

81 ADM-57

Chapter 991, Laws of 1981: Short
Term Involuntary Protective Services
Orders



NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001
 BARBARA B. BLUM
 Commissioner



(An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.)

ADMINISTRATIVE DIRECTIVE

TO: Commissioners of Social Services

TRANSMITTAL NO: 81 ADM-057
 (Adult Services)

SUBJECT: Chapter 991, Laws of 1981: Short Term
 Involuntary Protective Services Orders

DATE: December 11, 1981

SUGGESTED

DISTRIBUTION: County and Agency Attorneys
 Directors of Social Services
 Protective Services for Adults Staff

CONTACT PERSON: Any questions concerning this release should be directed to Christina Hay, Division of Adult Services by calling 800-342-3715, ext. 3-1713, or Sharon Lane ext. 3-8728, or Irv Abelman (212) 488-5097.

I. Purpose:

The purpose of this release is to advise the local social services districts of the provisions of Chapter 991 of the Laws of 1981, which authorizes the districts to petition the court for short term involuntary protective services orders on behalf of certain involuntary clients in need of Protective Services for Adults (PSA), and the steps which must be taken to effectively utilize this statutory authority.

II. Background:

PSA is provided to persons who are:

- at least 18 years of age;
- have mental and/or physical impairments;
- are threatened with harm by the actions of themselves or others;
- have unmet essential needs; and
- have no one able to assist them in a responsible manner.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/ Chapter Ref.	Misc. Ref.
		457.8 457.14	473-a		

Section 473 of the Social Services Law (formerly Section 131-*l*) mandates the provision of PSA by the local districts to persons in need, without regard to income.

Although many persons in need of PSA accept these services voluntarily, there are a number of involuntary clients who resist the provision of essential services. While local district PSA staff must respect an individual's right to self determination, they also have the responsibility to provide necessary services to persons who require them. With regard to involuntary clients in need of PSA, the Department's Program Bulletin 194 advises "the decision for intervention is not lightly made but the doctrine of self determination cannot always be strictly observed". Bulletin 194 further advises, "that while the basic principle of the client's rights to accept or reject services must be recognized, for the endangered client who rejects needed service, the agency has the responsibility to initiate appropriate actions."

This apparent conflict between the civil rights of a client and the responsibility to provide services, has been a major concern of the districts for the past several years. Because of the lack of explicit statutory authority, the issue of providing PSA to involuntary clients has been especially problematic in those situations where the client is at imminent risk of death or serious physical harm, but is not admissible to a psychiatric facility under the appropriate provision of the mental hygiene law. Because of the need to act expeditiously in these situations, the provisions of Article 77 and 78 of the Mental Hygiene Law, which govern the appointment of Conservators and Committees, are also initially of little assistance to the districts due to the time consuming nature of these proceedings.

In response to the need for explicit statutory authority to enable the districts to effectively respond to the needs of involuntary clients at imminent risk of death or serious physical harm, the Department prepared the necessary remedial legislation. It must be noted that this legislation was based on a recommendation made by the Governor's Interagency Task Force on PSA in its report to the Governor and the Legislature on March 1, 1980. This legislation establishes a special judicial proceeding for the authorization of short term involuntary protective services orders on behalf of clients at imminent risk of death or serious physical harm who do not understand the consequences of their situation. In the 1981 Legislative Session; this legislation passed both Houses of the New York State Legislature and was subsequently signed into law on July 31, by the Governor as Chapter 991 of the Laws of 1981. This law becomes effective 90 days after enactment.

III. Program Implications:

Chapter 991 establishes a new Article 9B in the Social Services Law (SSL) which contains two separate sections of law. Section 473 essentially sets forth the definition, eligibility criteria and services components of PSA. This section was formerly section 131-*l* SSL. Section 473-a, as previously stated, sets forth the provisions pertaining to short term involuntary protective services orders. As stated above, this new statutory authority establishes a judicial proceeding which provides the districts with a means of effectively responding to the services needs of involuntary PSA clients who are at imminent risk of death or serious physical harm and who do not understand the consequences of their

situation. At the same time, the law contains rigorous due process safeguards to assure that the civil liberties of the client are adequately protected. The major provisions of section 473-a SSL include:

