

1 (c) Whether the ^{protective} placement is in the best interests of the ward.

person under protective placement

2 (9) ORDER RELATING TO TRANSFER. Following the hearing under sub. (7), the
3 court shall do one of the following:

proposed protective

4 (a) If the court finds that the individual continues to meet the standards under
5 s. 55.08 (1) and the individual's ⁸ current placement does not meet the standard for
6 transfer under sub. (9), the court shall issue an order prohibiting the transfer. The
7 court shall include the information relied upon as a basis for the order and shall make
8 findings based on the ^{standards under sub. (8)} factors in s. 55.08 (1) in support of the denial of the transfer.

INSERT 64-8

9 (b) If the court finds that the individual continues to meet the standards under
10 s. 55.08 (1) and the proposed transfer meets the standard under sub. (9), the court
11 shall ^{approve the proposed transfer} order the transfer of the individual to a proposed facility. The court may order
12 protective services along with transfer of placement. The court shall include the
13 information relied upon as a basis for the order and shall make findings based on the
14 standards in s. 55.08 (1) in support of the need for continued protective placement.

the protective STEPS leave as typed

15 (c) If the court finds that the individual no longer meets the standards under
16 s. 55.08 (1), the court shall terminate the protective placement, as provided in s.
17 55.17.

protective B protective

18 SECTION 58. 55.16 of the statutes is created to read:

19 **55.16 Modification of an order for protective placement or services.**

20 (1) USE OF TRANSFER PROVISIONS. If a petitioner is an entity authorized under s. 55.15
21 (2) to transfer an individual under a protective placement and the modification
22 sought is a transfer of an individual between placement units, between placement
23 facilities, or from a placement unit to a medical facility, the petitioner may utilize the
24 procedure in s. 55.15 in lieu of the procedure under this subsection.

that is not a psychiatric facility

the individual's legal counsel or

I

(a) Filing; service.

or receiving protective services

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(2) PETITION. An individual under protective placement, the individual's guardian, ~~or~~ guardian ad litem, ^{(if any),} the department, the county department that placed the individual pursuant to ^{or provided the protective services under} an order of the court, a ~~contractual~~ agency, or any interested person, may file a petition at any time for modification of an order for protective services or protective placement. The petition shall be served on the individual, the individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the county department.

with which the county department contract under s. 55.02 (2)

^b (a) *Modification of an order for protective placement; allegations.* A petition for modification of an order for ^a protective placement shall ~~allege that the protective placement order should be modified for~~ ^{make} one of the following reasons:

- That 1. The protective placement is not in the least restrictive environment that is consistent with the ~~person's~~ ^{individual's} needs.
- That 2. A protective placement in a facility with a higher level of restrictiveness would be more consistent with the individual's current needs.
- That 3. A protective placement in a different facility with the same level of restrictiveness as the current placement would be more consistent with the individual's current needs for reasons unrelated to the level of restrictiveness.

^c (b) *Modification of an order for protective services; allegations.* 1. A petition for modification of an order for protective services, other than an order under s. 55.14, shall allege that the order should be modified because the protective services are not provided in the least restrictive manner that is consistent with the individual's needs or are not otherwise consistent with his or her current needs.

2. A petition for modification of an order under s. 55.14 shall allege that modification of the order or the treatment plan for the individual would be in the best interests of ~~the person.~~

his or her

SECTION 58

under sub. (2)

except that the court is not required to hold a

for the individual

1 (3) HEARING. (a) The court shall order a hearing within 21 days after the filing
 2 of the petition, and may order a hearing if a hearing on a protective placement or
 3 petition for court-ordered protective services or transfer of protective placement
 4 with respect to the individual has been held within the previous 6 months.

STET: leave as typed

on a

5 (b) The court may extend the 21-day limitation in par. (a) if requested by the
 6 individual or the individual's guardian, guardian ad litem, or legal counsel.

7 (c) The hearing shall be subject to the requirements of s. 55.10 (4).

After a hearing under sub. (3) on a petition for

8 (4) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. ~~The court, in making~~
 9 a determination with respect to the modification of an order for protective placement,
 10 under this section, may make one of the following findings and, if made, shall issue
 11 an order that includes the information relied on as a basis for that order:

STET: leave as typed

the court shall

orders

it does so

include in the

requirements of

INSERT 66-111

12 (a) If the court finds that individual continues to meet the standards under s.
 13 55.08 (1) and the individual's protective placement is in the least restrictive
 14 environment that is consistent with his or her needs and with the factors in s. 55.12
 15 (3), (4), and (5), the court shall order continuation of the protective placement in the
 16 facility in which the individual resides at the time of the hearing.

INSERT 66-116

17 (b) If the court finds that the individual continues to meet the standards under
 18 s. 55.08 (1) and the protective placement of the individual is not in an environment
 19 that is consistent with his or her needs and with the factors in s. 55.12 (3), (4), and
 20 (5), the court shall order transfer of the individual to a protective placement that is
 21 in the least restrictive environment consistent with the individual's needs and with
 22 the factors in s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual
 23 to a specific facility, the court may order the county department of residence to
 24 develop or recommend a protective placement that is in the least restrictive
 25 environment consistent with the individual's needs and with the factors in s. 55.12

the individual's

1 (3), (4), and (5), and arrange for the individual's transfer to that protective placement
2 within 60 days after the court's order. The court may extend this time period to
3 permit development of a protective placement. The court may order protective
4 services along with transfer of placement. *protective*

5 (c) If the court finds that ^{the} individual no longer meets the standards under s.
6 55.08 (1), the court shall terminate the protective placement, as provided in s. 55.17

7 (3) (c). ✓

8 (5) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES. (a)

9 ~~The court, in making a determination with respect to the~~ modification of an order for
10 protective services ~~under this section~~, other than an order under s. 55.14, ~~may~~ make
11 one of the following ~~findings~~ and, ~~if made~~, shall issue an order that includes the
12 information relied on as a basis for that order: *include in the* *requirements of*

13 1. If the court finds that the individual continues to meet the standard ^s under
14 s. 55.08 (2) and the current protective services are provided in the least restrictive
15 manner that is consistent with his or her needs and with the factors in s. 55.12 (3),
16 (4), and (5), the court shall continue the order for protective services.

