

87 ADM-6

Protective Services for Adults:
Orders to Gain Access to Persons
Believed to be in need of Protective
Services for Adults (Chapter 413 of
the Laws of 1986)



NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001
 CESAR A. PERALES
 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

TRANSMITTAL NO: 87 ADM-006
 (Adult Services)

TO: Commissioners of Social Services

DATE: March 12, 1987

SUBJECT: Protective Services for Adults:
 Orders to Gain Access to Persons
 Believed to Be in Need of Protective
 Services for Adults (Chapter 413 of the Laws of 1986)

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

CONTACT PERSON: Any questions concerning this release should be directed to the district's Protective Services for Adults Program Representative in the Division of Adult Services by calling 1-800-342-3715: Sharon Lane, ext. 3-8728; Regina Driscoll, ext. 3-1713; Kathleen Crowe, ext. 4-6607; or Irv Abelman, ext. 4-8934 or (212) 488-5097.

I. Purpose

The purpose of this directive is to advise the local social services districts of the provisions of Chapter 4(3 of the Laws of 1986, which authorizes the districts to petition the court for an order to gain access in order to assess a person's need for Protective Services for Adults (PSA) when the district is refused access by that person or another individual. This transmittal also sets forth the steps which must be taken to effectively utilize this statutory authority. (A copy of the statute is attached as Addendum #1)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/Chapter Ref.	Misc. Ref.
85 ADM-005 82 ADM-032 81 ADM-057		Part 457	473 473-a 473-c Article 690, Criminal Procedure Law	194	

II. Background

Part 457 of the Department's regulations requires a prompt response and investigation of PSA referrals. Districts must commence an investigation as soon as possible but not later than 24 hours after receipt of a PSA referral when it is determined that a life-threatening situation exists. If a life-threatening situation does not exist, an investigation must be commenced within 72 hours of the referral and a visit made to the client within 3 working days of the referral. It is the districts' responsibility to determine whether a life threatening situation exists at the time a referral is made. A PSA referral is defined in Section 457.1(c)(2) of the regulations as any written or verbal information provided to a district in which a specific person is identified as apparently in need of PSA, or any verbal or written information provided to a district on behalf of an adult for whom the district determines that a PSA investigation and assessment are necessary.

Local district staff sometimes encounter serious difficulties in responding to PSA referrals because they are unable to gain access to the potential client. In these situations, access is denied either by the subject of the PSA referral or a family member or friend who is acting as the person's caregiver. Often, the caregiver who is denying access to the potential client is suspected of abusing or exploiting this individual. In order to respond to these cases, local district enlist the assistance of family members, friends, neighbors, or staff of other agencies already known to the potential client in order to gain access. However, there are still situations where local district staff cannot gain access. In these cases, staff were advised to request assistance from law enforcement personnel. However, the ability and willingness of law enforcement - personnel to effectively intervene in these situations varies greatly depending on the specific situation and the individual police jurisdiction involved. Chapter 413 of the Laws of 1986, which established a new Section 473-c of the Social Services Law (SSL), addresses this problem by providing a mechanism for local districts, in conjunction with law enforcement personnel, to utilize in order to gain access to persons who are believed to be in need of PSA.

III. Program Implications

As previously noted, Chapter 413 establishes a new Section 473-c SSL, which sets forth the provisions pertaining to orders to gain access to persons believed to be in need of PSA. This new statutory authority establishes a judicial proceeding which provides the districts with a means of assessing a person's need for PSA, when the district is refused access by that person or another individual. The major provisions of Section 473-c SSL include:

- A. authorizing local social services officials to apply to supreme or county court for an order to gain access to a person to assess whether that person is in need of PSA, when the officials, having reasonable cause to believe that the person may be in need of PSA, are refused access by that person or another individual;

- B. giving the application preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference;
- C. requiring a court to grant an order to gain access if it is satisfied that there is reasonable cause to believe that a person in need of protective services may be found on the premises and that access to the person has been refused;
- D. establishing the standard for proof and procedure for the authorization to conduct a PSA assessment to be the same as for a search warrant under Article 690 of the Criminal Procedure Law;
- E. requiring a police officer to accompany social services officials and other designated individuals when entering the premises to conduct an assessment of a person's need for PSA pursuant to an order to gain access; and
- F. limiting the provision of involuntary protective services to the completion of the PSA assessment.