- authorizing local social services officials to petition the supreme or county court for a short term involuntary protective services order for those adults who are at imminent risk of death or serious physical harm, and who do not understand the consequences of their situation;
- requiring the appointment of counsel by the court, at public expense, to represent the allegedly endangered adult;
- limiting the services that can be provided pursuant to a short term order to those authorized by section 473 of the Social Services Law;
- requiring the courts to make show cause orders issued pursuant to this section returnable within 48 hours of their issuance;
- limiting the duration of a short term order to 72 hours subject to one 72 hour extension; and
- prohibiting an order from authorizing the removal of a person to a psychiatric facility.

It should also be noted that the law requires the courts to give the special proceedings brought under section 473-a SSL preference over all other proceedings. Therefore, it is anticipated that the courts will respond in an expeditious manner. A copy of Chapter 991 is attached to this directive as Addendum I.

The types of cases that this new statutory authority is intended to address include, but are not necessarily limited to:

- situations of imminent risk of death or serious physical harm where an adult has emergency health and/or medical needs which he is refusing or neglecting to meet; and
- situations of imminent risk of death or serious physical harm where dependent adults are being abused by relatives and lack the capacity to protect themselves or provide themselves with needed care.

IV. Required Action:

To effectively utilize this new statutory authority on behalf of involuntary clients in need of PSA, close cooperation between the district's PSA staff and the county or agency attorneys is absolutely essential. Therefore, local commissioners must initiate appropriate efforts to ensure the availability of necessary legal resources for the effective implementation of this law. Discussed below are the actions that both a district's PSA staff and the county or agency attorney must take in cooperation with each other in order to assure the effective use of section 473-a SSL.

1. PRELIMINARY ACTIONS TO BE TAKEN BY PSA CASEWORK STAFF

The initial steps in utilizing the provisions of section 473-a SSL are the usual investigation and ease assessment activities completed by PSA caseworkers for all referrals. As with all other PSA referrals, the appropriate personnel from other public, law enforcement and private agencies involved in the provision of this service should be called upon for advice and assistance as necessary.

Upon making a determination that the person is in need of PSA, efforts must be made to provide the service voluntarily and in accordance with the principle of the least restrictive intervention necessary. This is essential because section 473-a 4(c) (iv) SSL requires a district's petition for a short term involuntary protective services order to state that voluntary services have been tried, but have failed to remedy the situation. Once the provision of voluntary services have failed and in the judgment of the PSA caseworker, the individual is an endangered adult as defined in section 473-a.1(a) SSL, the appropriate actions should be initiated to enable the district to petition the supreme or county court for a short term involuntary protective services order. Section 473-a.1(a) SSL defines an endangered adult as a person 18 years or over who is:

- in a situation or condition which poses an imminent risk or death or imminent risk of serious physical harm to him or her; and
- lacking the capacity to comprehend the nature and consequences of remaining in that situation or condition.

This section further provides that mental illness and/or refusal to accept PSA shall not conclusively be evidence of such incapacity.

Once it is determined by the PSA caseworker that an individual is an endangered adult as defined above, the following information shall be obtained and put in writing to the extent that this information can be determined with reasonable diligence, considering the need to provide PSA expeditiously:

- the name, age and physical description of the endangered adult; and
- the address or other location where the endangered adult can be found.

In addition, the caseworker must put the following information in writing:

- that the person is an endangered adult and the reason for this determination;
- why the short term involuntary protective services recommended are necessitated by the situation or condition which poses an imminent risk of death or serious physical harm to the individual, and how these specific services would remedy the situation or condition which poses an imminent risk of death or serious physical harm to the individual, and why these services are not overly broad in scope or duration;

- that voluntary protective services have been tried and have failed to remedy the situation, and why future voluntary, less restrictive services would not be appropriate or are not available;
- if a change in the endangered adult's physical location is determined necessary, the reason(s) why the situation cannot be remedied by the provision of services in the person's current location;
- any known inconsistency between the involuntary protective services being recommended and the individual's religious belief;
- that if it reasonably appears that the adult does not understand the English language, the reasonable efforts which have been made to communicate with the endangered adult in a language he/she understand and the results of these efforts.