17 2. If the court finds that the individual continues to meet the standard ^s under
18 s. 55.08 (2) and the protective services ordered for the individual are not provided in
19 ^a the manner that is consistent with his or her needs or with the factors in s. 55.12 (3),
20 (4), and (5), the court shall order protective services that are more consistent with
21 his or her current needs. The services shall be provided in the least restrictive
22 manner consistent with the individual's needs and with the factors in s. 55.12 (3), (4),
23 and (5).

After a hearing under sub. (3) on a petition for

the court shall

orders

if made

requirements of

After a hearing under sub. (3) on a petition for

1 3. If the court finds that the individual no longer meets the standard^s for
2 protective services under s. 55.08 (2), the court shall terminate the order for
3 protective services.

as provided in s. 55.17 (4) (a) 3

orders required under

4 (b) ~~The court, in making a determination with respect to the~~ modification of an
5 order under s. 55.14, ~~may~~ make one of the findings set forth in s. 55.19 (3) (e) ~~or 2~~
6 ~~or 3~~, and if ~~made~~, shall issue an order that includes the information relied upon^{on} as
7 a basis for that order.

The court shall

include in the

8 SECTION 59. 55.17 of the statutes is created to read:

protective

9 55.17 Termination of an order for protective placement or services. (1)

10 PETITION. An individual, the individual's guardian or guardian ad litem, the
11 department, the county department, a contractual agency, or any interested person,
12 may file a petition at any time for termination of order for a protective placement or
13 services. The petition shall be served on the individual; the individual's guardian;
14 the individual's attorney and guardian ad litem, if any; and the county department.
15 The petition shall allege that the protective placement or court-ordered protective
16 services order shall be terminated because the individual no longer meets the
17 standards under s. 55.08 (1) for protective placement or under s. 55.08 (2) for
18 court-ordered protective services.

19 (2) HEARING. A hearing under this subsection shall comply with s. 55.16 (3).

20 (3) ORDER FOR INDIVIDUAL UNDER PROTECTIVE PLACEMENT. ~~The court, in making~~
21 ~~a determination with respect to the~~ termination of an order for protective placement
22 ~~under this section, may~~ make one of the following findings and, if made, shall issue
23 an order that includes the information relied on as a basis for that order:

24 (a) If the individual continues to meet the standards under s. 55.08 (1) and the
25 individual's protective placement is in the least restrictive environment that is

the court shall

include in the

the court finds that

After a hearing under sub. (2) on a petition for

(2)

requirements of

1 consistent with ~~his or her needs and with~~ the factors in s. 55.12 (3), (4), and (5), the
2 court shall order continuation of the individual's protective placement in the facility
3 in which he or she resides at the time of the hearing.

4 (b) If the court finds that the individual continues to meet the standards under
5 s. 55.08 (1) and the protective placement of the individual is not in an environment
6 that is consistent with ~~his or her needs and with~~ the factors in s. 55.12 (3), (4), and
7 (5), the court shall make an order specified in s. 55.16 (4) (b).

8 (c) If the individual no longer meets the standards under s. 55.08 (1), the court
9 shall terminate the protective placement. If the protective placement is terminated,
10 all of the following shall apply:

11 1. The court shall review the needs of the individual with respect to protective
12 services. If the court determines that the individual meets the standard for protective
13 services under s. 55.08 (2), the court may order protective services. The services shall
14 be provided in the least restrictive manner consistent with the individual's needs and
15 with the factors in s. 55.12 (3), (4), and (5).

16 2. If the court determines that the individual does not meet the standard for
17 protective services under s. 55.08 (2), and the individual is being transferred or
18 discharged from his or her current residential facility, the county department shall
19 assist the residential facility with discharge planning for the individual, including
20 planning for a proper residential living arrangement and the necessary support
21 services for the individual.

22 3. Any individual whose protective placement is terminated under this
23 subdivision *may* is permitted to reside in his or her current residential facility for up to
24 60 days after a determination under subd. 1. or 2. in order to arrange for an
25 alternative living arrangement. If the residential facility has fewer than 16 beds, the

protective placement

paragraph

SECTION 59

protective placement

1 individual may remain in the residential facility as long as the requirements of s.
2 55.055 are met. Admission by the individual, if an adult, to another residential
3 facility shall be ^{made} under s. 55.055. ^{After a hearing under sub. (a) on a} ^{petition for} ^{e2}

the court shall

4 (4) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES. (a)
5 The court, in making a determination with respect to termination of an order for
6 protective services under this section, other than an order under s. 55.14, ~~may~~ make
7 one of the following ^{orders} findings and, if made, shall issue an order ^{include in the} that includes the
8 information relied on as a basis for that order: ^{requirements of}

9 1. If the individual continues to meet the standard under s. 55.08 (2) and the
10 current protective services ^{ordered for the individual} are provided in the least restrictive manner that is
11 consistent with ~~his or her needs and with~~ the factors under s. 55.12 (3), (4), and (5),
12 the court shall continue the order for protective services. ^{least restrictive}

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13 2. If the individual continues to meet the standard under s. 55.08 (2) and the
14 protective services ordered for the individual are not provided in the manner that is
15 consistent with ~~his or her needs and with~~ the factors under s. 55.12 (3), (4), and (5),
16 the court shall make an order for protective services as provided in s. 55.16 (5) (b). ^{(a)2.}

17 3. If the individual no longer meets the standard for protective services under
18 s. 55.08 (2), the court shall terminate the order for protective services. ^{orders required under}

19 (b) The court, in making a determination with respect to termination of an
20 order under s. 55.14, ^{the court shall} may make one of the findings set forth in s. 55.19 (3) (e) ~~1, 2,~~
21 ~~or 3,~~ and, if made, shall issue an order ^{include in the} that includes the information relied upon as
22 a basis for that order.