IV. Required Action

- A. STEPS TO BE TAKEN BY THE DISTRICT TO ENSURE EFFECTIVE IMPLEMENTATION OF THE STATUTE
 - 1. As part of their mandated outreach and community education efforts for PSA, local districts are required to notify appropriate agencies and professionals of the provisions of Section 473-c SSL, including:
 - a. supreme and county court personnel, since the applications are to be filed in these courts;
 - b. those health and mental health professionals and agencies who may be needed to assist in assessing the person's need for PSA, since the application to the court must include this information; and
 - c. law enforcement agencies, since, if the court grants the order to gain access, local social services officials must be accompanied by a police officer when entering the premises to conduct the PSA assessment.
 - 2. To effectively utilize this new statutory authority, close cooperation between the district's PSA staff and the county or agency attorneys is 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 to assure the effective use of Section 473-c.

B. PRELIMINARY ACTIONS TO BE TAKEN BY PSA CASEWORK STAFF

1. The initial steps in utilizing the provisions of Section 473-c SSL are the usual steps taken by PSA caseworkers in responding to all referrals. At the time of referral, staff should obtain as much information as possible about the potential client. When responding to a referral and being refused access to assess the person's need for PSA, casework staff must first utilize the other methods currently employed to gain access:
 - a. enlisting the aid of family members, friends, neighbors or staff of other agencies known to the potential PSA client; and/or
 - b. requesting assistance from law enforcement personnel.
2. Should these efforts to gain access fail and the PSA caseworker continues to believe that the person may be in need of PSA, the following information, to the extent the information can be determined or verified, shall be presented to the appropriate supervisor for review and subsequently recorded in the case record:
 - a. the name and address of the person who may be in need of PSA and the premises on which this person may be found;
 - b. the reason that the person may be in need of PSA, including information provided by other agencies or individuals who are familiar with the person;
 - c. the person or persons who are responsible for preventing access to the potential PSA client;
 - d. the efforts made to gain access to the person believed to be in need of PSA;
 - e. the names of any individuals, such as physicians or nurses, or other health or mental health professionals qualified to participate in the assessment, who shall accompany and assist the PSA caseworker in assessing the person's need for PSA; and
 - f. the manner in which the proposed assessment is to be conducted.
3. The documentation of the information cited above in the case record is essential, since Section 473-c. 1 SSL requires this information to be contained in the application to the court.

4. If the supervisor concurs with the caseworkers determination of the need for a court order to gain access, the information shall be promptly presented to the county or agency attorney. If the supervisor is not satisfied that sufficient efforts have been made to obtain access voluntarily, the supervisor shall advise the caseworker of the additional effort(s) which must be made. If these additional efforts are unsuccessful, this supplemental information shall be communicated to the supervisor. The supervisor's decision whether or not to support the need for an order to gain access, the reasons for this determination and the information obtained by the caseworker shall be recorded in the case record. If 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.

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

1. If the county or agency attorney finds that the information presented by the PSA staff is legally sufficient to present in court, the attorney shall immediately prepare an application for an order to gain access. The information gathered by the caseworker as discussed in IV.B.2. above, shall be used in the preparation of the application. In accordance with Section 473-c.1(g) and (h) SSL, the application also must include statements that:
 - a. the order is being sought only for the purpose of assessing the person's need for PSA as set forth in Section 473 SSL and Sections 457,1 and 2 of the Department's regulations; and
 - b. no prior application has been made for an order to gain access or similar type of relief, or if a prior application has been made, the determination of the court and the new facts, if any, that were not previously presented which warrant a renewal of the application.
2. In addition, Section 473-c.2 SSL requires that any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. These affidavits must be attached to the application.
3. Once the application is prepared, along with the attached affidavits, it shall be presented to the commissioner for approval and signature. The commissioner must then decide whether or not to sign the application. The commissioner's decision and the reason(s) for his determination shall be recorded in the case record.
4. If the county or agency attorney determines that a case is not legally sufficient for presentation to the court, the attorney shall promptly advise the PSA staff of this decision and the reason for it. In these instances, if the PSA staff still believe that an application for an access 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 initiate the application.

If the commissioner deems it appropriate to initiate the application, the attorney shall immediately prepare the application, as discussed above, for the commissioner's signature. As stated above, the commissioner's decision and the reasons for this determination must be recorded in the case record. While the final decision regarding initiation of the application rests with the commissioner, in cases where the commissioner reasonably believes that the case is legally sufficient, the Department recommends that the application be filed.