The written documentation of the information cited above is essential because section 473-a.4 SSL, requires this information to be contained in all petitions made to the courts by a district for short term involuntary protective services orders. It must be stressed that under the provisions of Chapter 991 only local social services officials can petition the court for a short term involuntary protective services order. In addition, if the cooperation of another public or law enforcement agency is needed in the provision of short term involuntary protective services to an endangered adult, the appropriate role of that agency(ies) should be put down in writing. The reason for this is because section 473-a.10(c) SSL authorizes the court to order any other public or law enforcement official to render such assistance and cooperation which is in his legal authority, as may be required for the successful provision of involuntary protective services to an endangered adult as defined in section 473-a.1 SSL. This information, if applicable, shall also be included in the district's petition to the court for a short term involuntary protective services order. -

Once the above information is gathered and put down in writing, the caseworker shall present it to the appropriate supervisor for review. If the supervisor concurs with the caseworker's determination of the need for a short term involuntary protective services order and the specific services recommended, the information shall be promptly presented to the county or agency attorney. If the supervisor does not support the determination of the caseworker as to the need for an involuntary protective services order, the reasons for this decision must be put down in writing and placed in the case file along with the written information obtained by the caseworker. If the supervisor determines that the services plan recommended by the caseworker shall be revised, the appropriate changes should be made prior to presenting the information to the county or agency attorney. However, if at any time during the investigation and assessment of a case, the PSA casework or supervisory staff are unsure about the legal sufficiency of their case for presentation to the court, they should promptly arrange to consult with the county or agency attorney.

2. PRESENTATION OF MATERIAL TO COUNTY OR AGENCY ATTORNEY AND COMMISSIONER OR HIS DESIGNEE

If the county or agency attorney finds that the evidence of a case presented by the PSA staff is legally sufficient to present in court, he shall immediately prepare a petition in accordance with section 473-a.4 SSL. The written information gathered by the caseworker shall be used in the preparation of the petition. The districts are reminded that the only services which can be provided under a short term involuntary protective services order are those authorized by section 473 SSL. Therefore, petitions made to the courts shall not request any service not authorized by section 473 SSL. Once the petition is prepared, along with the necessary information and affidavits required to section 473-a.4(c) (viii) and (d) SSL, it shall be presented to the commissioner for his/her approval and signature. The commissioner must then decide whether or not to sign the petition. If the county or agency attorney determines that a case is not legally sufficient for presentation in court, he shall promptly advise the PSA staff of his decision and the reasons for it. The PSA caseworker shall record the attorney's position in writing and place these written remarks in the case file. A copy of these written remarks shall be forwarded to the attorney for his records.

In those cases in which the county or agency attorney determines that a case is not legally sufficient but the PSA staff still believe that a petition for a short term involuntary protective services order is appropriate, the matter shall be immediately brought to the attention of the commissioner by the PSA supervisor. After reviewing both positions, the commissioner shall make a decision on whether to petition the court for a services order. If the commissioner deems it appropriate to petition the court, the attorney shall immediately prepare the petition, as discussed above, for the commissioner's signature. In those instances where the commissioner decides not to make a petition, the reasons for this determination shall be put down in writing by the caseworker and placed in the case record. A copy of the written remarks shall be sent to the commissioner and the attorney. If the commissioner chooses to delegate the responsibility for approving or disapproving petitions for short term involuntary protective services orders to a designee, he must delegate one person to perform this function on his behalf. For the purposes of this directive, the term commissioner shall mean the local commissioner or his designee.

3. SITUATIONS IN WHICH THE COMMISSIONER DECIDES IT IS NOT APPROPRIATE TO PETITION THE COURT FOR A SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDER

In those instances in which the commissioner determines it is not appropriate to petition the court for a short term involuntary protective services order, despite the recommendation by the PSA staff, the caseworker shall continue to periodically monitor the individual's situation. The caseworker shall also inform the individual, as well as any known friends or relatives, of the availability of services if the person decides to accept them voluntarily. If through the periodic monitoring of the individual it is determined that his situation has further deteriorated, this new evidence should be brought to the attention of the appropriate supervisor and put in writing. At this point the supervisor must determine if this additional evidence is strong enough to warrant being brought to the attention of the county or agency attorney and the commissioner for a redetermination of the need for a short term involuntary protective services order. If the supervisor decides not to bring the new evidence to the attention of the county or agency attorney and the commissioner, the reason for this determination must be put down in writing and placed in the case file. If the evidence is considered strong enough to warrant a redetermination of the need for a short term involuntary protective services order, the supervisor shall proceed as discussed above under number two. As previously stated, if PSA casework and/or supervisory staff are unsure about the legal sufficiency of their case, they should promptly arrange to consult with the attorney.

