

H.B. NO. 3127

A BILL FOR AN ACT

RELATING TO ADULT PROTECTIVE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 346, Hawaii Revised Statutes, is
2 amended by amending part X to read as follows:

3 "[+]**PART X.**[+] [~~DEPENDENT~~] ADULT PROTECTIVE SERVICES

4 [+]**§346-221**[+] **Purpose; construction.** The legislature
5 recognizes that citizens of the State who are elder and mentally
6 or physically impaired constitute a significant and identifiable
7 segment of the population and are particularly subject to risks
8 of abuse, neglect, and exploitation.

9 The legislature also recognizes that it is a person's
10 [~~dependency status,~~] vulnerability, not age, which is often
11 encountered in cases of abuse, neglect, and exploitation. While
12 advanced age alone is not sufficient reason to intervene in a
13 person's life, the legislature finds that [~~many~~] elders [~~have~~]
14 may become subjects of abuse and neglect. Substantial public
15 interest exists to ensure that this segment of the population
16 receives protection.

17 The legislature declares that the State shall develop and
18 promote community services for the economic, social, and

1 personal well-being and protection of its elder citizens who are
2 mentally or physically impaired.

3 In taking this action, the legislature intends to place the
4 fewest possible restrictions on personal liberty and to permit
5 the exercise of constitutional rights by adults consistent with
6 protection from abuse, neglect, and exploitation.

7 ~~[+]~~ §346-222 ~~[+]~~ **Definitions.**

8 "Abuse" means ~~[actual or imminent]~~ physical injury,
9 psychological abuse ~~[or neglect]~~, sexual abuse, financial
10 exploitation, ~~[negligent treatment, or maltreatment]~~ caregiver
11 neglect, or self-neglect or poor self care as further defined in
12 this chapter.

13 ~~[Abuse occurs where:]~~

14 ~~(1) Any dependent adult exhibits evidence of:~~

15 ~~(A) Substantial or multiple skin bruising or any~~
16 ~~other internal bleeding;~~

17 ~~(B) Any injury to skin causing substantial bleeding;~~

18 ~~(C) Malnutrition;~~

19 ~~(D) A burn or burns;~~

20 ~~(E) Poisoning;~~

21 ~~(F) The fracture of any bone;~~

22 ~~(G) A subdural hematoma;~~

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1 ~~(H) Soft tissue swelling;~~
2 ~~(I) Extreme physical pain; or~~
3 ~~(J) Extreme mental distress which includes a~~
4 ~~consistent pattern of actions or verbalizations~~
5 ~~including threats, insults, or harassment, that~~
6 ~~humiliates, provokes, intimidates, confuses, and~~
7 ~~frightens the dependent adult;~~
8 ~~and the injury is not justifiably explained, or where~~
9 ~~the history given is at variance with the degree or~~
10 ~~type of injury, or circumstances indicate that the~~
11 ~~injury is not the product of an accidental occurrence;~~
12 ~~(2) Any dependent adult has been the victim of~~
13 ~~noneconsensual sexual contact or conduct, including but~~
14 ~~not limited to:~~
15 ~~(A) Sexual assault, molestation, sexual fondling,~~
16 ~~incest, prostitution;~~
17 ~~(B) Obscene or pornographic photographing, filming,~~
18 ~~or depiction; or~~
19 ~~(C) Other similar forms of sexual exploitation;~~
20 ~~(3) Any dependent adult is not provided in a timely manner~~
21 ~~with adequate food, clothing, shelter, psychological~~
22 ~~care, physical care, medical care, or supervision;~~

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- 1 ~~(4) Any dependent adult is provided with dangerous,~~
- 2 ~~harmful, or detrimental drugs as defined by section~~
- 3 ~~712-1240; however, this paragraph shall not apply when~~
- 4 ~~such drugs are provided to the dependent adult~~
- 5 ~~pursuant to the direction or prescription of a~~
- 6 ~~practitioner, as defined in section 712-1240;~~
- 7 ~~(5) There has been a failure to exercise that degree of~~
- 8 ~~care toward a dependent adult which a reasonable~~
- 9 ~~person with the responsibility of a caregiver would~~
- 10 ~~exercise, including, but not limited to, failure to:~~
- 11 ~~(A) Assist in personal hygiene;~~
- 12 ~~(B) Provide necessary food, shelter, and clothing;~~
- 13 ~~(C) Provide necessary health care, access to health~~
- 14 ~~care, or prescribed medication;~~
- 15 ~~(D) Protect a dependent adult from health and safety~~
- 16 ~~hazards; or~~
- 17 ~~(E) Protect against acts of abuse by third parties;~~
- 18 ~~(6) Any dependent adult appears to lack sufficient~~
- 19 ~~understanding or capacity to make or communicate~~
- 20 ~~responsible decisions concerning the dependent adult's~~
- 21 ~~person, and appears to be exposed to a situation or~~

