§ 473-a. Short-term involuntary protective services orders. 1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "endangered adult" means a person, age eighteen or over who is:

(i) in a situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to him or her, and

(ii) lacking capacity to comprehend the nature and consequences of remaining in that situation or condition, provided that:

a. refusal by the adult to accept protective services shall not in itself be sufficient evidence of such lack of capacity; and

b. mental illness shall not in itself be sufficient evidence of such lack of capacity.

(b) "short-term involuntary protective services" means those services set forth in section four hundred seventy-three of this article which are provided involuntarily pursuant to the procedures established by this title.

(c) "petitioner" means a social services official initiating a proceeding pursuant to this title.

(d) "respondent" means an allegedly endangered adult.

2. Jurisdiction. The supreme court and the county court shall each have jurisdiction over the special proceeding commenced pursuant to the provisions of this title.

3. Venue. A petition for the provision of short-term involuntary protective services shall be made to:

(a) a term of the supreme court:

(i) held in the county in which the allegedly endangered adult resides or is found; or

(ii) held in a county, within the same judicial district, adjacent to the county in which the allegedly endangered adult resides or is found; or

(b) the county court:

(i) in the county in which the allegedly endangered adult resides or

is found; or

(ii) in a county adjacent to the county in which the allegedly endangered adult resides or is found.

4. Petition. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services may only be initiated by a social services official.

(b) The petition shall state, insofar as the facts can be ascertained with reasonable diligence:

(i) the name, age and physical description of the allegedly endangered adult; and

(ii) the address or other location where the allegedly endangered adult can be found.

(c) The petition shall state facts showing:

(i) that the adult who is the subject of this petition is an endangered adult as defined in paragraph (a) of subdivision one of this section;

(ii) the specific short-term involuntary protective services petitioned for, how such services would remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the allegedly endangered adult, and why such services are not overbroad as to extent or duration;

(iii) that the short-term involuntary protective services being applied for are necessitated by the situation or condition described in paragraph (a) of subdivision one of this section;

(iv) that other voluntary protective services have been tried and have failed to remedy the situation, and that a future, voluntary, less restrictive alternative would not be appropriate or would not be available;

(v) if a change in the allegedly endangered adult's physical location is being applied for, that remedy of the dangerous situation or condition described in paragraph (a) of subdivision one of this section is not appropriate in existing physical surroundings of the allegedly endangered adult;

(vi) any inconsistency known to petitioner between the proposed short-term involuntary protective services and the allegedly endangered adult's religious belief;

(vii) that if it reasonably appears that the allegedly endangered adult does not understand the English language, that reasonable efforts have been made to communicate with the allegedly endangered adult in a language he or she understands;

(viii) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(d) The petition shall be verified. Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the petition.

5. Commencement of proceedings. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services shall be commenced by an order to show cause, the petition and supporting affidavits, if any.

(b) The order to show cause shall set forth:

(i) in bold type, on its face, the following:

WARNING IF YOU DO NOT APPEAR IN COURT YOUR LIFE AND LIBERTY MAY BE

SERIOUSLY AFFECTED. FOR FREE INFORMATION CONCERNING YOUR LEGAL RIGHTS CALL OR VISIT

(ii) the protective services to be provided if the petition is granted;

(iii) the date, place and time of the hearing to determine whether the petition is to be granted;

(iv) that the respondent is entitled to counsel at all stages of the proceeding, that upon granting the order to show cause, the court shall assign counsel to assist the respondent, and that respondent is free at any time to discharge the counsel assigned by the court. The name, address and telephone number of the assigned counsel shall be inserted at the end of the warning referred to in subparagraph (i) of this paragraph;

(v) that if the respondent or retained counsel does not appear at the hearing to determine whether the petition is to be granted, the court will appoint a guardian ad litem;

(vi) that if the respondent discharges the assigned counsel prior to the hearing to determine if the petition is to be granted, such counsel shall report this fact to the court no later than the commencement of the hearing, and shall appear at the hearing, unless otherwise relieved by the court. In the event that neither the respondent nor his retained counsel appears at the hearing, the court may appoint the person previously assigned as counsel to act as the guardian ad litem; and

(vii) that a copy of the order to show cause, the petition, and supporting affidavits, if any, shall be served upon the respondent.