4. **INSTANCES IN WHICH THE COMMISSIONER SIGNS THE PETITION FOR A SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDER**

In those situations in which the commissioner signs the petition, it is the responsibility of the county or agency attorney to present the petition and the necessary affidavits and supporting information to a court of appropriate jurisdiction as set forth in section 473-a.3 SSL. The district may select the court of appropriate jurisdiction to petition for a short term involuntary protective services order.

Once the petition is made to a court of appropriate jurisdiction, a special proceeding for the authorization of a short term involuntary protective services order will be commenced by an order to show cause in accordance with the provisions of section 473-a.5 SSL. A show cause order is an order, decree, execution etc., to appear as directed, and present to the court such reasons and considerations as one has to offer why a particular order, decree, etc. should not be confirmed, take effect, be executed, or as the case may be. The district shall be responsible for delivering the order to show cause, the petition and supporting affidavits, if any, to the respondent and to the counsel assigned by the court on behalf of the endangered adult.

The order to show cause is returnable to the court within 48 hours following its issuance, unless the 48 hour period ends on a day in which the court is not in session, in which case the return date is the first business day following the issuance of the order to show cause. Upon the return date designated in the order to show cause, a hearing shall be immediately held by the court in accordance with section 473-a.7 SSL. The county or agency attorney shall represent the district at these hearings. Also, the caseworker primarily responsible for the case or his supervisor shall also be present at the hearing. As stated in section 473-a.9 SSL, if the court finds that all of the material allegations set forth in the petition have been admitted or proven by clear and convincing proof, a judgment authorizing a short term involuntary protective services order shall be granted.

5. **INSTANCES IN WHICH THE COURT GRANTS THE DISTRICT A SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDER**

If the judgment is granted in favor of the district, it shall proceed to provide those protective services authorized by the order in accordance with the provisions of section 473-a.10 SSL. As stated in section 473-a.10(f) SSL, no order shall extend for a period of more than 72 hours, subject to one 72 hour extension. If it is determined by the district that the situation of imminent risk cannot be remedied within the 72 hour duration of the order, it shall document the reasons for this determination in writing. Whenever possible, the county attorney shall present this evidence to the court not later than 24 hours prior to the expiration of the initial order. During the provision of services authorized by a short term involuntary protective services order, the caseworker shall make the necessary efforts to encourage the client to voluntarily accept those essential services needed after the expiration of the order and/or extension.

6. **SITUATIONS IN WHICH THE COURT DENIES THE DISTRICT A SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDER**

In those instances in which the court does not grant a short term involuntary protective services order, a copy of the judgment shall be placed in the case file. The commissioner, acting with the advise of the PSA staff and the county or agency attorney must then decide whether to appeal the decision in accordance with section 473-a.11 SSL. In all cases where the court refuses to authorize a

short term involuntary protective services order, the district shall periodically monitor the case and inform the client and any known family members or friends, of the availability of protective services should the client decide to accept them voluntarily. If through the periodic monitoring of these cases, it is determined that the person's situation is deteriorating, therefore further increasing the imminent risk of death or serious physical harm, this new evidence shall be put down in writing by the caseworker. After a review and approval by the PSA supervisor, this new evidence shall be promptly shared with the county or agency attorney and the commissioner. The commissioner must then decide whether to again petition the court in accordance with section 473-a.4 (c) (viii) SSL.

7. REPORTS TO THE COURT

In all cases where a short term involuntary protective services order has been granted by a court, the district in accordance with section 473-a.10(b)(iii) SSL, shall submit a written report to the court within one week of the commencement of the ordered protective services. This report shall include:

- a statement regarding the impact of the protective services authorized by the court on the condition or situation such services are intended to remedy;
- whether the individual will continue to receive services as a voluntary client after expiration of the order or its extension; and
- any other information the court may deem appropriate.