1 ~~condition which poses an imminent risk of death or~~
2 ~~risk of serious physical harm; or~~
3 ~~(7) There is financial and economic exploitation. For the~~
4 ~~purpose of this part, "financial and economic~~
5 ~~exploitation" means the wrongful or negligent taking,~~
6 ~~withholding, misappropriation, or use of a dependent~~
7 ~~adult's money, real property, or personal property.~~
8 ~~"Financial and economic exploitation" can include but~~
9 ~~is not limited to:~~
10 ~~(A) Breaches of fiduciary relationships such as the~~
11 ~~misuse of a power of attorney or the abuse of~~
12 ~~guardianship privileges, resulting in the~~
13 ~~unauthorized appropriation, sale, or transfer of~~
14 ~~property;~~
15 ~~(B) The unauthorized taking of personal assets;~~
16 ~~(C) The misappropriation, misuse, or transfer of~~
17 ~~moneys belonging to the dependent adult from a~~
18 ~~personal or joint account; or~~
19 ~~(D) The intentional or negligent failure to~~
20 ~~effectively use a dependent adult's income and~~
21 ~~assets for the necessities required for the~~
22 ~~person's support and maintenance.~~

1 ~~The exploitations may involve coercion, manipulation,~~
2 ~~threats, intimidation, misrepresentation, or exertion~~
3 ~~of undue influence.]~~

4 "Capacity" means the ability to understand and appreciate
5 the nature and consequences of making decisions concerning one's
6 person or to communicate such decisions.

7 "Caregiver" means any person who has undertaken the care,
8 custody, or physical control of, or who has a legal or
9 contractual duty to care for the health, safety, and welfare of a
10 vulnerable adult.

11 "Caregiver neglect" means the failure to exercise that
12 degree of care toward a vulnerable adult that a reasonable
13 person with the responsibility of a caregiver would exercise,
14 including but not limited to, failure to:

- 15 (1) Assist in personal hygiene;
16 (2) Protect the vulnerable adult from abandonment;
17 (3) Provide in a timely manner necessary food, shelter,
18 and clothing;
19 (4) Provide in a timely manner necessary health care,
20 access to health care, prescribed medication,
21 psychological care, physical care, or supervision;

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- 1 (5) Protect the vulnerable adult from the provision of
2 dangerous, harmful, or detrimental drugs as defined by
3 section 712-1240 except that this paragraph shall not
4 apply when such drugs are provided to the vulnerable
5 adult pursuant to the direction or prescription of a
6 practitioner, as defined in section 712-1240;
7 (6) Protect the vulnerable adult from health and safety
8 hazards; or
9 (7) Protect the vulnerable adult against acts of abuse by
10 third parties.

11 "Court" means the family court having jurisdiction over a
12 matter under this part.

13 "Department" means the department of human services and its
14 authorized representatives.

15 ~~["Dependent adult" means any adult who, because of mental~~
16 ~~or physical impairment is dependent upon another person, a care~~
17 ~~organization, or a care facility for personal health, safety, or~~
18 ~~welfare.]~~

19 "Emergency medical treatment" means those services
20 necessary to maintain a person's physical health and without
21 which there is a reasonable belief that the person will suffer
22 irreparable harm or death.

1 "Financial exploitation" means the wrongful or negligent
2 taking, withholding, misappropriation, or use of a vulnerable
3 adult's money, real property, or personal property, including
4 but not limited to:

- 5 (1) Breaches of fiduciary relationships such as the misuse
6 of a power of attorney or the abuse of guardianship
7 privileges, resulting in the unauthorized
8 appropriation, sale, or transfer of property;
9 (2) The unauthorized taking of personal assets;
10 (3) The misappropriation, misuse, or transfer of moneys
11 belonging to the vulnerable adult from a personal or
12 joint account; or
13 (4) The intentional or negligent failure to effectively
14 use a vulnerable adult's income and assets for the
15 necessities required for the person's support and
16 maintenance.

17 The exploitations may involve coercion, manipulation,
18 threats, intimidation, misrepresentation, or exertion of
19 undue influence.

20 ~~["Imminent abuse" means that there exists reasonable cause~~
21 ~~to believe that abuse will occur or recur within the next ninety~~
22 ~~days.]~~

1 "Party" means those persons, care organizations, or care
2 facilities entitled to notice of proceedings under sections 346-
3 237 and 346-238, including any state department or agency that
4 is providing services and treatment to a [~~dependent~~] vulnerable
5 adult in accordance with a protective services plan.

6 "Physical abuse" means the non-accidental infliction of
7 physical or bodily injury, pain or impairment, including but not
8 limited to, being slapped, burned, cut, bruised, poisoned,
9 improperly physically restrained, or suffering injuries that are
10 not justifiably explained or where the history given is at
11 variance with the degree or type of injury.

12 "Protective services plan" means a specific written plan,
13 prepared by the department, setting forth the specific services
14 and treatment to be provided to a [~~dependent~~] vulnerable adult.

15 "Psychological abuse" means the infliction of mental or
16 emotional distress by use of threats, insults or harassment that
17 humiliates, provokes, intimidates, confuses, or frightens the
18 vulnerable adult.