5. If the commissioner chooses to delegate the responsibility for approving or disapproving applications for access orders to a designee, one person must be delegated to perform this function on the commissioner's behalf. For the purposes of this directive, the term ."commissioner" shall mean the local commissioner or his designee.

D. SITUATIONS IN WHICH THE COMMISSIONER DECIDES IT IS NOT APPROPRIATE TO APPLY TO THE COURT FOR AN ORDER TO GAIN ACCESS

In those instances in which the commissioner determines that it is not appropriate to apply to the court for an order to gain access, the caseworker shall notify the potential client, as well as known relatives, friends and interested agencies, of the continued willingness of the district to complete an assessment and provide appropriate services, if the person should agree to accept such services. If the district receives additional information that the situation has deteriorated, the caseworker shall advise the appropriate supervisor and record the information in the case record. The supervisor must then determine whether this additional information is sufficient to warrant being brought to the attention of the county or agency attorney and the commissioner for a redetermination of the decision to apply for an access order. The supervisor's decision on whether or not to bring the new information to the attention of the attorney and the commissioner and the reason for the determination shall be recorded in the case record. If the evidence is considered sufficient to warrant a redetermination, the information shall be promptly presented to the county or agency attorney, and the district shall proceed as discussed under Letter C above. As previously indicated, PSA staff should promptly arrange to consult with the attorney whenever they are unsure about the legal sufficiency of their case.

E. INSTANCES IN WHICH THE COMMISSIONER SIGNS THE APPLICATION FOR AN ORDER TO GAIN ACCESS.

1. In those situations in which the commissioner signs the application, it is the responsibility of the county or agency attorney to file the application and the necessary affidavits and supporting information with a court of appropriate jurisdiction as set forth in Section 473-c.1 SSL. This section provides that a social services official may apply to either supreme court or the county court for an order to gain access. Since the statute does not require notification to any person affected by the order, it is an ex parte application.

2. Once the application is made to a court of appropriate jurisdiction, in accordance with the provisions of Section 473-c.3 SSL, the application is to have preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference.

F. INSTANCES IN WHICH THE COURT GRANTS THE DISTRICT AN ORDER TO GAIN ACCESS

1. If the court is satisfied that there is a reasonable cause to believe that a person in need of PSA may be found at the premises described in the application, that such person may be in need of PSA, and that access to such person has been refused, it shall grant the application and issue an order authorizing the social services official and the other health and/or mental health professionals named in the application as being needed to assist in assessing the person's need for PSA, accompanied by a police officer, to enter the premises to conduct an assessment to determine whether the person is in need of PSA. The results of the assessment shall be documented in the case record.
2. In assessing a persons need for PSA pursuant to an order to gain it is necessary to establish whether the person is eligible for PSA as set forth in Section 7.1(b) of the Department's regulations and whether the person is able to make decisions on his/her own behalf if the person refuses services and involuntary services must be considered as discussed in number 3 below. It is not necessary to do a comprehensive assessment. However, districts are encouraged to complete as much of the PSA Assessment/ Services Plan (DSS36O2) as possible when assessing a person's need for PSA pursuant to an order to gain access. This will assure that services can be provided as expeditiously as possible in appropriate situations.
3. As stated in Section 473-c.5 SSL, the provisions of this statute are not to be construed as authorizing a social services official to remove any person from the premises described in the application, or to provide any involuntary protective services other than to assess a person's need for PSA. If the person is found to be in need of PSA but refuses to accept services voluntarily, involuntary protective services may be provided or court proceedings initiated in appropriate situations to the extent authorized by Sections 473 and 473-a SSL, and Sections 457.1, 457.6 and 457.10 of the Department's regulations. Additional information regarding involuntary interventions may also be found in Bulletin 94, 81 ADM-57, and 82 ADM-32.

G. INSTANCES IN WHICH THE COURT DENIES AN ORDER TO GAIN ACCESS

In those instances in which the court does not issue an order to gain access in order to assess a person's need for PSA, a copy of the decision shall be placed in the case record. The caseworker shall notify the potential client, as well as known relatives, friends and interested agencies, of the continued willingness of the district to complete an assessment and provide appropriate services, upon the request of the person. If the district receives additional information that the situation has deteriorated, this new information shall be recorded in the case record. After a review and approval by the PSA supervisor, this new information shall be promptly shared with the county or agency attorney and the commissioner. The commissioner must then decide whether to again apply for an order to gain access.

