
A BILL FOR AN ACT

RELATING TO ADULT PROTECTIVE SERVICES.

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

1 SECTION 1. Section 346-45, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The court shall maintain records of all adult
4 protective proceedings under this chapter. All court documents
5 and records pertaining to the action or proceeding shall be
6 subject to inspection only by the [~~dependent~~] vulnerable adult,
7 and [~~his or her~~] the vulnerable adult's guardian, conservator,
8 their respective attorneys, the guardian ad litem of the
9 [~~dependent~~] vulnerable adult, and the other parties and their
10 respective attorneys or guardians ad litem."

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

13 "[+]PART X. []-DEPENDENT] ADULT PROTECTIVE SERVICES"

14 SECTION 3. Section 346-221, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§346-221[+] Purpose; construction. The legislature
17 recognizes that citizens of the State who are [~~elder and~~
18 ~~mentally or physically impaired or~~] vulnerable constitute a



1 significant and identifiable segment of the population and are
2 particularly subject to risks of abuse, neglect, and
3 exploitation.

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

12 The legislature declares that the State shall develop and
13 promote safety and community services for the economic, social,
14 and personal well-being and protection of its [~~elder~~] vulnerable
15 citizens who [~~are mentally or physically impaired.~~] may be
16 vulnerable to abuse, neglect, and exploitation.

17 In taking this action, the legislature intends to [~~place~~]
18 protect vulnerable adults and while placing the fewest possible
19 restrictions on personal liberty, and to permit the exercise of
20 constitutional rights by adults consistent with protection from
21 abuse, neglect, and exploitation."



1 SECTION 4. Section 346-222, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[f]~~§346-222~~[f]~~ **Definitions.** For the purposes of this
4 part:

5 "Abuse" means [~~actual or imminent~~] physical injury,
6 psychological abuse [~~or neglect~~], sexual abuse, or financial
7 exploitation, [~~negligent treatment, or maltreatment~~] caregiver
8 neglect, or self-neglect or poor self care, as further defined
9 in this chapter. Abuse does not include and shall not be based
10 solely on physical, psychological, or financial conditions that
11 result when a vulnerable adult seeks, or when a caregiver
12 provides or permits to be provided, treatment with the express
13 consent or in accordance with the religious or spiritual
14 practice of the vulnerable adult.

15 [~~Abuse occurs where:~~

- 16 ~~(1) Any dependent adult exhibits evidence of:~~
- 17 ~~(A) Substantial or multiple skin bruising or any~~
- 18 ~~other internal bleeding;~~
- 19 ~~(B) Any injury to skin causing substantial bleeding;~~
- 20 ~~(C) Malnutrition;~~
- 21 ~~(D) A burn or burns;~~
- 22 ~~(E) Poisoning;~~



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



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



1 ~~responsible decisions concerning the dependent adult's~~
2 ~~person, and appears to be exposed to a situation or~~
3 ~~condition which poses an imminent risk of death or~~
4 ~~risk of serious physical harm; or~~

5 ~~(7) There is financial and economic exploitation. For the~~
6 ~~purpose of this part, "financial and economic~~
7 ~~exploitation" means the wrongful or negligent taking,~~
8 ~~withholding, misappropriation, or use of a dependent~~
9 ~~adult's money, real property, or personal property.~~

10 ~~"Financial and economic exploitation" can include but~~
11 ~~is not limited to:~~

12 ~~(A) Breaches of fiduciary relationships such as the~~
13 ~~misuse of a power of attorney or the abuse of~~
14 ~~guardianship privileges, resulting in the~~
15 ~~unauthorized appropriation, sale, or transfer of~~
16 ~~property;~~

17 ~~(B) The unauthorized taking of personal assets;~~

18 ~~(C) The misappropriation, misuse, or transfer of~~
19 ~~moneys belonging to the dependent adult from a~~
20 ~~personal or joint account; or~~

21 ~~(D) The intentional or negligent failure to~~
22 ~~effectively use a dependent adult's income and~~



1 ~~assets for the necessities required for the~~
2 ~~person's support and maintenance.~~

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

6 "Capacity" means the ability to understand and appreciate
7 the nature and consequences of making decisions concerning one's
8 person or to communicate ~~[such]~~ these decisions.