8. REPORTS TO THE STATE DEPARTMENT OF SOCIAL SERVICES

In addition to the reports which must be submitted to the court, the district shall submit quarterly reports to the department on the utilization of this new statutory authority. These reports shall be made on the format contained in Addendum II. The information which shall be included in this report is:

- the number of petitions for a short term involuntary protective services order made by the district;
- the number of petitions granted by the courts;
- the number of reapplications made for short term involuntary protective services orders pursuant to section 473-a.4(c) (viii) SSL;
- the number of reapplications granted by the court pursuant to section 473-a.4(c)(viii) SSL;
- the number of extensions applied for;
- the number of extensions granted by the courts;

- the number of clients who require services beyond the duration of the order and its extension;
- the number of clients who accept services voluntarily after the expiration of the order-and its extension;
- the number of petitions made due to medical or health needs;
- the number of petitions made for abuse and/or neglect reasons; and
- the number of petitions made for other reasons.

The first report shall be submitted to the Department on March 31, 1982. All subsequent reports shall be submitted quarterly on June 30, September 30, December 31 and March 31 of each year.

The Department will provide each district with a two year supply of the reporting forms. Each report shall be signed by the commissioner or his designee prior to being submitted to the Department. The reports shall be sent to:

Deputy Commissioner Corinne Plummer
Division of Adult Services
NYS Department of Social Services
40 No. Pearl St. - 9th Floor
Albany, NY 12243

In addition to these reports, the districts shall mark each PSA case file in which a short term involuntary protective services order has been sought by the district with a common identifier, regardless of whether the petition is subsequently granted by the court. This will assure the prompt availability of these cases for review by the appropriate program staff of the department.

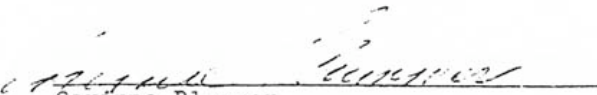
V. Additional Information

The districts should also be aware of section 473-a.13 SSL. This provision states: "Nothing in this title shall preclude the simultaneous commencement of a proceeding under this section and a proceeding under section 9.43 of the mental hygiene law, or a proceeding under article seventy-seven or article seventy-eight of such law. Furthermore, a pending proceeding under section 9.43 of the mental hygiene law, or a proceeding under article seventy-seven or article seventy-eight of such law shall not preclude commencement of a proceeding under this section."

Therefore, in those cases where it is determined by the district that in addition to the immediate need for a short term involuntary protective services order, an endangered adult requires the longer term protection of a conservator, committee or a placement in a psychiatric facility, it should initiate or arrange for the initiation of the proper proceedings under section 9.43 or Article 77 or 78 of the Mental Hygiene Law. For guidance on the utilization of the provisions of Articles Nine, 77 and 78 of the Mental Hygiene Law, please refer to Bulletin 194. Conversely, if there is a pending proceeding under section 9.43 MHL, or under Article 77 or 78 MHL, and the district determines that a short term involuntary protective services order is necessary, it shall initiate the necessary actions as specified in this administrative directive.

VI. Effective Date

December 10, 1981


Corinne Plummer
Deputy Commissioner
Division of Adult Services

STATE OF NEW YORK

7585-A

ADDENDUM #1

1981-1982 Regular Sessions

IN ASSEMBLY

March 31, 1981

Introduced by M. of A. WEINSTEIN, CONNELLY, DeLORO, SCHMIDT, BRANCA—
Multi-Sponsored by—M. of A. DAVIS, MONTANO, NINE—(at request of the
Department of Social Services)—read once and referred to the Commit-
tee on Social Services—reported and referred to the Committee on
Rules—Rules Committee discharged, bill amended, ordered reprinted as
amended and recommitted to the Committee on Rules

AN ACT to amend the social services law and the judiciary law, in rela-
tion to providing protective services for adults