(c) Petitioner shall cause the order to show cause, the petition, and supporting affidavits, if any, to be delivered to the counsel assigned by the court.

(d) The order to show cause shall be made returnable within forty-eight hours following its issuance, unless such forty-eight hour period ends on a day in which the court is not in session, in which case the return date shall be the first business day following issuance of the order to show cause.

6. Service. (a) Service of the order to show cause, the petition, and supporting affidavits, if any, shall be made upon the respondent by any of the methods permitted by section three hundred eight of the civil practice law and rules. Notwithstanding any other provision of law to the contrary, Saturday and Sunday service is valid.

(b) The respondent shall be authorized to answer either orally or in writing.

7. Hearing. (a) Upon the return date designated in the order to show cause issued pursuant to subdivision five of this section a hearing shall be held forthwith.

(b) The allegedly endangered adult shall be entitled to be present at the hearing.

(c) Adjournments shall be permitted only for good cause shown. In granting adjournments the court shall consider the need to provide short-term involuntary services expeditiously.

(d) At the conclusion of the hearing the court shall issue for the record a statement of its findings of fact and conclusions of law.

8. Preference. The special proceeding authorized by this title shall have preference over all other causes in all courts of appropriate jurisdiction.

9. Findings. After a hearing, the court must find, in order to authorize the provision of short-term involuntary protective services, that all of the material allegations as specified in paragraph (c) of subdivision four of this section have been admitted or proven by clear and convincing proof.

10. Judgment. (a) The court, upon making the findings required by subdivision nine herein, shall direct the entry of a judgment authorizing the provision of short-term involuntary protective services to an endangered adult.

(b) A judgment authorizing short-term involuntary protective services to be provided to an endangered adult:

(i) shall prescribe those specific protective services, authorized by section four hundred seventy-three of this article, which are to be provided and what person or persons are authorized or ordered to provide them; and

(ii) shall not provide for any forcible entry unless the persons so entering are accompanied by a peace officer, acting pursuant to his special duties, or a police officer, who is a member of an authorized police department or force or of a sheriff's department;

(iii) shall require persons acting under subparagraphs (i) and (ii) of this paragraph to submit a written report to the court within one week following the commencement of the ordered protective services.

(c) The judgment may order any other public or law enforcement official to render such assistance and cooperation as shall be within his legal authority, as may be required to further the objects of this title.

(d) The judgment shall not order removal to a hospital, as that term is defined in section 1.03 of the mental hygiene law.

(e) Issuance of the judgment shall not be evidence of the competency or incompetency of the endangered adult.

(f) No order issued pursuant to this title shall extend for more than seventy-two hours. An original order may be renewed once for up to

another seventy-two hour period upon showing by the petitioner to the court that continuation is necessary to remedy the original situation or condition. No further renewals shall be permitted.

(g) In no event shall the short-term involuntary services authorized to be provided to an endangered adult by the judgment be broader than those which are necessary to remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the endangered adult.

(h) Notice of the judgment rendered by the court shall be given to the respondent personally, or if personal service is not possible in whatever other fashion the court shall prescribe.

11. Appeals. Appeals arising from the issuance of judgments pursuant to the provisions of this title shall be expedited.

12. The assigned counsel and the guardian ad litem appointed by the court pursuant to this title shall be reimbursed for their services pursuant to section thirty-five of the judiciary law.

13. Nothing in this title precludes the simultaneous commencement of a proceeding under this title 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. A pending proceeding under section 9.43 of the mental hygiene law or under article seventy-seven or article seventy-eight of the mental hygiene law does not preclude commencement of a proceeding under this title.

14. No existing right or remedy of any character shall be lost, impaired or affected by reason of this title.