

Laws Pertaining To Adult Abuse, Neglect And Exploitation

Social Services Law (SSL)

SSL Section 473: requires local departments of social services to provide protective services to adults and describes eligibility criteria and scope of services to be provided.

SSL Section 473-c: Orders to gain access to persons believed to be in need of protective services for adults.

This law provides a means for a local department of social services to gain access to a person who may be in need of protective services but to whom access is being denied. A petition must be filed in Supreme or County Court to obtain authorization to gain access and conduct an assessment to determine if the person is in need of PSA. If granted, the order authorizes PSA staff, accompanied by a police officer and other necessary professionals, to enter the home to conduct an assessment. This law does not provide for removal of the person from the home or for the provision of involuntary services. If the person refuses needed services, and lacks decision-making capacity, other provisions of law must be used to secure involuntary services to deal with the particular circumstances.

SSL Section 473-a: Short-term involuntary protective services orders.

This law allows the department of social services to apply to Supreme or County Court for authority to provide involuntary emergency services for a 72-hour period, with one possible renewal for an additional 72 hours. This law applies if the adult is at imminent risk of death or serious physical harm, is unable to understand the risk because of an impairment and is resisting or unable to consent to services. The Short-Term Involuntary Protective Services Order (STIPSO) may authorize a police officer to use forcible entry and to render assistance and cooperation in carrying out the authorized protective services. The person may be removed to a hospital or receive other services available through PSA. This law does not apply to removal of the person to a psychiatric hospital, which is covered under the Mental Hygiene Law.

SSL Section 473, subdivision 5: PSA reports to law enforcement and district attorneys.

This law requires PSA to report to law enforcement (and to the local district attorney's office if that office has requested such reports) whenever PSA has a reason to believe that a criminal offense has been committed against a PSA client or a person being assessed to determine whether PSA is needed.

SSL Section 473-e: Confidentiality of PSA Information.

This law provides that PSA case records and reports are confidential and may be released only to persons who are covered under an exception permitting access. One such exception is for law enforcement where such information is needed to conduct a criminal investigation or criminal prosecution involving or affecting a person who is

receiving or who has received PSA services, and it is reasonable to believe such PSA records may be related to the criminal investigation or prosecution.

Mental Hygiene Law (MHL)

MHL 9.41: Emergency admissions for immediate observation, care and treatment, powers of certain peace officers and police officers.

This law authorizes a police officer to take into custody any person who appears to be mentally ill and is conducting him/herself in a manner that is likely to result in serious harm to himself or others. The officer may remove the person to a hospital or any comprehensive emergency psychiatric program with facilities for the observation, examination, care and treatment of persons alleged to be mentally ill or, pending examination or admission to such hospital, temporarily detain the person in another safe and comfortable place. If the hospital finds that the person qualifies for admission, the hospital may retain the person for no longer than 48 hours, unless within this time period the person is examined and found to require further observation, care or treatment.

MHL Article 81: Proceedings for appointment of a guardian for personal needs or property management.

A court may appoint a guardian for an incapacitated person if clear and convincing evidence shows that the person is likely to suffer harm because the person is unable to provide for personal needs or unable to manage property and financial affairs, and the person cannot adequately understand and appreciate the nature and consequences of such inability. Guardianships can be for long-term periods or they can be used for a single protective arrangement or transaction and then terminated. Temporary guardianship can be used if there is danger in the reasonably foreseeable future to the health and well-being of the person or danger of waste, misappropriation or loss of property. An injunction or restraining order can also be issued while a guardianship is pending. These actions may be useful in cases of financial exploitation.

Family Court Act

Article 8, Orders of Protection

PSA will assist an adult to apply, or apply on their behalf, to family or local criminal court for an order of protection to control abusive or criminal acts between family members or people in the same household.

Chapter 222 of the Laws of 1994, Family Protection and Domestic Violence Intervention Act

This law concerns the police response to family offenses and provides specific information concerning enforcing orders of protection in domestic violence situations.

Specific Crimes Against Elderly and Vulnerable Adults

While most crimes may apply to vulnerable adults as well as to the general population, the following are specific crimes against elderly and vulnerable adults.

- Endangering the Welfare of a Vulnerable Elderly Person or an Incompetent or Physically Disabled Person in the Second Degree (P.L. section 260.32, class E felony) and the First Degree (P.L. section 260.34, class D felony). Someone guilty of this crime when being a *caregiver* to a vulnerable elderly person or an incompetent or physically disabled person, they cause injury to such person (with intent to do so, or recklessly, or with criminal negligence) or subjects such person to sexual contact without the latter's consent. The terms "vulnerable elderly person" and "incompetent or physically disabled person" are defined in the law.
- Endangering the Welfare of an Incompetent or Physically Disabled Person (P.L. section 260.25, class A Misdemeanor). Unlike the provisions above, this crime does not presuppose the perpetrator is a caregiver. Someone is guilty of this crime if they knowingly act in a manner likely to harm the physical, mental or moral welfare of a person who is unable to care for him or herself because of physical disability, mental disease or defect.
- Scheme to Defraud in the First Degree (P.L. sections 190.65 and 260.30). Defrauding more than one "vulnerable elderly person" increases the severity of the crime.
- Assault in the Second Degree aka "Granny's Law" (P.L. section 120.05). A Class D violent felony if the victim is 65 years of age or older and the perpetrator is more than 10 years younger than the victim.