19 "Self-neglect" or "poor self care" means a vulnerable
20 adult's inability, due to physical or mental impairments to
21 perform tasks essential to caring for oneself, including but not
22 limited to, providing essential food, clothing, shelter, and

1 medical care, obtaining goods and services necessary to maintain
2 physical health, mental health, emotional well-being and general
3 safety, or managing financial affairs. The vulnerable adult
4 shall appear to lack sufficient understanding or capacity to
5 make or communicate responsible decisions concerning the
6 vulnerable adult's person, and appear to be exposed to a
7 situation or condition that poses an immediate risk of death or
8 risk of serious physical harm.

9 "Sexual abuse" means non-consensual sexual contact or
10 conduct, including but not limited to:

- 11 (1) Sexual assault, molestation, sexual fondling, incest,
12 prostitution;
13 (2) Obscene or pornographic photographing, filming, or
14 depiction; or
15 (3) Other similar forms of sexual exploitation.

16 "Vulnerable adult" means any adult who, because of mental
17 or physical impairment, is unable to make reasonable decisions
18 to manage one's own resources, to carry out or arrange for
19 essential activities of daily living, or to protect oneself from
20 abuse, neglect, or financial exploitation without assistance
21 from others.

1 [+]§346-223[+] **Jurisdiction; venue.** The family court
2 shall have jurisdiction in protective proceedings under this
3 part concerning any [~~dependent~~] vulnerable adult who was or is
4 found within the circuit at the time such facts and
5 circumstances occurred, were discovered, or were reported to the
6 department, which constitute the basis for a finding that the
7 person has been abused [~~and is threatened with imminent abuse,~~]
8 or is in danger of being abused if immediate action is not
9 taken; provided that the protective proceedings under this part
10 are not exclusive and shall not preclude the use of any other
11 criminal, civil, or administrative remedy. The protective
12 proceedings under this part shall be held in the judicial
13 circuit in which the [~~dependent~~] vulnerable adult resides at the
14 time of the filing of the petition or in which the [~~dependent~~]
15 vulnerable adult has assets.

16 [+]§346-224[+] **Reports.** (a) The following persons who,
17 in the performance of their professional or official duties,
18 know or have reason to believe that a [~~dependent~~] vulnerable
19 adult has been abused [~~and is threatened with imminent abuse~~] or
20 is in danger of being abused if immediate action is not taken
21 shall promptly report the matter orally to the department of
22 human services:

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- 1 (1) Any licensed or registered professional of the healing
2 arts and any health-related occupation who examines,
3 treats, or provides other professional or specialized
4 services to [~~dependent~~] vulnerable adults, including
5 but not limited to, physicians, physicians in
6 training, psychologists, dentists, nurses, osteopathic
7 physicians and surgeons, optometrists, chiropractors,
8 podiatrists, pharmacists, and other health-related
9 professionals;
- 10 (2) Employees or officers of any public or private agency
11 or institution providing social, medical, hospital or
12 mental health services, including financial
13 assistance;
- 14 (3) Employees or officers of any law enforcement agency
15 including, but not limited to, the courts, police
16 departments, correctional institutions, and parole or
17 probation offices;
- 18 (4) Employees or officers of any adult residential care
19 home, adult day care center, or similar institution;
20 and
- 21 (5) Medical examiners or coroners.

1 (b) The initial oral report required by subsection (a)
2 shall be followed as soon as possible by a written report to the
3 department; provided that where a police department is the
4 initiating agency, a written report shall not be required unless
5 the police department has declined to take further action and
6 the department informs the police department that it intends to
7 pursue the matter of the orally reported incident of abuse. All
8 written reports shall contain the name and address of the
9 ~~[dependent]~~ vulnerable adult and the person who or care
10 organization or care facility which is alleged to have committed
11 or been responsible for the ~~[dependent]~~ vulnerable adult abuse,
12 if known; the nature and extent of the ~~[dependent]~~ vulnerable
13 adult's injury or harm; and any other information the reporter
14 believes might be helpful in establishing the cause of the
15 ~~[dependent]~~ vulnerable adult abuse.

16 (c) This section shall not prohibit any of the persons
17 enumerated in subsection (a) from reporting incidents which
18 those persons have reason to believe involve abuse which came to
19 their attention in any private or nonprofessional capacity.

20 (d) Any other person who has reason to believe that a
21 ~~[dependent]~~ vulnerable adult has been abused or is ~~[threatened~~
22 ~~with imminent abuse]~~ in danger of being abused if immediate

1 action is not taken may report the matter orally to the
2 department.

3 (e) Any person who knowingly fails to report as required
4 by this section or who wilfully prevents another person from
5 reporting pursuant to this section shall be guilty of a petty
6 misdemeanor.

7 (f) The department shall maintain a central registry of
8 reported cases.

9 [‡]§346-225[‡] **Confidentiality of reports.** All reports
10 made pursuant to this part, including the identity of the
11 reporting person, as well as all records of such reports, are
12 confidential and any person who makes an unauthorized disclosure
13 of a report or records of a report under this part shall be
14 guilty of a misdemeanor. The director of human services may
15 adopt, amend, or repeal rules, pursuant to chapter 91, to
16 provide for the confidentiality of reports and records, and for
17 the authorized disclosure of reports and records.