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

13 "Caregiver neglect" means the failure to exercise that
14 degree of care toward a vulnerable adult that a reasonable
15 person with the responsibility of a caregiver would exercise,
16 including failure to:

- 17 (1) Assist with personal hygiene;
18 (2) Protect the vulnerable adult from abandonment;
19 (3) Provide, in a timely manner, necessary food, shelter,
20 or clothing;



- 1 (4) Provide, in a timely manner, necessary health care,
2 access to healthcare, prescribed medication,
3 psychological care, physical care, or supervision;
- 4 (5) Protect the vulnerable adult from the provision of
5 dangerous, harmful, or detrimental drugs, as defined
6 in section 712-1240; provided that this paragraph
7 shall not apply when such drugs are provided to the
8 vulnerable adult pursuant to the direction or
9 prescription of a practitioner, as defined in section
10 712-1240;
- 11 (6) Protect the vulnerable adult from health and safety
12 hazards; or
- 13 (7) Protect the vulnerable adult from acts of abuse by
14 third parties.

15 "Court" means the family court [~~having jurisdiction over a~~
16 ~~matter under this part~~].

17 "Department" means the department of human services and its
18 authorized representatives.

19 [~~"Dependent adult" means any adult who, because of mental~~
20 ~~or physical impairment is dependent upon another person, a care~~
21 ~~organization, or a care facility for personal health, safety, or~~
22 ~~welfare.~~]



1 "Director" means the director of human services.

2 "Emergency medical treatment" means ~~[those services]~~ any
3 service necessary to maintain a person's physical health and
4 without which there is a reasonable belief that the person will
5 suffer irreparable harm or death.

6 "Financial exploitation" means the wrongful or negligent
7 taking, withholding, misappropriation, or use of a vulnerable
8 adult's money, real property, or personal property, including:

9 (1) Breaches of fiduciary relationships, such as the
10 misuse of a power of attorney or the abuse of
11 guardianship privileges resulting from the
12 unauthorized appropriation, sale, or transfer of
13 property;

14 (2) The unauthorized taking of personal assets;

15 (3) The misappropriation, misuse, or transfer of moneys
16 belonging to the vulnerable adult from a personal or
17 joint account; or

18 (4) The intentional or negligent failure to effectively
19 use a vulnerable adult's income and assets for the
20 necessities required for the vulnerable adult's
21 support and maintenance.



1 The exploitation may involve coercion, manipulation, threats,
2 intimidation, misrepresentation, or exertion of undue influence.

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

6 "Party" means those persons, care organizations, or care
7 facilities entitled to notice of proceedings under sections
8 346-237 and 346-238, including any state department or agency
9 that is providing services and treatment to a [~~dependent~~]
10 vulnerable adult in accordance with a protective services plan.

11 "Physical abuse" means:

12 (1) The non-accidental infliction of physical or bodily
13 injury, pain, or impairment, including being slapped,
14 burned, cut, bruised, poisoned, or improperly
15 physically restrained; or

16 (2) Injuries that are not justifiably explained or where
17 the history given is at variance with the degree or
18 type of injury.

19 "Protective services plan" means a specific written plan,
20 prepared by the department, [~~setting~~] that sets forth the
21 specific services and treatment to be provided to a [~~dependent~~]
22 vulnerable adult.



1 "Psychological abuse" means the infliction of mental or
2 emotional distress by the use of threats, insults, or harassment
3 that humiliates, provokes, intimidates, confuses, or frightens
4 the vulnerable adult.

