGENCY DETERMINATION.** A client may request an indigency determination if the client is unable to pay for the confirmatory test fee. When a client requests financial assistance to pay for a confirmatory test, the agent shall make an indigency determination. In making an indigency determination, the agent shall do all of the following:

(a) Consider the client's financial resources as given in s. DOC 328.05 (2). The agent may require the client to provide financial information as given in s. DOC 328.05 (3).

(b) Consider the client's financial need, including reasonable and necessary expenses in support of the client and the client's immediate family.

(c) Consider the client's financial obligation, including payment of restitution, fines, court costs, surcharges, and attorney fees.

(d) Consider the cost of the test.

(e) Determine the client to be indigent if the client's financial need, financial obligation, and cost of the test are greater than the client's income, liquid assets, and assets capable of being converted to cash for payment of the confirmatory test.

(f) Determine the client to be partially indigent if the client's income, liquid assets, and assets capable of being converted to cash is greater than the client's financial need, financial obligation but less than the amount needed to pay for the confirmatory test.

History: Cr. Register, May, 1995, No. 473, eff. 6-1-95.

**DOC 328.17 Discharge.** (1) The department 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 or has been under supervision for 2 years; 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.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (3) (b) 3., Register, April, 1986, No. 364, eff. 5-1-86.

### Subchapter III

#### Use of Force and Related Matters

**DOC 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. DOC 306.

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

**DOC 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.

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

**DOC 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.

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

**DOC 328.21 Search and seizure.** (1) **GENERAL POLICY.** A search of a client, the client's body contents or the client's living quarters or property may be made at any time, but only in accordance with this section.

(2) **PERSONAL SEARCH.** (a) In this subsection, "personal search" means 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 a visual inspection of the client's mouth.

(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;
2. At the direction of a supervisor;
3. Before a client enters and after a client leaves the security enclosure of a correctional institution, jail or detention facility; or
4. When a client is taken into custody.

(c) A written report of every personal search shall be prepared by the staff member who conducted the search and shall be filed in the client's case record.

(3) **SEARCH OF LIVING QUARTERS OR PROPERTY.** (a) 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, such as suspicion the parolee will destroy contraband or use a weapon, require search without approval.

(b) 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 state this;
5. Any items seized pursuant to the search; and
6. Whether any damage was done to the premises or property during the search.

(c) If any items are damaged pursuant to the search of a client's living quarters or property, the agent shall document the damage in the case record, inform his or her supervisor and inform the client.

(d) In conducting searches, field staff may not disturb the effects of the client more than is necessary for thoroughness.

(e) During searches, staff may not read any legal materials, any communication between the client and an attorney or any materials prepared in anticipation of a lawsuit. Staff are not prohibited from reading business records.

(f) The agent may not forcibly enter a locked premises to search it if the client whose living quarters or property it is is not present.

(4) **BODY CONTENTS SEARCH.** (a) In this subsection, "body contents search" means a search in which the client is required to provide a sample of urine, breath, saliva, blood, hair or stool for

testing for the presence of an intoxicating substance. Only licensed or certified medical staff shall take a blood or stool sample. When the agent or supervisor requires the collection of a urine specimen to be observed, a field staff member of the same sex as the client shall observe and collect the urine specimen. Any trained field staff member may conduct breathalyzer tests or collect hair samples.

(b) Any field staff member may order a body contents search under any of the following conditions:

1. Upon the client's reception to field supervision.
2. Upon the staff member's reasonable grounds to believe the client has used, is in possession of or is under the influence of a non-prescribed controlled substance.
3. Upon finding a non-prescribed controlled substance in the possession of the client or in an area controlled, occupied or inhabited by the client.
4. Upon the staff member's reasonable grounds to believe the client has violated a rule or condition of his or her supervision.

5. As part of a field staff member's random testing program. The field staff may not select a client for random testing for the purpose of harassing or intimidating the client.

6. When a client is held in a county jail regardless of work release privileges.

7. When a client has a history of alcohol or other drug abuse.

(c) The field staff member who conducted the search shall maintain a report of every body contents search and file a copy of the report in the client's case record.

(d) The client whose body contents are tested under this section shall pay a fee under the fee schedule developed by the department to partially offset the cost of the testing program. The agent shall provide the client with a copy of the fee schedule.

(5) **RESPECT FOR THE CLIENT.** Field staff shall strive to preserve the dignity of clients in all searches conducted under this section.

(6) **INFORMING THE CLIENT.** Whenever possible before a search is conducted, the field staff shall inform the client of all of the following:

- (a) A search is about to occur.
- (b) Why the search will be conducted.
- (c) How the search will be conducted.
- (d) The place where the search is to occur.
- (e) The consequences of not complying with the search.

(7) **REASONABLE GROUNDS.** In deciding whether there are reasonable grounds to believe that a client has used, possesses or is under the influence of an intoxicating substance, that a client possesses contraband or that a client's living quarters or property contain contraband, a staff member shall consider any of the following:

- (a) The observations of staff members.
- (b) Information provided by informants.

(c) The reliability of the information provided by an informant. In evaluating the reliability of the information, the field staff shall give attention to the detail, consistency and corroboration of the information provided by the informant.

(d) The reliability of the informant. In evaluating the informant's reliability, attention shall 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 or might have used or be under the influence of an intoxicating substance.

(f) Information provided by the client that is relevant to whether the client has used, possesses or is under the influence of an intoxicating substance or possesses any other contraband.

(g) The experience of a staff member with that client or in a similar circumstance.

- (h) Prior seizures of contraband from the client.

(i) The need to verify compliance with rules of supervision and state and federal law.

*History:* Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. Register, April, 1986, No. 364, eff. 5-1-86; am. (1), renum. (4) to (6) to be (5) to (7) and am. (6) and (7), cr. (4), Register, May, 1995, No. 473, eff. 6-1-95.

**DOC 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 is alleged to have been 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 sub. (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 shall be authorized by the administrator. A client detained under sub. (2) (c) may only be detained with supervisory approval for a maximum of 5 working days for disciplinary purposes. This subsection does not apply to detentions pending final revocation which are authorized by an agent's immediate supervisor under s. DOC 331.04 (5) when a preliminary hearing is not held pursuant to s. DOC 331.04 (2).

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

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

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

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

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

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

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

(a) Whether the client is available for transport;

(b) Whether an on-site hearing should be held prior to transport;

(c) Whether extradition matters are resolved;

(d) Which staff members shall transport the client.

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

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

#### Subchapter IV Records and Reports

**DOC 328.27 Presentence investigation report.** (1) **PURPOSE.** The primary purpose of the presentence investigation report is to provide the sentencing court with accurate and relevant

information upon which to base its sentencing decision. The report is also important in the correctional process. It is used for such things as determining levels of supervision, classification, program assignment, parole planning and decision making and in the overall correctional treatment of offenders.

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

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

1. Present offense

2. Prior criminal record

3. Prior correctional institution record

4. Victim's statement

5. Family information

6. Personal history

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

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

(d) *Tentative plan.* Unless waived by the supervisor, a tentative treatment plan addressing the specific conclusions arrived at under par. (b). The plan shall contain the offender's response, unless the supervisor waives this requirement. The treatment plan shall include any recommendations about restitution.

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

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

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

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

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

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

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

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

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

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

**DOC 328.30 Recordkeeping.** (1) 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 written disclosures of information to social welfare agencies, law enforcement agencies or third parties, and of all information disclosed pursuant to a written request for specific information to social welfare agencies, law enforcement agencies or 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 s. DOC 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;

(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.

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

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