18 [‡]§346-226[‡] **Access to records.** Records of a
19 [~~dependent~~] vulnerable adult shall be obtained by the department
20 or the [~~dependent~~] vulnerable adult's court-appointed guardian
21 ad litem with the written consent of the [~~dependent~~] vulnerable
22 adult or that person's representative, or by court order. Any

1 person who reports to the department under section 346-224, upon
2 demand of the department, shall provide all information related
3 to the alleged incident of [~~dependent~~] vulnerable adult abuse or
4 neglect, including, but not limited to, financial records and
5 medical reports, which were not included in the written report
6 submitted pursuant to section 346-224(b).

7 ~~[§346-227]~~ **Investigation.** Upon receiving a report
8 that abuse of a [~~dependent~~] vulnerable adult has occurred [~~and~~
9 ~~is imminent,~~] or is in danger of occurring if immediate action
10 is not taken, the department shall cause an investigation to be
11 commenced in accordance with this part as the department deems
12 appropriate. The department shall not be required to
13 investigate a report that fails to allege that abuse of a
14 vulnerable adult has occurred or is in danger of occurring if
15 immediate action is not taken.

16 ~~[§346-228]~~ **Action upon investigation.** Upon
17 investigation the department shall take action toward preventing
18 abuse from occurring or preventing further abuse and shall have
19 the authority to do any or all of the following:

- 20 (1) Resolve the matter in an informal fashion as is
21 appropriate under the circumstances;
22 (2) Exercise its right of entry under section 346-229;

- 1 (3) Seek an order for immediate protection;
- 2 (4) Seek a temporary restraining order;
- 3 (5) File a petition with the court under this part; and
- 4 (6) Seek any protective or remedial actions authorized by
- 5 law.

6 [~~f~~]§346-229[~~f~~] **Right of entry.** (a) An employee of the

7 department engaged in an investigation under this part shall be

8 authorized to visit and communicate with the [~~dependent~~]

9 vulnerable adult who is the subject of the report. Any person

10 intentionally or knowingly obstructing or interfering with the

11 department's access to or communication with the [~~dependent~~]

12 vulnerable adult shall be guilty of a misdemeanor.

13 (b) Any employee of the department engaged in an

14 investigation under this part, having probable cause to believe

15 that a [~~dependent~~] vulnerable adult will be physically injured

16 through abuse before a court order for entry can be obtained,

17 without a warrant, may enter upon the premises where the

18 [~~dependent~~] vulnerable adult may be found for the purpose of

19 ascertaining that person's welfare. Where a warrantless entry

20 is authorized under this section, the employee of the department

21 may request the assistance of a police officer to gain entrance.

1 **§346-230 Termination of services.** The department shall
2 act only with the consent of the victim, unless the department
3 obtains court authorization to provide necessary services, as
4 provided in section 346-231. Investigation and services
5 provided under this part shall be immediately terminated if:

6 (1) The [~~dependent~~] vulnerable adult has the capacity to
7 consent and either does not consent or withdraws
8 consent to the receipt of protective services; or

9 (2) The department determines that protection is no longer
10 needed under this part; or

11 (3) The court so orders.

12 Upon the department's determination that protective
13 services are no longer needed, the [~~dependent~~] vulnerable adult
14 shall be referred to the agency responsible for follow-up
15 services. For the mentally ill, mentally retarded or
16 developmentally disabled adult, the state agency designated to
17 provide services shall be the department of health.

18 [~~§~~]**§346-231**[~~§~~] **Order for immediate protection.** (a) If
19 the department believes that a person is a [~~dependent~~]
20 vulnerable adult and it appears probable that the [~~dependent~~]
21 vulnerable adult has been abused [~~and is threatened with~~
22 ~~imminent abuse~~] or is in danger of being abused unless immediate

1 action is taken; and the [~~dependent~~] vulnerable adult consents,
2 or if the [~~dependent~~] vulnerable adult does not consent and
3 there is probable cause to believe that the [~~dependent~~]
4 vulnerable adult lacks the capacity to make decisions concerning
5 the [~~dependent~~] vulnerable adult's person, the department shall
6 seek an order for immediate protection in accordance with this
7 section.

8 (b) A finding of probable cause may be based in whole or
9 in part upon hearsay evidence when direct testimony is
10 unavailable or when it is demonstrably inconvenient to summon
11 witnesses who will be able to testify to facts from personal
12 knowledge.

13 (c) Upon finding that the person is a [~~dependent~~]
14 vulnerable adult and that there is probable cause to believe
15 that the [~~dependent~~] vulnerable adult has been abused [~~and is~~
16 ~~threatened with imminent abuse~~] or is in danger of being abused
17 unless immediate action is taken; and the [~~dependent~~] vulnerable
18 adult consents, or if the [~~dependent~~] vulnerable adult does not
19 consent and there is probable cause to believe that the
20 [~~dependent~~] vulnerable adult lacks the capacity to make
21 decisions concerning the [~~dependent~~] vulnerable adult's person,

1 the court shall issue an order for immediate protection. This
2 order may include, but is not limited to:

3 (1) An authorization for the department to transport the
4 person to an appropriate medical or care facility;

5 (2) An authorization for medical examinations;

6 (3) An authorization for emergency medical treatment; and

7 (4) Such other matters as may prevent [~~imminent~~] immediate
8 abuse, pending a hearing under section 346-232.