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

- 1 Section 1. The social services law is amended by adding a new article
2 nine-B to read as follows:
3 ARTICLE 9-B
4 ADULT PROTECTIVE SERVICES
5 Title 1. Protective services (§ 473).
6 2. Short-term involuntary protective services orders (§ 473-a).
7 TITLE 1
8 PROTECTIVE SERVICES
9 Section 473. Protective Services.
10 TITLE 2
11 SHORT-TERM INVOLUNTARY PROTECTIVE SERVICES ORDERS
12 Section 473-a. Short-term involuntary protective services orders.
13 § 473-a. Short-term involuntary protective services orders. 1.
14 Definitions. When used in this section unless otherwise expressly
15 stated or unless the context or subject matter requires a different
16 interpretation:
17 (a) "endangered adult" means a person, age eighteen or over who is:
18 (i) in a situation or condition which poses an imminent risk of death
19 or imminent risk of serious physical harm to him or her, and

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (ii) lacking capacity to comprehend the nature and consequences of
2 remaining in that situation or condition, provided that:
3 a. refusal by the adult to accept protective services shall not in it-
4 self be sufficient evidence of such lack of capacity; and
5 b. mental illness shall not in itself be sufficient evidence of such
6 lack of capacity.
7 (b) "short-term involuntary protective services" means those services
8 set forth in section four hundred seventy-three of this article which
9 are provided involuntarily pursuant to the procedures established by
10 this title.
11 (c) "petitioner" means a social services official initiating a
12 proceeding pursuant to this title.
13 (d) "respondent" means an allegedly endangered adult.
14 2. Jurisdiction. The supreme court and the county court shall each
15 have jurisdiction over the special proceeding commenced pursuant to the
16 provisions of this title.
17 3. Venue. A petition for the provision of short-term involuntary
18 protective services shall be made to:
19 (a) a term of the supreme court:
20 (i) held in the county in which the allegedly endangered adult resides
21 or is found; or
22 (ii) held in a county, within the same judicial district, adjacent to
23 the county in which the allegedly endangered adult resides or is found;
24 or
25 (b) the county court:
26 (i) in the county in which the allegedly endangered adult resides or
27 is found; or
28 (ii) in a county adjacent to the county in which the allegedly en-
29 dangered adult resides or is found.
30 4. Petition. (a) A special proceeding to obtain an order authorizing
31 the provision of short-term involuntary protective services may only be
32 initiated by a social services official.
33 (b) The petition shall state, insofar as the facts can be ascertained
34 with reasonable diligence:
35 (i) the name, age and physical description of the allegedly endangered
36 adult; and
37 (ii) the address or other location where the allegedly endangered
38 adult can be found.
39 (c) The petition shall state facts showing:
40 (i) that the adult who is the subject of this petition is an en-
41 dangered adult as defined in paragraph (a) of subdivision one of this
42 section;
43 (ii) the specific short-term involuntary protective services peti-
44 tioned for, how such services would remedy the situation or condition
45 which poses an imminent risk of death or imminent risk of serious phys-
46 ical harm to the allegedly endangered adult, and why such services are
47 not overbroad as to extent or duration;
48 (iii) that the short-term involuntary protective services being an-
49 plied for are necessitated by the situation or condition described in
50 paragraph (a) of subdivision one of this section;
51 (iv) that other voluntary protective services have been tried and have
52 failed to remedy the situation, and that a future, voluntary, less res-
53 trictive alternative would not be appropriate or would not be available;
54 (v) if a change in the allegedly endangered adult's physical location
55 is being applied for, that remedy of the dangerous situation or condi-