23 SECTION 60. 55.175 of the statutes is created to read:

24 55.175 Discharge from protective placement. Prior to any discharge from
25 a protective placement the county department which is responsible for placement

2 After a hearing under sub. (a) on a petition for

1 shall review the need for provision of continuing protective services or for
 2 continuation of full or limited guardianship or provision for such guardianship if the
 3 individual has no guardian. Recommendation shall be made to the court if the
 4 recommendation includes a course of action for which court approval would be
 5 required. Prior to discharge from any state institute or center for the
 6 developmentally disabled, the department shall make such review under s. 51.35.

7 SECTION 61. 55.18 of the statutes is created to read:

8 55.18 Annual review of protective placement. All of the following shall

9 be performed with respect to any individual who is ^{subject to an order for protective placement} protectively placed under s. 55.12:

10 (1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department

11 of the individual's county of residence shall, except as provided in pars. (b) and (bm),
 12 annually review the status of each individual who has been protectively placed. The
 13 review shall include a written evaluation of the physical, mental, and social
 14 condition of the individual and the service needs of the individual. The review shall
 15 be made a part of the permanent record of the individual. The county department
 16 shall inform the guardian of the individual of the review at the time the review is
 17 made and shall invite the individual and the guardian to submit comments or
 18 information concerning the individual's need for protective placement or protective
 19 services before completing a report of the review. Not later than the first day of the
 20 11th month after the initial order is made for protective placement for an individual,
 21 and, except as provided in par. (b), annually thereafter, the county department shall:

22 **No 9** 1. File a report of the review with the court that ordered the protective
 23 placement under s. 55.12. MATERIAL FROM pp. 72+73 goes HERE

24 2. File with the court under subd. 1. a petition for annual review by the court
 25 of the protective placement ordered under s. 55.12 for the individual.

INSECT
71-23

for protective placement
or to an order initially issued under
s. 55.06(9)(a), 2003 stats

individual's

1 3. Provide the report under subd. 1. to the individual and the guardian of the
2 individual, and to the person's agent under an activated power of attorney for health
3 care, if any.

following

under the requirements
§ 55.10(4)

~~STET~~

4 (b) If, in an annual review of an individual's status under par. (a), the individual
5 or the individual's guardian or guardian ad litem requests modification or
6 termination of the individual's protective placement and a full due process hearing
7 is provided, or ^{if} a full due process hearing is provided pursuant to a petition for
8 modification or termination of the protective placement, the county is not required

STET
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9 to initiate a subsequent review of the individual's status under this section until the
10 first day of the 11th month after the date that the court issues a final order after the
11 full due process hearing.

par. (a)

12 (bm) If the individual is subject to an order for involuntary administration of
13 psychotropic medication under s. 55.14, the review under this section shall be
14 conducted simultaneously with the review under s. 55.19.

15 (c) The county department or contractual agency staff member performing the
16 review under par. (a) shall visit the individual and shall contact the individual's
17 guardian, as provided under par. (a) (intro.). The review may not be conducted by

under par. (a)

18 a person who is an employee of the facility in which the individual resides. The report
19 of the review shall include information on all of the following:

20 1. The functional abilities and disabilities of the individual at the time the
21 review is made including the needs of the individual for health, social, or
22 rehabilitation services, and the level of supervision needed.

23 2. The ability of community services to provide adequate support for the
24 individual's needs.

25 3. The ability of the individual to live in a less restrictive setting.

MOVE TO p.
71, line 23

1 4. Whether sufficient services are available to support the individual and meet
 2 the individual's needs in the community and if so, an estimate of the cost of such
 3 services, including the use of county funds.

4 5. Whether the protective placement order should be terminated or whether
 5 the individual should be placed in another residential facility with adequate support
 6 services that places fewer restrictions on the individual's personal freedom, is closer
 7 to the individual's home community or more adequately meets the individual's
 8 needs, including any recommendation that is made during the reporting period by
 9 the department with respect to termination of the protective placement or placement
 10 of the individual in another residential facility.

11 6. The comments of the individual and the individual's guardian during the
 12 performance of the review, as summarized by the county department, and the
 13 response of the county department to the comments.

14 7. The comments, if any, of any staff member at the facility in which the
 15 individual is placed which are relevant to the review of the individual's placement.

16 (1m) County Separately Agreement
 17 The county of residence of an individual whose placement is in a different
 18 county may enter into an agreement under which the county of the individual's
 19 placement performs all or part of the duties of the county of residence under this
 subsection.

20 (2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has
 21 filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad
 22 litem who is an attorney appointed in accordance with s. 757.48 (1). The guardian
 23 ad litem shall do all of the following:

24 (a) Review the report filed under sub. (1) (a) 1., the report under s. 880.38 (3),
 25 and any other relevant reports on the individual's condition and placement.

MOVE TO P. 71, line 23

the

county

CS

with that county

required

of the individual

1 (b) Meet with the individual and contact the individual's guardian and explain
2 to the individual and guardian all of the following:

INSERT 74-2

- 3 1. The procedure for review of protective placement.
- 4 2. The right to appointment of legal counsel. *under sub. (3)(c)*
- 5 3. The right to ~~performance of~~ an evaluation under sub. (3) (a) 1. *(b)*
- 6 4. The contents of the report under sub. (1) (a) 1.
- 7 5. That a change in or termination of protective placement or protective

8 services may be ordered by the court.

9 6. That a ~~full due process~~ hearing *under sub. (3)(d)* may be requested by the individual or the
10 individual's guardian. *required*

INSERT 74-10

11 (c) Provide the information under par. (b) to the individual in writing. *and to the individual's guardian*

INSERT 74-11

12 (d) Review the individual's condition, placement, and rights with the
13 individual's guardian. *sub. (3)(b), (c), or (d)*

14 (e) Ascertain whether the individual wishes to exercise any of his or her rights
15 under par. (b) 2., 3. or 6. *subsection*

16 (f) File a written report with the court within 30 days after appointment, using *based on*

17 information obtained under this paragraph and any other evaluations or records of
18 the individual. The report shall discuss whether the individual appears to continue
19 to meet the standards for protective placement under s. 55.08 (1) and whether the
20 protective placement is in the least restrictive environment that is consistent with
21 the individual's needs. The report shall also state whether any of the following apply:

22 1. An evaluation under sub. (3) (a) 1. *(b)* is requested by the guardian ad litem, the
23 individual, or the individual's guardian. *individual or the individual's guardian*

24 2. The individual or the individual's guardian requests modification or
25 termination of the protective placement.