9 (d) The court may also make orders as may be appropriate
10 to third persons, including temporary restraining orders,
11 enjoining them from:

12 (1) Removing the [~~dependent~~] vulnerable adult from the
13 care or custody of another;

14 (2) Abusing the [~~dependent~~] vulnerable adult;

15 (3) Living at the [~~dependent~~] vulnerable adult's
16 residence;

17 (4) Contacting the [~~dependent~~] vulnerable adult in person
18 or by telephone;

19 (5) Selling, removing, or otherwise disposing of the
20 [~~dependent~~] vulnerable adult's personal property;

21 (6) Withdrawing those funds from any bank, savings and
22 loan association, credit union, or other financial

- 1 institution, or from a stock account in which the
2 [~~dependent~~] vulnerable adult has an interest;
- 3 (7) Negotiating any instruments payable to the [~~dependent~~]
4 vulnerable adult;
- 5 (8) Selling, mortgaging, or otherwise encumbering any
6 interest that the [~~dependent~~] vulnerable adult has in
7 real property;
- 8 (9) Exercising any powers on behalf of the [~~dependent~~]
9 vulnerable adult by representatives of the department,
10 any court-appointed guardian or guardian ad litem or
11 any official acting on their behalf;
- 12 (10) Engaging in any other specified act which, based upon
13 the facts alleged, would constitute harm or present a
14 threat of [~~imminent~~] immediate harm to the [~~dependent~~]
15 vulnerable adult or would cause the loss of the
16 [~~dependent~~] vulnerable adult's property.
- 17 (e) Court orders under section 346-232 and this section
18 may be obtained upon oral or written application by the
19 department, without notice and without a hearing. Any oral
20 application shall be reduced to writing within twenty-four
21 hours. The court may issue its order orally, provided that it
22 shall reduce the order to writing as soon as possible thereafter

1 and in any case not later than twenty-four hours after the court
2 received the written application. Certified copies of the
3 application and order shall be personally served upon the
4 [~~dependent~~] vulnerable adult and any other person or entity
5 affected by the order together with the notice of the order to
6 show cause hearing in section 346-232.

7 (f) If a written order for immediate protection is issued,
8 the department shall file a petition invoking the jurisdiction
9 of the court under this part within twenty-four hours.

10 [~~§~~ **§346-232** ~~§~~] **Order to show cause hearing.** (a) When a
11 written order for immediate protection is issued, the court
12 shall hold a hearing on the application for immediate
13 protection, no later than seventy-two hours after issuance of
14 the written order excluding any Saturday or Sunday, requiring
15 cause to be shown why the order or orders should not continue.
16 The department shall make arrangements to have the [~~dependent~~]
17 vulnerable adult attend the hearing or show cause why the
18 [~~dependent~~] vulnerable adult cannot attend.

19 (b) When the court finds that there is probable cause to
20 believe that a [~~dependent~~] vulnerable adult has been abused [~~and~~
21 ~~is threatened with imminent abuse,~~] or is in danger of being
22 abused if immediate action is not taken and the [~~dependent~~]

1 vulnerable adult consents, or if the [~~dependent~~] vulnerable
2 adult does not consent and the court finds that there is
3 probable cause to believe that the [~~dependent~~] vulnerable adult
4 lacks the capacity to make decisions concerning the [~~dependent~~]
5 vulnerable adult's person, the court may continue or modify any
6 order pending an adjudicatory hearing on the petition. These
7 orders may include orders for the [~~dependent~~] vulnerable adult's
8 temporary placement and ordinary medical care.

9 (c) The parties personally or through counsel may
10 stipulate to the entry or continuance of such orders as the
11 court deems to be in the best interest of the [~~dependent~~]
12 vulnerable adult, and the court shall set the case for an
13 adjudicatory hearing as soon as it is practical.

14 [~~+~~]**§346-233**[~~+~~] **Petition.** (a) A petition invoking the
15 jurisdiction of the court under this part shall be entitled "In
16 the matter of the protection of _____," and shall
17 be verified.

18 (b) The petition shall set forth with specificity the:

- 19 (1) Reasons the person is considered to be a [~~dependent~~]
20 vulnerable adult;
21 (2) Facts which bring the [~~dependent~~] vulnerable adult
22 within this part;

1 (3) Name, birth date, sex, and residence address of the
2 [~~dependent~~] vulnerable adult;

3 (4) Names and addresses of any living persons, or entities
4 required to be notified pursuant to section 346-237;
5 and

6 (5) If appropriate, allegations describing any lack of
7 capacity of the [~~dependent~~] vulnerable adult.

8 [~~§~~346-234~~§~~] **Guardian ad litem; counsel.** (a) In any
9 case where the court has reason to believe that a [~~dependent~~]
10 vulnerable adult or any other party lacks the capacity to
11 effectively make decisions concerning the party's person, it may
12 appoint a guardian ad litem to represent the interests of that
13 party throughout the pendency of proceedings under this part.
14 The court shall appoint counsel for the [~~dependent~~] vulnerable
15 adult at any time where it finds that the [~~dependent~~] vulnerable
16 adult requires a separate legal advocate and is unable to afford
17 private counsel.