1 tion described in paragraph (a) of subdivision one of this section is
2 not appropriate in existing physical surroundings of the allegedly en-
3 dangered adult;
4 (vi) any inconsistency known to petitioner between the proposed short-
5 term involuntary protective services and the allegedly endangered
6 adult's religious beliefs;
7 (vii) that if it reasonably appears that the allegedly endangered
8 adult does not understand the English language, that reasonable efforts
9 have been made to communicate with the allegedly endangered adult in a
10 language he or she understands;
11 (viii) that no prior application has been made for the relief
12 requested or for any similar relief, or if prior application has been
13 made, the determination thereof, and the new facts, if any, that were
14 not previously shown which warrant a renewal of the application.
15 (d) The petition shall be verified. Any allegations which are not
16 based upon personal knowledge shall be supported by affidavits provided
17 by a person or persons having such knowledge. Such affidavits shall be
18 attached to the petition.
19 5. Commencement of proceedings. (a) A special proceeding to obtain an
20 order authorizing the provision of short-term involuntary protective
21 services shall be commenced by service of an order to show cause, the
22 petition and supporting affidavits, if any.
23 (b) The order to show cause shall set forth:
24 (i) in bold type, on its face, the following:
25 WARNING
26 IF YOU DO NOT APPEAR IN COURT YOUR LIFE AND LIBERTY
27 MAY BE SERIOUSLY AFFECTED. FOR FREE INFORMATION
28 CONCERNING YOUR LEGAL RIGHTS CALL OR VISIT
29 (ii) the protective services to be provided if the petition is
30 granted;
31 (iii) the date, place and time of the hearing to determine whether the
32 petition is to be granted;
33 (iv) that the respondent is entitled to counsel at all stages of the
34 proceeding, that upon granting the order to show cause, the court shall
35 assign counsel to assist the respondent, and that respondent is free at
36 any time to discharge the counsel assigned by the court. The name, ad-
37 dress and telephone number of the assigned counsel shall be inserted at
38 the end of the warning referred to in subparagraph (i) of this para-
39 graph;
40 (v) that if the respondent or retained counsel does not appear at the
41 hearing to determine whether the petition is to be granted, the court
42 will appoint a guardian ad litem;
43 (vi) that if the respondent discharges the assigned counsel prior to
44 the hearing to determine if the petition is to be granted, such counsel
45 shall report this fact to the court no later than the commencement of
46 the hearing, and shall appear at the hearing, unless otherwise relieved
47 by the court. In the event that neither the respondent nor his retained
48 counsel appears at the hearing, the court may appoint the person
49 previously assigned as counsel to act as the guardian ad litem; and
50 (vii) that a copy of the order to show cause, the petition, and sup-
51 porting affidavits, if any, shall be served upon the respondent.
52 (c) Petitioner shall cause the order to show cause, the petition, and
53 supporting affidavits, if any, to be delivered to the counsel assigned
54 by the court.

- 1 (d) The order to show cause shall be made returnable within forty-
2 eight hours following its issuance, unless such forty-eight hour period
3 ends on a day in which the court is not in session, in which case the
4 return date shall be the first business day following issuance of the
5 order to show cause.
- 6 6. Service. (a) Service of the order to show cause, the petition, and
7 supporting affidavits, if any, shall be made upon the respondent by any
8 of the methods permitted by section three hundred eight of the civil
9 practice law and rules. Notwithstanding any other provision of law to
10 the contrary, Saturday and Sunday service is valid.
- 11 (b) The respondent shall be authorized to answer either orally or in
12 writing.
- 13 7. Hearing. (a) Upon the return date designated in the order to show
14 cause issued pursuant to subdivision five of this section a hearing
15 shall be held forthwith.
- 16 (b) The allegedly endangered adult shall be entitled to be present at
17 the hearing.
- 18 (c) Adjournments shall be permitted only for good cause shown. In
19 granting adjournments the court shall consider the need to provide
20 short-term involuntary services expeditiously.
- 21 (d) At the conclusion of the hearing the court shall issue for the
22 record a statement of its findings of fact and conclusions of law.
- 23 8. Preference. The special proceeding authorized by this title shall
24 have preference over all other causes in all courts of appropriate
25 jurisdiction.
- 26 9. Findings. After a hearing, the court must find, in order to
27 authorize the provision of short-term involuntary protective services,
28 that all of the material allegations as specified in paragraph (c) of
29 subdivision four of this section have been admitted or proven by clear
30 and convincing proof.
- 31 10. Judgment. (a) The court, upon making the findings required by sub-
32 division nine herein, shall direct the entry of a judgment authorizing
33 the provision of short-term involuntary protective services to an en-
34 dangered adult.
- 35 (b) A judgment authorizing short-term involuntary protective services
36 to be provided to an endangered adult:
- 37 (i) shall prescribe those specific protective services, authorized by
38 section four hundred seventy-three of this article, which are to be
39 provided and what person or persons are authorized or ordered to provide
40 them; and
- 41 (ii) shall not provide for any forcible entry unless the persons so
42 entering are accompanied by a peace officer, acting pursuant to his spe-
43 cial duties, or a police officer, who is a member of an authorized
44 police department or force or of a sheriff's department;
- 45 (iii) shall require persons acting under subparagraphs (i) and (ii) of
46 this paragraph to submit a written report to the court within one week
47 following the commencement of the ordered protective services.
- 48 (c) The judgment may order any other public or law enforcement offi-
49 cial to render such assistance and cooperation as shall be within his
50 legal authority, as may be required to further the objects of this
51 title.
- 52 (d) The judgment shall not order removal to a hospital, as that term
53 is defined in section 1.03 of the mental hygiene law.
- 54 (e) Issuance of the judgment shall not be evidence of the competency
55 or incompetency of the endangered adult.

