

Chapter HSS 328

ADULT FIELD SUPERVISION

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NOTE: Some sections in this chapter have explanatory material which can be found in the appendix following HSS 328.30.

Subchapter I—General Provisions

HSS 328.01 Purpose. The purposes of this chapter are to provide rules for community and facility-based supervision, services, and programs for clients under control in order to assure public safety, promote social reintegration, reduce repetition of crime and carry out the statutory directives under s. 46.001, Stats. The following specific goals and objectives are relevant towards fulfillment of these purposes:

- (1) To supervise and control offenders to the extent necessary to meet public, staff, and offender safety responsibilities;
- (2) To provide opportunities for obtaining education, training, work experience, coping skills, and other programs and services to enable offenders to live constructive lives;
- (3) To provide access to community-based programs for probationers and parolees for whom such programs are desirable and necessary;
- (4) To establish necessary guidelines, procedures, and controls to maintain program, staff, and fiscal accountability and to promote program efficiency and effectiveness;
- (5) To cooperate with other public and private agencies in activities for the purpose of prevention of crime and to provide alternatives to institutionalization; and

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

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

HSS 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. 46.001, 46.03, 46.036, 53.11, 53.14, 53.19, 53.31, 57.06(3), 57.072, 57.075, 57.12, 57.13, 57.135, 57.14, 161.47, 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, Stats., 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.

HSS 328.03 Definitions. In this chapter:

(1) "Absconding" means the failure of a client to make himself or herself available as directed by the agent.

(2) "Administrator" means the administrator of the division or his or her designee.

(3) "Agent" means that employe of the bureau of community corrections, division of corrections, department of health and social services, who may be assigned the responsibilities under this chapter.

(4) "Bureau of community corrections" or "bureau" means the bureau of community corrections, division of corrections, department of health and social services.

(5) "Client" means 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. HSS 328.09 (3) and (4) "client" has the meaning prescribed in s. HSS 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 his or her designee.

(9) "Compact coordinator" means that employe of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or his or her designee.

(10) "Compact specialist" means an employe of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or designees.

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appeal. Copies of the decision shall be sent to the client, the client's agent, and supervisor.

(8) **APPEAL OF THE REGIONAL CHIEF'S DECISION.** (a) If the client, agent, or supervisor disagrees with the decision of the regional chief, he or she may within 5 working days of receipt of the decision, appeal in writing to the director of the bureau of community corrections.

(b) The bureau director or designee shall review all relevant written material, including the client's complaint 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 bureau director 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 bureau director fails to decide, the regional chief's decision shall be final.

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

(9) **EFFECT OF APPEAL ON DISPUTED DECISION.** During the period required under this section to investigate any complaint or review any decision, the affected parties shall comply with the decision under dispute.

(10) **EXPEDITED APPEAL.** If resolution of a complaint under the periods of time provided for under this section would moot the complaint, the complaint process shall be expedited.

(11) **PENALTIES.** No penalties to a client shall result from the mere filing of a complaint by the client.

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

HSS 328.12 Purchase of services. (1) If a client requires assistance or materials that cannot feasibly be provided through any other available resource, the department may provide such assistance through individual or group service contracts with service agencies.

(2) The division shall follow department established, specific policies and procedures consistent with the goals and objectives of this chapter and s. 46.036, Stats., for the provision of such assistance to clients. Such guidelines should set priorities for the types of assistance which may be provided by the department.

(3) (a) A client may request and an agent may arrange for assistance to be provided to the client. Documentation of the provision of service shall be maintained in the client's record and it shall include the reasons why the assistance is needed and the agent's attempts to provide the necessary assistance through other sources. It shall be reviewed by the agent's supervisor.

(b) Appropriate staff may audit the provision of services to a client where a purchase of services contract has been entered into.

(4) Assistance to clients may be provided after receiving departmental approval pursuant to the procedures under sub. (2). Purchase of service funds may be used in service of clients by contracting with other service

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

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

HSS 328.13 Voluntary return to an institution. (1) A client on parole may request a return to a correctional institution in writing only after the client has been informed by an agent:

(a) That if he or she goes back to the institution a return to parole status may be determined only by the parole board or he or she may have to remain there until he or she reaches his or her mandatory release date under s. HSS 302.21;

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

HSS 328.14 Absconding. (1) If a client absconds, a field staff member shall issue an apprehension warrant to be entered in the TIME system or to be sent to the local apprehending authority. If the local apprehending authorities are contacted, they shall be instructed not to forward any information regarding the absconding to the TIME system.