18 (b) The court may order reasonable costs and fees of the
19 guardian ad litem to be paid by the party for whom the guardian
20 ad litem is appointed, if that party has sufficient financial
21 resources to pay such costs and fees. The court may also order
22 the appropriate parties to pay or reimburse reasonable costs and

1 fees of the guardian ad litem and counsel appointed for the
2 [~~dependent~~] vulnerable adult.

3 **§346-235 Consolidation with guardianship proceedings.** A
4 proceeding for the appointment of a guardian or conservator
5 under article V of chapter 560 may be consolidated with the
6 proceedings under this part as the applicable circuit court and
7 the family court, in the exercise of their discretion, shall
8 permit.

9 [+] **§346-236** [+] **Permanent changes.** Permanent changes in
10 the living situation of an abused [~~dependent~~] vulnerable adult
11 shall not ordinarily be made under authority of this part. If
12 permanent changes in the living situation or nonemergency
13 medical treatment are necessary, the appropriate guardianship,
14 or civil commitment action shall be initiated pursuant to
15 applicable state law.

16 **§346-237 Notice of proceedings.** After a petition has been
17 filed, the matter shall be set for hearing and a notice of
18 hearing shall be issued to all parties to the proceeding. The
19 parties to the proceeding shall include:

- 20 (1) The [~~dependent~~] vulnerable adult;
- 21 (2) Any caregiver or facility in which the [~~dependent~~]
22 vulnerable adult resides or is a patient;

- 1 (3) The spouse and adult children of the [~~dependent~~]
2 vulnerable adult;
- 3 (4) The parents of the [~~dependent~~] vulnerable adult,
4 unless waived by the court for good cause;
- 5 (5) Any guardian or conservator who may have been
6 appointed; and
- 7 (6) Any other person or entity affected by the order for
8 immediate protection.

9 Where the name or whereabouts of a potential party is
10 unknown, the court may require the petitioner to set forth the
11 reasonable efforts the petitioner made to ascertain the party's
12 name or whereabouts and why the petitioner has been unable to
13 determine those facts.

14 [+]§346-238[+] **Service.** (a) Service of the notice shall
15 be made by delivery of a copy thereof together with a certified
16 copy of the petition to each person or entity to be given notice
17 either by personal service, by certified mail, return receipt
18 requested and addressed to the last known address, by
19 publication, or by other means authorized by the court. Upon a
20 showing of good cause, the court may waive notice to any party
21 except the [~~dependent~~] vulnerable adult.

1 (b) Service shall be effected at least forty-eight hours
2 prior to the time fixed in the notice for hearing when held
3 pursuant to section 346-232(a), or at least fifteen days prior
4 to the time fixed in the notice for an adjudicatory,
5 disposition, or review hearing, unless the party otherwise was
6 ordered by the court to appear at those hearings.

7 **[+]§346-239[+] Required findings concerning postponed**
8 **hearings.** Except as otherwise provided, no hearing shall be
9 delayed upon the grounds that a party other than the [~~dependent~~]
10 vulnerable adult is not present at the hearing or has not been
11 served with a copy of the order for immediate protection or the
12 petition, where reasonable efforts have been made to effect
13 service and it would be detrimental to the [~~dependent~~]
14 vulnerable adult to postpone the proceedings until service can
15 be made. Whenever a hearing is delayed or postponed under this
16 section, the court shall enter a finding that it will not be
17 detrimental to the [~~dependent~~] vulnerable adult and shall also
18 specify what additional measures shall be undertaken to effect
19 service.

20 **[+]§346-240[+] Adjudicatory hearing.** (a) When a petition
21 has been filed, the court shall set a return date hearing to be
22 held within thirty days of the filing of the petition. On the

1 return date, the parties personally or through counsel may
2 stipulate to the entry or continuance of the orders as the court
3 deems to be in the best interests of the [~~dependent~~] vulnerable
4 adult, and the court shall set the case for an adjudicatory
5 hearing as soon as is practical.

6 (b) In an adjudicatory hearing, the court shall determine
7 whether the person is a [~~dependent~~] vulnerable adult, and
8 whether the [~~dependent~~] vulnerable adult has been abused [~~and is~~
9 ~~threatened with imminent abuse,~~] or is in danger of being abused
10 if immediate action is not taken, based upon a preponderance of
11 the evidence. Evidence which is contained in a written report,
12 study, or examination shall be admissible, provided that the
13 maker of the written report, study, or examination be subject to
14 direct and cross-examination upon demand when the maker is
15 reasonably available. A social worker employed by the
16 department in the area of adult protective services shall be
17 presumed to be qualified to testify as an expert in the field of
18 protective services.