STET: leave as typed

the individual's

1 3. The individual or his or her guardian requests or the guardian ad litem
2 recommends that legal counsel be appointed for the individual.

3 4. The individual or his or her guardian or guardian ad litem requests a full due
4 process hearing under this section for the individual.

5 (g) Certify to the court that he or she has complied with the requirements of
6 pars. ^(a) ~~(b), (c), and (d)~~ to (e). **required**

INSERT
75-6

7 **(3) COURT REVIEW OF REPORTS; HEARING; ORDER.** (a) The court that ordered
8 protective placement for an individual under s. 55.12 shall review the report of the
9 guardian ad litem under sub. (2) (f), the **annual review** report filed under sub. (1) (a)
10 1., and the report ~~filed~~ under s. 880.38 (3). The court shall determine whether any

11 of the following is necessary:

a person

12 1. Performance of an evaluation of the physical, mental, and social condition
13 of the individual and the individual's service needs by ~~an individual~~
14 employee of the county department and that, if the individual is indigent, is
15 performed at the expense of the responsible county department under sub. (1) (a).

16 2. Obtaining any other information with respect to the individual.

17 3. Appointment of legal counsel.

18 4. Holding of a full due process hearing.

, by a person who is not an employee of the county department,

19 (b) The court shall order ~~performance of~~ an evaluation of the physical, mental,
20 and social condition of the individual and the service needs of the individual that is
21 independent of the review performed under sub. (1) (a) if any of the following apply:

22 1. The **review** report required under sub. (1) (a) 1. is not timely filed, or the court
23 determines that the report fails to meet the requirements of sub. (1) (c).

24 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
25 determines that an independent evaluation for the individual is necessary.

SECTION 61

shall be held on the record

1 3. The individual or the individual's guardian or guardian ad litem so requests.

2 (bm) If an evaluation is ordered under par. (b), it shall be performed at the

3 expense of the individual unless the individual is indigent. If the individual is

4 indigent, the evaluation shall be performed at the expense of the county of residence

5 under sub. (1) (a).

INSERT 76-5

6 (c) The court shall order legal counsel for an individual and, if the individual

7 appears to be indigent, refer him or her to the authority for indigency determinations

8 under s. 977.07 (1) if any of the following apply:

9 1. Following review of the guardian ad litem's report under sub. (2) (f), the court

10 determines that legal counsel for the individual is necessary.

11 2. The individual or the individual's guardian or guardian ad litem so requests.

12 (d) The court shall order either a summary hearing or a full due process

under the requirements of s. 55.10 (4)

13 hearing. A summary hearing may be held in court or may be held by other means

including

14 such as by telephone or videoconference. The court shall hold a full due process

is not an evidentiary hearing, and does not require attendance by the individual

15 hearing if any of the following apply:

INSERT 76-15

16 1. The individual or the individual's guardian or guardian ad litem so requests.

17 2. The report under sub. (2) (f) indicates that the individual no longer meets the

18 standards for protective placement.

under s. 55.08(1)

protective

19 3. The report under sub. (2) (f) indicates that the current placement is not in

20 the least restrictive environment consistent with the individual's needs.

21 4. The report under sub. (2) (f) indicates that the individual objects to the

22 current placement.

23 (e) Following the hearing under par. (d), the court shall do one of the following:

24 1. If the court finds that the individual continues to meet the standards under

25 s. 55.08 (1) and the protective placement of the individual is in the least restrictive

SECTION 61

the individual

requirements of

1 environment that is consistent with his or her needs and with the factors in s. 55.12
 2 (3), (4), and (5), the court shall order the continuation of the protective placement in
 3 the facility in which he or she resides at the time of the hearing. The court shall
 4 include the information relied upon as a basis for the order and shall make findings
 5 based on the factors in s. 55.08 (1) in support of the need for continuation of the
 6 protective placement.

in the order

standards under

7 2. If the court finds that the individual continues to meet the standards under
 8 s. 55.08 (1) and the protective placement of the individual is not in the least
 9 restrictive environment that is consistent with his or her needs and with the factors
 10 in s. 55.12 (3), (4), and (5), the court shall order transfer of the individual to a
 11 protective placement that is in the least restrictive environment consistent with the
 12 individual's needs and with the factors in s. 55.12 (3), (4), and (5). In lieu of ordering
 13 transfer of the individual to a specific facility, the court may order the county
 14 department of residence to develop or recommend a protective placement that is in
 15 the least restrictive environment consistent with the individual's needs and with the
 16 factors in s. 55.12 (3), (4), and (5) and arrange for the individual's transfer to that
 17 protective placement within 60 days after the court's order. The court may extend
 18 this period to permit development of a protective placement. The court may order
 19 protective services along with transfer of placement. The court shall include the
 20 information relied upon as a basis for the order and shall make findings based on the
 21 factors in s. 55.08 (1) in support of the need for continued protective placement.

as well as a

protective

in the order

standards under

22 3. If the court finds that the individual no longer meets the standards under
 23 s. 55.08 (1), the court shall terminate the protective placement. If the protective placement is
 24 terminated, s. 55.17 (3) (c) shall apply.

the court shall

1. to 3.

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.

2. The individual's guardian, guardian ad litem, and legal counsel, if any, and to the person's agent under an activated power of attorney for health care, if any.

3. The facility in which the individual resided when the petition for annual review was filed.

4. The county department under sub. (1) (a).

(4) ESTABLISHMENT OF COUNTY POLICY. The county protective services agency shall ensure that no later than December 31, 2004, the county establishes a written policy that specifies procedures to be followed in the county which are designed to ensure that annual reviews of all protectively placed persons residing in the county are conducted as required by this section. The county protective services agency shall maintain a copy of the written policy and shall make the policy available for public inspection.