- 1 (f) No order issued pursuant to this title shall extend for more than
2 seventy-two hours. An original order may be renewed once for up to
3 another seventy-two hour period upon showing by the petitioner to the
4 court that continuation is necessary to remedy the original situation or
5 condition. No further renewals shall be permitted.
- 6 (g) In no event shall the short-term involuntary services authorized
7 to be provided to an endangered adult by the judgment be broader than
8 those which are necessary to remedy the situation or condition which
9 pose an imminent risk of death or imminent risk of serious physical
10 harm to the endangered adult.
- 11 (h) Notice of the judgment rendered by the court shall be given to the
12 respondent personally, or if personal service is not possible in
13 whatever other fashion the court shall prescribe.
- 14 11. Appeal. Appeals arising from the issuance of judgments pursuant to
15 the provisions of this title shall be expedited.
- 16 12. The assigned counsel and the guardian ad litem appointed by the
17 court pursuant to this title shall be reimbursed for their services pur-
18 suant to section thirty-five of the judiciary law.
- 19 13. Nothing in this title precludes the simultaneous commencement of a
20 proceeding under this title and a proceeding under section 9.43 of the
21 mental hygiene law, or a proceeding under article seventy-seven or arti-
22 cle seventy-eight of such law does not preclude commencement of a
23 proceeding under this title.
- 24 14. No existing right or remedy of any character shall be lost, im-
25 paired or affected by reason of this title.
- 26 § 2. Section one hundred thirty-one-1 of such law, as amended by chap-
27 ter four hundred forty-six of the laws of nineteen hundred seventy-nine,
28 is renumbered section four hundred seventy-three.
- 29 § 3. Section thirty-five of the judiciary law is amended by adding a
30 new subdivision five to read as follows:
- 31 5. Assigned counsel and guardians ad litem appointed pursuant to the
32 provisions of title two of article nine-b of the social services law
33 shall be compensated in accordance with the provisions of this section.
- 34 § 4. This act shall take effect on the ninetieth day after it shall
35 have become a law.

ADDENDUM #2

QUARTERLY REPORT TO THE STATE DEPARTMENT OF SOCIAL SERVICES
ON THE UTILIZATION OF SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDERS
PURSUANT TO SECTION 473-a OF THE SOCIAL SERVICES LAW

District's Name _____ Reporting period _____ through _____

1. The number of petitions for Short Term Involuntary Protective Services Orders made by the district. _____
2. The number of petitions granted by the courts. _____
3. The number of reapplications made for Short Term Involuntary Protective Services Orders pursuant to section 473-a.4(c) (viii) of SSL. _____
4. The number of reapplications granted by the courts pursuant to section 473-a.4(c) (viii) SSL. _____
5. The number of extensions applied for by the district. _____
6. The number of extensions granted by the courts. _____
7. The number of clients who require services beyond the duration of the order and its extension. _____
8. The number of clients who accept services voluntarily after the expiration of the order and its extension. _____
9. The number of petitions made due to medical or health reasons. _____
10. The number of petitions made for abuse and/or neglect reasons. _____
11. The number of petitions made for other reasons. _____
Please specify these reasons in the space below.

12. Other comments the district may wish to make on the utilization of short term involuntary protective services orders.

Commissioner's signature _____