19 (c) If facts sufficient to sustain the petition are
20 established in court, or are stipulated to by all parties, the
21 court shall enter an order finding that the [~~dependent~~]
22 vulnerable adult has been abused [~~and threatened with imminent~~

1 ~~abuse~~] or is in danger of being abused if immediate action is
2 not taken and shall state the grounds for the finding. The
3 court shall also make a finding concerning the capacity of the
4 [~~dependent~~] vulnerable adult to effectively make decisions
5 concerning personal needs or property or both. If the capacity
6 of the [~~dependent~~] vulnerable adult is at issue, the court shall
7 require that the [~~dependent~~] vulnerable adult be examined by a
8 psychiatrist or other physician who is skilled in evaluating the
9 particular area in which the [~~dependent~~] vulnerable adult is
10 alleged to lack capacity before making any finding that the
11 [~~dependent~~] vulnerable adult lacks capacity. If there is no
12 finding that the [~~dependent~~] vulnerable adult lacks capacity to
13 make such decisions and if the [~~dependent~~] vulnerable adult does
14 not give consent, the court shall not have authority to proceed
15 further and the court shall dismiss the case.

16 (d) Upon the completion of the adjudicatory hearing, the
17 disposition hearing may commence immediately after the required
18 findings are made, provided the requirements of section 346-
19 241(a) have been met, or the court may set the disposition
20 hearing for such time as it deems appropriate.

1 (e) If facts sufficient to sustain the petition under this
2 part are not established, the court shall dismiss the petition
3 and shall state the grounds for dismissal.

4 (f) If the court sustains the petition and does not
5 commence immediately to the disposition hearing, it shall
6 determine, based upon the facts adduced during the adjudicatory
7 hearing and any additional facts presented to it, whether any
8 temporary orders should be issued pending final disposition.

9 **§346-241 Disposition.** (a) The department shall prepare a
10 proposed protective order and a written protective services plan
11 and submit copies to the court and each of the parties or their
12 counsel at least seven days prior to the disposition hearing.

13 (b) The proposed protective order may include any of the
14 provisions set forth in section 346-231, and, in addition may
15 include an order that:

16 (1) The person inflicting abuse on the [~~dependent~~]
17 vulnerable adult participate in counseling or therapy
18 as the court deems appropriate;

19 (2) Any party report to the department any violation of
20 the protective order or protective services plan;

21 (3) The department make periodic home visits to the
22 [~~dependent~~] vulnerable adult; and

1 (4) The department monitor compliance with the order.

2 (c) The proposed protective services plan shall set forth
3 the following:

4 (1) Specific services or treatment to be provided to the
5 [~~dependent~~] vulnerable adult and the specific actions
6 the parties shall take;

7 (2) Specific responsibilities that the parties shall
8 assume;

9 (3) Period during which the services shall be provided;

10 (4) Dates by which the actions shall be completed;

11 (5) Specific consequences that may be reasonably
12 anticipated to result from a party's failure to comply
13 with any terms and conditions of the plan; and

14 (6) Steps that shall be necessary to terminate the court's
15 jurisdiction.

16 (d) In preparing such a proposed protective order, the
17 department shall seek to impose the least restrictive limitation
18 on the freedom and liberties of the [~~dependent~~] vulnerable
19 adult. To the greatest extent possible, the [~~dependent~~]
20 vulnerable adult should be permitted to participate in decisions
21 concerning the [~~dependent~~] vulnerable adult's person, or
22 property, or both.

1 (e) The court shall conduct a disposition hearing
2 concerning the terms and conditions set forth in the proposed
3 protective order and proposed protective services plan unless
4 each of the appropriate parties accepts the order and plan, in
5 which event, the court may approve the order and plan without a
6 hearing.

7 **§346-242 Review hearings.** Except for good cause shown,
8 the court shall set each case for a review hearing not later
9 than six months after the date that a protective order and
10 protective services plan are ordered by the court. Thereafter,
11 the court shall review the matter at intervals of not longer
12 than six months until the court's jurisdiction has been
13 terminated. The department and the guardian ad litem, if any,
14 shall submit a written report, with copies to the parties or
15 their counsel, at least fifteen days prior to the date set for
16 each review. The report shall evaluate whether the parties have
17 complied with the terms and conditions of the protective order
18 and protective services plan; shall recommend any modification
19 to the order or plan; and shall recommend whether the court
20 shall retain jurisdiction or terminate the case. At each
21 review, the court shall determine whether the parties have
22 complied with the terms and conditions of the order and plan;

1 enforce such sanctions for noncompliance as may be appropriate;
2 and order such revisions to the existing order or plan as are in
3 the best interests of the [~~dependent~~] vulnerable adult. At each
4 review, the court shall make an express finding as to whether it
5 shall retain jurisdiction or terminate the case, and, in each
6 instance, shall state the basis for its action.

7 [+]§346-243[+] **Appeal.** Any party aggrieved by an order or
8 decree of the court may appeal as provided by section 571-54.

9 **§346-244 Admissibility of evidence.** The physician-patient
10 privilege, the psychologist-client privilege, the spousal
11 privilege, and the victim-counselor privilege shall not be
12 grounds for excluding evidence in any judicial proceeding
13 resulting from a report pursuant to this part.

14 [+]§346-245[+] **Hearings.** The protective proceedings shall
15 be heard without a jury. The hearing may be adjourned from time
16 to time. The general public shall be excluded, and only such
17 persons as are found by the court to have a direct interest in
18 the case shall be admitted.

19 [+]§346-246[+] **Failure to comply with court orders.** The
20 court may apply contempt of court provisions and all other
21 provisions available under the law if a party fails to comply

1 with the terms and conditions of any order issued under this
2 part.