(5) The register in probate of each county shall, by December 31 of each year, file with the chief judge of the judicial administrative district a statement indicating whether each report and petition required to be filed by the county under sub. (1) that year has been filed. If the statement indicates that a required report or petition has not been filed, the statement shall include an explanation of the reasons the report or petition has not been filed.

SECTION 62. 55.19 of the statutes is created to read:

55.19 Annual review of order authorizing involuntary administration of psychotropic medication. All of the following shall be performed with respect to any individual who is subject to an order under s. 55.14 or an order initially issued

individual's

for protective placement

2003 Stats.,

and, if relevant, sub. (1m)

individuals who are subject to orders for protective placement under s. 55.12 or to orders initially issued under s. 55.06(9)(a),

INSERT 78-15

REPORT BY REGISTER IN PROBATE

department

INSERT 78-21

STEP - leave as typed

except as provided in sub. (1m)

2003

RESTORE

1 under s. 880.33 (4r), ~~2001~~ stats., authorizing involuntary administration of
2 psychotropic medication:

a visit to the individual and

3 (1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department
4 of the individual's county of residence shall, ~~except as provided in par. (b) and (bm),~~
5 review, in compliance with the requirements of this section, the status of each
6 individual who is the subject of the order ~~unders. 55.06 (9) (am).~~ The review shall
7 include a written evaluation of the physical, mental, and social condition of the
8 individual that ~~are~~ ^{is} relevant to the issue of the continued need for the order. The
9 review shall be made a part of the permanent record of the individual. The county
10 department shall inform the guardian of the individual of the review at the time the
11 review is made and shall ~~invite~~ ^{before completing a report of the review,} the individual and the guardian to submit comments
12 or information concerning the individual's need for involuntary administration of
13 psychotropic medication or other protective services ~~before completing a report of the~~
14 review. Not later than the first day of the 11th month after the initial order is made
15 for an individual, ~~and,~~ except as provided in par. (b), ^{and} at least annually thereafter, the
16 county department shall do all of the following:

keep comma

MATERIAL FROM PP. 80+ 81 GOES HERE

- 17 1. File a report of the review with the court that issued the order.
- 18 2. File with the court under subd. 1. a petition for annual review by the court
- 19 of the order.
- 20 3. Provide the report under subd. 1. to the individual and the guardian of the
- 21 individual.

and

under the requirements of s. 55.10 (4)

22 (b) If, ~~in~~ ^{following} an annual review of an individual's status under par. (a), the individual
23 or the individual's guardian or guardian ad litem requests termination of the order
24 and a ~~full due process~~ hearing is provided, or a ~~full due process~~ hearing is provided
25 pursuant to a petition for modification or termination of the order, the county is not

STET

leave as typed

department

SECTION 62

par. (a)

1 required to initiate a subsequent review under ~~this section~~ until the first day of the
2 11th month after the date that the court issues a final order after the ~~full due process~~
3 hearing.

under s. 55.18

4 (bm) If the individual is subject to a protective placement order, the review
5 under ~~this section~~ shall be conducted simultaneously with the review of the
6 individual's protective placement ~~under s. 55.18~~.

par. (a)

7 (c) The county department or contractual agency staff member performing the
8 review under par. (a) shall visit the individual and shall contact the individual's
9 guardian, as provided under par. (a) (intro.). The review may not be conducted by
10 a person who is an employee of a facility in which the individual resides or from which
11 the individual receives services. The report of the review shall include information
12 on all of the following:

under par. (a)

13 1. Whether the individual continues to meet the standards for protective
14 services.

15 2. Whether the individual is ~~competent~~ to refuse psychotropic medication, as
16 set forth in s. 55.14 (4) (b).

not

defined

1 ✓

feasible or is not

17 3. Whether the individual continues to refuse to take psychotropic medication
18 voluntarily or attempting to administer psychotropic medication to the individual
19 voluntarily is not in the best interests of the individual, as set forth in s. 55.14 (4) (c).

specified

3 ✓

INSERT 80-19

20 4. Whether the individual's condition for which psychotropic medication has
21 been prescribed has been improved by psychotropic medication and the ~~person~~
22 responded positively to psychotropic medication.

met one of

individual

23 5. Whether the individual continues to meet the dangerousness criteria set
24 forth in s. 55.14 (4) (e).

s. 51.20 (1)(a) 2. a. to e., whether the individual continues to meet the criterion

If the petition alleged under s. 55.14 (3)(e) 2. that the

MOVE THIS TO p. 79-17

MOVE THIS TO P. 79-17

1 § 6. The comments of the individual and the individual's guardian during the
2 performance of the review, as summarized by the county department, and the
3 response of the county department to the comments.

4 7. The comments, if any, of any staff member at any facility at which the
5 individual is placed, receives services or at which psychotropic medication is
6 administered to the individual which are relevant to the review of the continued need
7 for the order.

COUNTY AGREEMENT.

8 (1m) The county of residence of an individual who is subject to an order under
9 s. 55.14 and is protectively placed and whose placement is in a different county may
10 enter into an agreement with that county under which the county of the individual's placement
11 performs all or part of the duties of the county of residence under this subsection.

12 (2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has
13 filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad
14 litem who is an attorney appointed in accordance with s. 757.48 (1). The guardian
15 ad litem shall do all of the following:

16 (a) Review the report filed under sub. (1) (a) 1., and any other relevant reports
17 on the individual's condition and continued need for the order under s. 55.14.

18 (b) Meet with the individual and contact the individual's guardian and explain
19 to the individual and guardian all of the following:

INSERT 81-19

20 1. The procedure for review of an order for involuntary administration of
21 psychotropic medication.

22 2. The right to appointment of legal counsel of the individual under sub. (3) (c)

23 3. The right to performance of an evaluation under sub. (3) (a) 1.

24 4. The contents of the report under sub. (1) (a) 1. e (b)

or modification of the treatment plan

or modification

1 5. That a termination of the order for involuntary administration of
2 psychotropic medication may be ordered by the court.

3 6. That a full due process hearing may be requested by the individual or the
4 individual's guardian.

INSERT 82-4

5 (c) Provide the information under par. (b) to the individual in writing.