H. REPORTS TO THE STATE DEPARTMENT OF SOCIAL SERVICES

1. The districts shall submit semiannual reports to the Department on the utilization of this new statutory authority. This report will be combined with the semiannual report on utilization of Section 473-a SSL, Short Term Involuntary Protective Services Orders (STIPSO). A copy of the form is attached as Addendum #2.
2. The first combined semi-annual STIPSO/Access report shall be submitted to the Department on June 30, 1987 and shall cover the period January 1, 1987 through June 30, 1987 for the STIPSO statute and the period November 18, 1986 through June 30, 1987 for the access statute. The STIPSO report for the period July 1, 1986 through December 31, 1986 shall be made on the form presently in use.
3. The Department will provide each district with a supply of reporting forms. Each report shall be signed by the commissioner or his/her designee prior to being submitted to the Department. The reports shall be sent to:

Deputy Commissioner
Division of Adult Services
New York State Department of Social Services
Floor 9 A
40 North Pearl Street
Albany, NY 12243

4. A case summary for each application for an order to gain access filed during the reporting period must accompany the semiannual report. This case summary form is similar to the form which is completed by the districts each time the STIPSO statute is utilized. A copy of the case summary form for the access statute is attached as Addendum #3.

V. **Systems Implications**

None

VI. Additional Information

- A. It is anticipated that in many situations in which districts use this statutory authority, access will be denied by a caregiver who is suspected of abusing, neglecting or exploiting the person who is the subject of the PSA referral. These situations are usually very sensitive and caseworkers must be careful not to exacerbate the problems which exist between the suspected abuser and the allegedly abused individual. While the allegedly abused individual is the primary concern of the district, service delivery efforts should also take into consideration the needs of the other household members in order to stabilize the situation and prevent the re-occurrence of abuse.

- B. In recording the appropriate information in the case record as discussed in the "Required Action" section of this ADM, local staff shall comply with the standards set forth in 85 ADM-5 "Process Standards for PEA".

- C. As noted above, Section 473-c SSL established the standard for proof and procedure for the authorization to conduct a PSA assessment to be the same as for a search warrant under the Criminal Procedure Law (CPL), specifically Article 690. If the court issues an order pursuant to Section 473-c SSL, the order must be executed by a police officer in accordance with the provisions of Section 690.50 CPL. The officer must give notice of his authority and purpose before entering the premises or make a reasonable effort to do so. If he is not admitted, he officer is allowed to use reasonable physical force. If additional information regarding this subject is required, it may be found in Article 690 CPL.

VII. Effective Date

This directive is effective March 1, 1987 retroactive to November 18, 1986.


Corinne Plummer
Deputy Commissioner

STATE OF NEW YORK

10515--A

IN ASSEMBLY

March 25, 1966

Introduced by M. of A. KRAMER, DEL TORO, RIVERA -- Multi-Sponsored by --
 M. of A. PROUD, DAVIS, CATAPANO, LOPEZ -- (at request of the Department
 of Social Services) -- read once and referred to the Committee on
 Social Services -- reported and referred to the Committee on Ways and
 Means -- committee discharged, bill amended, ordered reprinted as
 amended and recommitted to said committee

AN ACT to amend the social services law, in relation to protective ser-
 vices 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 section
 2 four hundred seventy-three-a to read as follows:
 3 § 473-c. An order to gain access to persons believed to be in need of
 4 protective services for adults. 1. A social services official may apply
 5 to the supreme court or county court for an order to gain access to a
 6 person to assess whether such person is in need of protective services
 7 for adults in accordance with the provisions of section four hundred
 8 seventy-three of this article when such official, having reasonable
 9 cause to believe that such person may be in need of protective services,
 10 is refused access by such person or another individual. Such application
 11 shall state, insofar as the facts can be ascertained with reasonable
 12 diligence:
 13 (a) the name and address of the person who may be in need of protec-
 14 tive services for adults and the premises on which this person may be
 15 found;
 16 (b) the reason the social services official believes the person may be
 17 in need of protective services for adults, which may include information
 18 provided by other agencies or individuals who are familiar with the per-
 19 son who may be in need of protective services for adults;
 20 (c) the person or persons who are responsible for preventing the
 21 social services official from gaining access to the person who may be in
 22 need of protective services for adults;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
 { } is old law to be omitted.