3 [+]§346-247[+] **Payment for service or treatment provided**
4 **to a party.** Whenever service, treatment, care, or support of a
5 [~~dependent~~] vulnerable adult is provided under this part, the
6 persons or legal entities who may be legally obligated to pay
7 for the service, treatment, care, or support of the [~~dependent~~]
8 vulnerable person, may be ordered by the court to pay the cost
9 of the service, care, support, or treatment provided to the
10 [~~dependent~~] vulnerable adult in whole or in part, after notice
11 and hearing.

12 [+]§346-248[+] **Fiscal and service responsibility.** The
13 department or other authorized agencies shall provide only the
14 care, service, treatment, support, or payment authorized by law.
15 The department or authorized agencies shall have the authority
16 to establish priorities and limitations of services based on
17 their resources.

18 [+]§346-249[+] **Cooperation.** Every public official or
19 department shall render all assistance and cooperation within
20 the official's or department's power and which may further the
21 purpose and objectives of this part. The department and the

1 court may seek the cooperation of organizations whose objectives
2 are to protect or aid [~~dependent~~] vulnerable adults.

3 [+]§346-250[+] **Immunity from liability.** (a) Anyone
4 participating in good faith in the making of a report pursuant
5 to this part shall have immunity from any liability, civil or
6 criminal, that might be otherwise incurred or imposed by or as a
7 result of the making of such a report. Any participant shall
8 have the same immunity with respect to participation in any
9 judicial proceeding resulting from that report.

10 (b) Any individual who assumes a duty or responsibility
11 pursuant to this part shall have immunity from civil liability
12 for acts or omissions performed within the scope of the
13 individual's duty or responsibility. Nothing in this part shall
14 limit the liability of the department, any other state agency,
15 or any private organization for the conduct of individuals
16 acting within the scope of their duties provided immunity under
17 this section.

18 [+]§346-251[+] **Presumption of capacity.** An individual
19 shall be presumed capable of making decisions concerning the
20 individual's person. A determination that an individual lacks
21 capacity under this part shall not be construed as a finding
22 that the individual lacks capacity for any other purpose.

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1 [+]§346-252[+] **Advanced age.** An individual shall not be
2 involuntarily subjected to the provisions of this part solely
3 based on advanced age.

4 [+]§346-253[+] **Rules.** The department shall adopt rules
5 pursuant to chapter 91 necessary for the purposes of this part."

6 SECTION 2. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval.

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11

INTRODUCED BY:

Calvin K. Ay

BY REQUEST

JAN 22 2008

Report Title:

Social Services; Adult Protective Services

Description:

Expands authority to investigate allegations of abuse, neglect, and financial exploitation of vulnerable adults.

JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO ADULT PROTECTIVE SERVICES.

PURPOSE: To amend provisions of chapter 346, Part X, Hawaii Revised Statutes, by: (1) amending the title to read "Adult Protective Services"; (2) amending the definition section by deleting definitions of "dependent adult" and "imminent abuse"; amending the definition of "abuse"; adding new definitions of "caregiver", "caregiver neglect", "financial exploitation", "physical abuse", "psychological abuse", "self-neglect or poor self care", "sexual abuse", and "vulnerable adult"; (3) enabling the Department of Human Services (DHS) to investigate and the court to have jurisdiction when reason exists to believe that a vulnerable adult has been abused or is in danger of being abused if immediate action is not taken; and (4) making conforming amendments for consistency and clarity.

MEANS: Amend chapter 346, Part X, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The changes will expand DHS authority to investigate allegations of vulnerable adult abuse, neglect and financial exploitation when there is reason to believe a vulnerable adult has been abused or is in danger of being abused if immediate action is not taken.

By substituting the phrase "vulnerable adult" for the current phrase "dependent adult", DHS will be able to intervene in situations of abuse, neglect, or exploitation for a broader population who may warrant protection. The proposed amendments also provide clarity as to what

constitutes vulnerable adult abuse, neglect, or exploitation. In addition, the proposed amendments clearly delineate the criteria by which DHS can initiate adult protective services (APS) investigations.

These clarifications are also needed to eliminate confusion on the part of the community in terms of what to report to DHS via its APS Hotline and what DHS are to investigate.

Impact on the public: The changes will allow governmental intervention in the form of APS investigations in response to reports from the community regarding alleged abuse of vulnerable adults that has already occurred or is likely to occur if immediate action is not taken.

Impact on the department and other agencies: The department will be responsible for an increased number of APS investigations statewide, thereby necessitating an increase in the number of staff to be designated as APS social work investigators. An increase in the number of registered nurses and social services assistants to aid the APS social workers in investigating the reported cases will also be needed. Due to plans for internal reorganization, DHS does not anticipate requesting additional staff positions.

Increased need for court intervention to stop vulnerable adult abuse from occurring or re-occurring may necessitate increased staffing for the Judiciary. DHS will also need additional legal support from the Department of the Attorney General to represent DHS in the court proceedings, including but not limited to orders for immediate protection and guardianship hearings.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HMS 601

OTHER AFFECTED
AGENCIES: The Judiciary and the Department of the
Attorney General

EFFECTIVE DATE: July 1, 2008