INSERT 82-5

6 (d) Review the individual's condition and rights with the individual's guardian.

7 (e) Ascertain whether the individual wishes to exercise any of his or her rights

8 under par. (b) 2., 3. or 6.

Sub. (3) (b) (c) or (d)

subsection

9 (f) File a written report with the court within 30 days after appointment, using

based on

10 information obtained under this paragraph and any other evaluations or records of
11 the individual. The report shall discuss whether the individual appears to continue
12 to meet the standards for an order under s. 55.14. The report shall also state whether
13 any of the following apply:

14 1. An evaluation under sub. (3) (a) 1. is requested by the guardian ad litem, the
15 individual, or the individual's guardian.

16 2. The individual or the individual's guardian requests termination of the order
17 under s. 55.14.

18 3. The individual or his or her guardian requests or the guardian ad litem
19 recommends that legal counsel be appointed for the individual.

20 4. The individual or his or her guardian or guardian ad litem requests a full due
21 process hearing under this section for the individual.

22 (g) Certify to the court that he or she has complied with the requirements of
23 pars. (b), (c), and (d).

INSERT 82-23

24 (3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that issued the
25 order under s. 55.14 shall review the report of the guardian ad litem under sub. (2)

by a person who is not an employee of the county department

1 (f) and the annual review report filed under sub. (1) (a) 1. The court shall determine
2 whether any of the following is necessary:

3 1. Performance of an evaluation of the physical, mental, and social condition
4 of the individual that are relevant to the issue of the continued need for the order
5 under s. 55.14 by an individual who is not an employee of the county department and
6 that, if the individual is indigent, is performed at the expense of the responsible
7 county department under sub. (1) (a).

8 2. Obtaining any other information with respect to the individual.

9 3. Appointment of legal counsel.

10 4. Holding of a full due process hearing.

(as specified in par. (a) 1, 3)

11 (b) The court shall order performance of an evaluation of the physical, mental,
12 and social condition of the individual that ^{is} relevant to the issue of the continued
13 need for the order under s. 55.14 that is independent of the review performed under
14 sub. (1) (a) if any of the following apply:

RESTORE

15 1. The review report required under sub. (1) (a) 1. is not timely filed, or the court
16 determines that the report fails to meet the requirements of sub. (1) (c).

17 2. Following review of the guardian ad litem's report under sub. (2) (f), the court
18 determines that an independent evaluation for the individual is necessary.

19 3. The individual or the individual's guardian or guardian ad litem so requests.

20 (bm) If an evaluation is ordered under par. (b), it shall be performed at the
21 expense of the individual unless the individual is indigent. If the individual is
22 indigent, the evaluation shall be performed at the expense of the county of residence
23 under sub. (1) (a).

order that the county department

¶ (br) The court shall obtain any other necessary information with respect to the individual.

SET: leave as typed

**** NOTE: Please review this paragraph.

It replaces material proposed as par. (a) 2. Generally, the material proposed as par. (a) 1. to 4. is redundant to material in par. (b) or (bm).

RESTORE

shall be held on the record,

(c) The court shall order legal counsel for an individual and, if the individual appears to be indigent, refer him or her to the authority for indigency determinations under s. 977.07 (1) if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means, such as by telephone or videoconference. The court shall hold a full due process hearing if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for an order under s. 55.14.

3. The report under sub. (2) (f) indicates that the individual objects to the order.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards for an order under s. 55.14, the court shall order the continuation of the order. The court shall include the information relied upon as a basis for the order and shall make findings based on the factors in s. 55.14 in support of the need for continuation of the order.

2. If the court finds that the individual continues to meet the standards for an order under s. 55.14 but that modification of the order or the treatment plan would be in the best interests of the individual, the court shall modify the order, order modifications to the individual's treatment plan, or both. Any modifications to the treatment plan are subject to the approval of the guardian. The court shall include

INSERT 84-10

is not an evidentiary hearing, and does not require attendance by the individual

requirements for allegations of a petition under

in the order

INSERT 84-20

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(9)

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(3)

requirements for allegations of a petition under

1 the information relied upon as a basis for its order and shall make findings based on
2 the ~~factors~~ ³ in s. 55.14 (4) in support of the need for authorizing the guardian to
3 consent to involuntary administration of psychotropic medication. (2)

INSERT
85-3

4 3. If the court finds that the individual no longer meets the standards for an
5 order under s. 55.14, ~~terminate~~ ^{the court shall} the order. If the order is terminated, the court shall
6 review the needs of the individual with respect to other protective services. If the
7 court determines that the individual meets the standard ^s for other protective services
8 under s. 55.08 (2) ~~which~~ ^{that} are not currently being provided to the individual, the court
9 may order those protective services for the individual.

10 (f) The court shall provide a copy of the order made under par. (e) to all of the
11 following:

- 12 1. The individual.
- 13 2. The individual's guardian, guardian ad litem, and legal counsel, if any. ✓
- 14 3. The facility in which the individual resided, if any, when the petition for
15 annual review was filed. ✓
- 16 4. The county department under sub. (1) (a). ^{and, if relevant, sub. (1m)}

17 SECTION 63. 55.21 (title) of the statutes is created to read:

18 **55.21 Centers for developmentally disabled.**

19 SECTION 64. 55.22 (title) of the statutes is created to read:

20 **55.22 Records.** (title) ← PLAIN

INSERT 85-20

21 SECTION 65. 851.72 (11) of the statutes is created to read:

22 851.72 (11) Annually submit to the chief judge of the judicial administrative
23 district the statement required under s. ~~55.065~~ (5) regarding the completion of
24 annual reviews of protective placement orders under s. ~~55.065~~ (1). ✓

25 SECTION 66. 880.01 (7m) of the statutes is repealed.

INSERT
85-25

SECTION 67

the court shall determine that venue lies in the county in which the petition is first filed or in another county, as appropriate.

If the court determines

1 **SECTION 67.** 880.01 (8m) of the statutes is created to read:

2 880.01 (8m) "Psychotropic medication" means a prescription drug, as defined
3 in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging
4 behavior.