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1 (d) the efforts made by the social services official to gain access to
2 the person who may be in need of protective services for adults;

3 (e) the names of any individuals, such as physicians or nurses, or
4 other health or mental health professionals qualified to participate in
5 the assessment, who shall accompany and assist the social services offi-
6 cial conducting an assessment of the need of a person for protective
7 services for adults;

8 (f) the manner in which the proposed assessment is to be conducted;

9 (g) that the social services official seeks an order solely for the
10 purpose of assessing the need of a person for protective services for
11 adults in accordance with the provisions of section four hundred
12 seventy-three of this article and applicable regulations of the depart-
13 ment;

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

18 2. Any allegations which are not based upon personal knowledge shall
19 be supported by affidavits provided by a person or persons having such
20 knowledge. Such affidavits shall be attached to the application.

21 3. The applications authorized in this section shall have preference
22 over all other causes in all courts of appropriate jurisdiction, except
23 those with a similar statutory preference.

24 4. If the court is satisfied that there is reasonable cause to believe
25 that a person in need of protective services for adults may be found at
26 the premises described in the application, that such person may be in
27 need of protective services for adults, and that access to such person
28 has been refused, it shall grant the application and issue an order
29 authorizing the social services official and such other individuals as
30 may be designated by the said official, accompanied by a police officer,
31 to enter the premises to conduct an assessment to determine whether the
32 person named in the application is in need of protective services for
33 adults. The standard for proof and procedure for such an authorization
34 shall be the same as for a search warrant under the criminal procedure
35 law.

36 5. The provisions of this section shall not be construed to authorize
37 a social services official to remove any person from the premises
38 described in the application, or to provide any involuntary protective
39 services to any person other than to assess a person's need for protec-
40 tive services for adults. Nothing in this section shall be construed to
41 impair any existing right or remedy.

42 § 2. This act shall take effect on the one hundred twentieth day after
43 it shall have become a law.

SEMIANNUAL 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 AND ORDERS TO GAIN ACCESS PURSUANT TO SECTION 473-c OF THE SOCIAL SERVICES LAW

District's Name _____

Reporting Period _____ through _____

1. The number of petitions for Short Term Involuntary Protective Services Orders (STIPSO) made by the district _____

(A Case Summary Reporting Form must be submitted for each STIPSO petition filed.)
2. The number of STIPSO petitions granted by the court _____
3. The number of applications for Orders to Gain Access filed by the district _____

(A Case Summary Reporting Form must be submitted for each access application filed.)
4. The number of access orders granted by the court _____
5. Any comments the district may wish to make on the utilization of Short Term Involuntary Protective Services Orders or Orders to Gain Access

Commissioner's Signature _____ Date _____

CASE SUMMARY: REPORT TO THE STATE DEPARTMENT OF SOCIAL SERVICES ON THE UTILIZATION OF ORDERS TO GAIN ACCESS PURSUANT TO Section 473-c OF THE SOCIAL SERVICES LAW

District Name _____

Date of Application to the Court _____

1. Client's Age ____ Gender ____ Race: () White () Black () Other _____

2. Location of client (city; town; borough, if NYC) _____

3. Living arrangements (own home, apartment, motel, trailer, homeless, etc.) _____

4. Client lives alone (); with other(s); relationship _____

5. Referral Source (indicate agency or relationship to client):

6. List all factors which indicate person may be in need of Protective Services Adults (PSA):

7. Is the person an alleged victim of neglect or abuse? () Yes () No. If yes, what is the relationship of abuser(s)?

8. Who is denying access? Potential client (); caregiver ():
relationship _____

9. Briefly describe efforts made to gain access prior to filing application: (use back of form or attach another sheet if necessary) _____

10. Was an order granted by the court? () Yes () No If no, please indicate what happened to the client. _____

- 11. Following an assessment for PSA, was the person determined to be in need of PSA?
 Yes No

If no, list reason(s) for this determination _____

If yes, did the person agree to accept services voluntarily Yes No
 If the person agreed to accept services, what services were provided?

If the person refused to accept services, were other legal or involuntary interventions pursued by the district? Yes No

if yes, describe _____

If no, explain why not _____

- 12. Disposition of the case as of _____(date of the report) is _____

- 13. Other pertinent information or comment: (please use back of form or attach another sheet, if necessary.)

Name of district staff person to be contacted for additional information