(2) An apprehension warrant shall include all relevant and necessary information and should satisfy all of the requirements of the TIME system.

(3) A violation report shall be prepared for a client who absconds, in accordance with s. HSS 31.03 (1) (d).

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mation in the past and whether the informant has reason to supply inaccurate information;

(e) The activity of the client that relates to whether the client might possess contraband;

(f) Information provided by the client that is relevant to whether the client possesses contraband;

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

(h) Prior seizures of contraband from the client; and

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

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

HSS 328.22 Custody and detention. Whenever feasible, staff shall rely on law enforcement authorities to take a client into custody. When such assistance is not practical, field staff shall take clients into custody in accordance with this section.

(1) A client shall be taken into custody and detained if the client 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 director. A client detained under sub. (2) (c) may only be detained with supervisory approval for a maximum of 5 working days for disciplinary purposes. This subsection does not apply to detentions pending final revocation which are authorized by an agent's immediate supervisor under s. HSS 31.04 (5) when a preliminary hearing is not held pursuant to s. HSS 31.04 (2).

(4) Custody decisions during revocation proceedings shall be made pursuant to s. HSS 31.04 (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.

HSS 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.

HSS 328.24 Good time forfeiture hearings. History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (a), Register, April, 1986, No. 364, eff. 5-1-86; r. and recr. eff. 9-10-86; r. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 328.25 Tolloed time. History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 328.26 Reinstatement. History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. Register, February, 1987, No. 374, eff. 3-1-87.

Subchapter IV—Records and Reports

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

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

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

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

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

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

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

See the note to ch. HSS 31.

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

Note: HSS 328.27. 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 were actually committed. No one is helped if the information is inaccurate or incomplete. Otherwise, police may rely on wrong information and terminate investigation of crimes that have not actually been solved. The offender may later be charged with a crime thought to have been readin, unless it is adequately identified and courts and correctional officials may be misled by inaccurate lists of readins.

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

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

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

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

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

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

Subsection (3) (d) requires a treatment plan with input from the offender. When confinement is recommended, the plan should still include a general treatment recommendation 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. 972.16, 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.

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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.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text outlines the various methods used to collect and analyze data, including the use of statistical techniques and computerized systems. It also discusses the challenges associated with data collection and analysis, such as the need for standardized procedures and the potential for bias in the data.

2. The second part of the document focuses on the role of the auditor in the financial reporting process. It describes the various types of audits, including internal audits, external audits, and forensic audits. It also discusses the importance of the auditor's independence and objectivity, and the need for the auditor to maintain a high level of professional skepticism. The text outlines the various steps involved in the audit process, from the initial planning and risk assessment to the final reporting and communication of the results.

3. The third part of the document discusses the importance of the auditor's communication with the client and the public. It emphasizes that the auditor must be able to communicate the results of the audit in a clear and concise manner, and that the auditor must be able to explain the reasons for any findings or conclusions. The text also discusses the importance of the auditor's communication with the public, and the need for the auditor to be transparent and accountable to the public.

4. The fourth part of the document discusses the importance of the auditor's communication with the regulatory authorities. It emphasizes that the auditor must be able to communicate the results of the audit to the regulatory authorities in a clear and concise manner, and that the auditor must be able to explain the reasons for any findings or conclusions. The text also discusses the importance of the auditor's communication with the regulatory authorities, and the need for the auditor to be transparent and accountable to the regulatory authorities.

5. The fifth part of the document discusses the importance of the auditor's communication with the media. It emphasizes that the auditor must be able to communicate the results of the audit to the media in a clear and concise manner, and that the auditor must be able to explain the reasons for any findings or conclusions. The text also discusses the importance of the auditor's communication with the media, and the need for the auditor to be transparent and accountable to the media.

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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.

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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 were actually committed. No one is helped if the information is inaccurate or incomplete. Otherwise, police may rely on wrong information and terminate investigation of crimes that have not actually been solved. The offender may later be charged with a crime thought to have been readin, unless it is adequately identified and courts and correctional officials may be misled by inaccurate lists of readins.

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

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

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

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

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

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

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

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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.