NOTE: Creates a definition of "psychotropic medication" in ch. 880, relating to guardianship.

5 **SECTION 68.** 880.06 (1) of the statutes is amended to read:

6 880.06 (1) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall
7 determine venue. ~~If~~ *it is determined* The court shall direct that proper notice be given to any
8 potentially responsible or affected county. After all potentially responsible or
9 affected counties and parties have been given an opportunity to be heard, ~~if it is~~

10 determined that venue lies in another county, the court shall order the entire record
11 certified to the proper court. A court wherein a subsequent petition is filed shall,
12 upon being satisfied of an earlier filing in another court, summarily dismiss ~~such~~ *the*
13 petition. *subsequent* If any potentially responsible or affected county or party objects to the

14 court's finding that the ward is a resident of another county, *of venue* the issue shall be
of health and family services. referred to the department pursuant to s. 51.40 (2) (g). *the court shall refer the*
15 The court shall then suspend
16 ruling on the motion for change of venue until the determination under s. 51.40 (2)
17 (g) is final. Proper notice is given to a potentially responsible or affected county if
18 written notice of the proceeding is sent by certified mail to the county's clerk and
19 corporation counsel. *and*

INSERT 86-19

20 **SECTION 69.** 880.06 (2) of the statutes is repealed and recreated to read:

21 880.06 (2) CHANGE OF RESIDENCE OF WARD BY GUARDIAN. A guardian for good
22 cause shown may change a ward's county of residence by filing with the court a
23 written statement pursuant to s. 51.40 (2) (f).

INSERT 86-23

as specified in

1 SECTION 70. 880.07 (1m) of the statutes is repealed.

2 SECTION 71. 880.07 (2m) of the statutes is created to read:

3 880.07 (2m) Whenever a petition for guardianship on the ground of
4 incompetency is filed with respect to a person who resides in a facility licensed for
5 16 or more beds, a petition for protective placement of the person shall also be filed.

NOTE: Requires the filing of a protective placement petition whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds.

6 SECTION 72. 880.08 (1) of the statutes is amended to read:

7 880.08 (1) INCOMPETENTS. A petitioner shall have notice served of a petition for
8 appointment or change of a guardian upon the proposed incompetent and existing
9 guardian, if any, by personal service at least 10 days before the time set for hearing.

10 If such proposed incompetent is in custody or confinement, a petitioner shall have
11 notice served by registered or certified mail on the proposed incompetent's custodian,
12 who shall immediately serve it on the proposed incompetent. The custodian shall

13 inform the proposed incompetent of the complete contents of the notice and certify
14 thereon that the custodian served and informed the proposed incompetent and
15 returned the certificate and notice to the circuit judge. The notice shall include the

16 names of all persons who are petitioning for guardianship. A copy of the petition
17 shall be attached to the notice. The proposed incompetent shall be present at the
18 hearing unless, after a personal interview, the guardian ad litem certifies in writing

19 to the court specific reasons why the person is unable to attend or certifies in writing
20 that the person is unwilling to participate or unable to participate in a meaningful
21 way. If the person is unable to attend a hearing because of physical inaccessibility

22 or lack of transportation, the court shall hold the hearing in a place where the person
23 may attend if requested by the proposed ward, guardian ad litem, adversary counsel

an individual

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individual

PLAIN

if able to attend to

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individual

LPS: Please Proof With Folio

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The proposed incompetent is presumed able to attend

PS: Please Proof W. R. Fatio

individual

1 or other interested person. The court is not required to hold the hearing in the
 2 presence of the person sought to be placed if the guardian ad litem, after a personal
 3 interview with the person, certifies in writing to the court that the person is
 4 unwilling to participate or unable to participate in a meaningful way. Such notice
 5 shall also be given personally or by mail at least 10 days before the hearing to the
 6 proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs
 7 or other persons who have legal or physical custody of the proposed incompetent
 8 whose names and addresses are known to the petitioner or can with reasonable
 9 diligence be ascertained, to any governmental or private agency, charity or
 10 foundation from which the proposed incompetent is receiving aid and to such other
 11 persons or entities as the court may require. The court shall then proceed under s.
 12 880.33.

INSERT 88-12A

NOTE: Specifies that the court need not hold a hearing on appointment of a guardian for a person alleged to be incompetent in the presence of the person under certain circumstances. These provisions are identical to provisions inserted into ch. 55 by SEC. 2 of the bill.

INSERT 88-12B

renumbered 880.24(3) and 880.24(3) (intro.) as renumbered is

13 SECTION 73. 880.24 (3) (a) ~~(intro)~~ of the statutes is amended to read:

fix component

14 880.24 (3) (a) (intro.) ~~Except as provided in par. (b),~~ when a guardian is
 15 appointed, the court shall award from the ward's estate payment of the petitioner's
 16 reasonable attorney fees and costs, ~~including those fees and costs, if any, related to~~
 17 ~~protective placement of the ward,~~ unless the court finds, after considering all of the
 18 following, that it would be inequitable to do so:

when

19 SECTION 74. 880.24 (3) (a) 4. of the statutes is renumbered 880.24 (3) (a) 5.

NOTE: Renumbers an existing statutory provision to facilitate the creation of s. 880.24 (3) (a) 4. in SEC. .

20 SECTION 75. 880.24 (3) (b) of the statutes is renumbered 880.24 (3) (a) 4, and
 21 amended to read:

(cm)

✓ (cm)

1 880.24 (3) ~~(a) 4~~ If the court finds that Whether the ward had executed a
2 durable power of attorney under s. 243.07 or a power of attorney for health care under
3 s. 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~
4 may not make the award specified in par. (a).

NOTE: Specifies that the court may consider whether the ward engaged in advance planning to avoid guardianship when deciding whether to award payment of the petitioner's attorney fees and costs from the ward's estate.

INSERT
89-4

5 **SECTION 76.** 880.33 (2) (f) of the statutes is created to read:
6 880.33 (2) (f) An interested person may participate in the hearing on the
7 petition at the court's discretion. ✓

NOTE: This provision is taken from the decision of the Wisconsin Court of Appeals in *Coston v. Joseph P.*, 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998).

INSERT
89-7

8 **SECTION 77.** 880.33 (4m) of the statutes is repealed. ✓

9 **SECTION 78.** 880.33 (4r) of the statutes is repealed. ✓

INSERT
89-9

10 **SECTION 79.** 880.331 (4) (a), (b), (d) and (e) of the statutes are amended to read:
11 880.331 (4) (a) Interview the proposed ward ~~or~~ subject of a petition for
12 protective placement or court-ordered protective services, or alleged incompetent
13 and explain the applicable hearing procedure, the right to counsel and, in an
14 incompetency case, the right to request or continue a limited guardianship.
15 (b) Advise the proposed ward ~~or~~ alleged incompetent, or subject of a petition
16 for protective placement or court-ordered protective services, both orally and in
17 writing, of that person's rights to a jury trial, to an appeal, to counsel and to an
18 independent medical or psychological examination on the issue of competency or on
19 the issue of the need for an order for protective placement or services, at county
20 expense if the person is indigent.
21 (d) If applicable, inform the court that the individual who is the proposed ward
22 or, alleged incompetent, or subject of a protective placement or court-ordered

1 ~~protective services petition~~ objects to a finding of incompetency, the present or
 2 proposed placement ~~or services~~ or the recommendation of the guardian ad litem as
 3 to the ~~proposed ward's or alleged incompetent's individual's~~ best interests or that the
 4 ~~proposed ward's or alleged incompetent's individual's~~ position on these matters is
 5 ambiguous.

6 (e) Present evidence concerning the best interests of the proposed ward ~~or,~~
 7 ~~alleged incompetent, or subject of a protective placement or court-ordered protective~~
 8 ~~services petition,~~ if necessary.

9 **SECTION 80.** 880.331 (4) (am), (ar) ~~and (as)~~ of the statutes are created to read:

10 880.331 (4) (am) Interview the proposed guardian and any other person
 11 seeking appointment as guardian. *and*

12 (ar) Make a recommendation to the court regarding the fitness of the proposed
 13 guardian.

14 (as) Interview the guardian of an individual who is the subject of a petition for
 15 protective placement or court-ordered protective services, if one has already been
 16 appointed. *if any*

INSERT 90-16

17 **SECTION 81.** 880.331 (4) (dm), (dr) and (ds) of the statutes are created to read:

18 880.331 (4) (dm) Inform the court and the petitioner, ~~or petitioner's counsel~~
 19 ~~where the petitioner is represented,~~ if the proposed ward requests representation by
 20 counsel. *55.11(1) (intro.)*

21 (dr) Attend all court proceedings related to the guardianship.

22 (ds) Notify the guardian of the right to be present at and participate in the
 23 hearing, to present and cross-examine witnesses, ~~and~~ to receive a copy of ~~the~~ *any*
 24 evaluations under ~~ss. 55.06 (8) and~~ 880.33 (2) (b). *S.*

INSERT 90-24

25 **SECTION 82.** 880.34 (6) of the statutes is repealed.

INSERT 90-25

, and to secure and present a report on an independent evaluation under 5.

other than psychotropic medication

under

1 SECTION 83. 880.38 (2) of the statutes is amended to read:
 2 880.38 (2) A guardian of the person shall endeavor to secure necessary care,
 3 services or appropriate protective placement on behalf of the ward. Subject to any
 4 limitation imposed by the court under s. 880.33 (8) (b), a guardian may consent,
 5 without further court involvement, to involuntary administration of medication,
 6 other than psychotropic medication, and involuntary medical treatment that is in
 7 the ward's best interest. A guardian may consent to involuntary administration of
 8 psychotropic medication only pursuant to a court order under s. 55.14. In
 9 determining whether medication or medical treatment is in the ward's best interest,
 10 the guardian shall consider the invasiveness of the medication or treatment and the
 11 likely benefits and side effects of the medication or treatment.

INSERT
91-11

12 SECTION 84. 880.38 (4) of the statutes is created to read:
 13 880.38 (4) (a) In this subsection, "protest" means make more than one
 14 discernible negative response, other than mere silence, to the offer of,
 15 recommendation for, or other proffering of voluntary receipt of psychotropic
 16 medication. "Protest" does not mean a discernible negative response to a proposed
 17 method of administration of the psychotropic medication.

the guardian's

18 (b) A guardian may, without court approval, give an informed consent to the
 19 voluntary receipt by a ward of medication, including any appropriate psychotropic
 20 medication, if the guardian has first made a good-faith attempt to discuss with the
 21 ~~guardian's~~ ward the ~~ward's~~ voluntary receipt of the medication, and if the ward does
 22 not protest.

INSERT
91-22

NOTE: Creates a definition of "protest" and creates a provision under which a guardian may provide informed consent to voluntary receipt of medication, including psychotropic medication, by a ward.

23 SECTION 85. 977.05 (4) (i) 8. of the statutes is created to read:

individuals

1 977.05 (4) (i) 8. Cases involving persons who are subject to petitions for
2 protective placement under ch. 55.

INSERT 92-2

3 SECTION 86. Nonstatutory provisions.

an order appointing

a guardian ~~appointed~~ under section 880.33 (4m), 2003

Stats and to

4 (1) REVIEW OF ORDER. For an individual who is subject to an order initially
5 issued under section 880.33 (4r), 2001 statutes, that is in effect on the effective date
6 of this subsection, the county department of the individual's county of residence
7 shall, no later than 9 months after the effective date of this subsection, review the
8 individual's status under the requirements of section 55.19 of the statutes, as created
9 by this act.

2003 stats

INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION

treatment

55.05 (2)(d)

(4m) and

(use 2x)

10 (2) TRANSITION. Notwithstanding the repeal of section 880.33 (4r) of the
11 statutes by this act, all orders issued under section 880.33 (4r), 2001 statutes, in
12 effect on the effective date of this subsection, remain in effect until modified or
13 terminated by a court order under section 55.16, 55.17, or 55.19 of the statutes, as
14 created by this act.

and

2003 stats

2003 stats

INSERT 92-14

55.05 (2)(d) and

(END)

D-NOTE