5 "Self-neglect" or "poor self care" means:

6 (1) A vulnerable adult's inability, due to physical or
7 mental impairments, or both, to perform tasks
8 essential to caring for oneself, including:

9 (A) Providing essential food, clothing, shelter, and
10 medical care;

11 (B) Obtaining goods and services necessary to
12 maintain physical health, mental health,
13 emotional well-being, and general safety; or

14 (C) Managing financial affairs; and

15 (2) The vulnerable adult appears to lack sufficient
16 understanding or capacity to make or communicate
17 responsible decisions concerning the vulnerable
18 adult's person, and appears to be exposed to a
19 situation or condition that poses an immediate risk of
20 death or serious physical harm.

21 "Sexual abuse" means non-consensual sexual contact or
22 conduct including:



1 (1) Sexual assault, molestation, sexual fondling, incest,
2 or prostitution;

3 (2) Obscene or pornographic photographing, filming, or
4 depiction; or

5 (3) Other similar forms of sexual exploitation.

6 "Vulnerable adult" means a person eighteen years of age or
7 older who, because of mental, developmental, or physical
8 impairment, is unable to:

9 (1) Communicate or make responsible decisions to manage
10 one's own care or resources;

11 (2) Carry out or arrange for essential activities of daily
12 living; or

13 (3) Protect oneself from abuse, neglect, or financial
14 exploitation from others."

15 SECTION 5. Section 346-223, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~[f]~~§346-223~~[f]~~ **Jurisdiction; venue.** The family court
18 shall have jurisdiction ~~[in]~~ over protective proceedings under
19 this part ~~[concerning any dependent]~~ that concern a vulnerable
20 adult who was or is found within the judicial circuit at the
21 time ~~[such]~~ the facts and circumstances occurred, were
22 discovered, or were reported to the department, which constitute



1 the basis for a finding that the [~~person has been~~] vulnerable
2 adult was abused [~~and~~] or is [~~threatened with imminent abuse;~~]
3 in danger of being abused if immediate action is not taken;
4 provided that the protective proceedings under this part [~~are~~]
5 shall not be considered exclusive and shall not preclude [~~the~~
6 ~~use of~~] any other criminal, civil, or administrative remedy.
7 The protective proceedings under this part shall be held in the
8 judicial circuit in which the [~~dependent~~] vulnerable adult
9 resides at the time of the filing of the petition or in which
10 the [~~dependent~~] vulnerable adult has assets."

11 SECTION 6. Section 346-224, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~+~~]**§346-224**[~~+~~] **Reports.** (a) The following persons who,
14 in the performance of their professional or official duties,
15 know or have reason to believe that a [~~dependent~~] vulnerable
16 adult has been abused [~~and~~] or is [~~threatened with imminent~~
17 ~~abuse~~] in danger of being abused if immediate action is not
18 taken shall promptly report the matter orally to the department
19 [~~of human services~~]:

20 (1) Any licensed or registered professional of the healing
21 arts and any health-related occupation who examines,
22 treats, or provides other professional or specialized



1 services to [~~dependent adults,~~] a vulnerable adult,
2 including [~~but not limited to,~~] physicians, physicians
3 in training, psychologists, dentists, nurses,
4 osteopathic physicians and surgeons, optometrists,
5 chiropractors, podiatrists, pharmacists, and other
6 health-related professionals;

7 (2) Employees or officers of any public or private agency
8 or institution providing social, medical, hospital, or
9 mental health services, including financial
10 assistance;

11 (3) Employees or officers of any law enforcement agency,
12 including [~~, but not limited to,~~] the courts, police
13 departments, correctional institutions, and parole or
14 probation offices;

15 (4) Employees or officers of any adult residential care
16 home, adult day care center, or similar institution;

17 [~~and~~]

18 (5) Medical examiners or coroners [~~-~~]; and

19 (6) Social workers.

20 (b) The initial oral report required by subsection (a)
21 shall be followed as soon as possible by a written report to the
22 department; provided that [~~where~~] if a police department is the



1 initiating agency, a written report shall not be required unless
2 the police department [~~has declined~~] declines to take further
3 action and the department informs the police department that
4 [~~it~~] the department intends to [~~pursue the matter of the orally~~
5 ~~reported incident~~] investigate the oral report of abuse. [~~All~~
6 ~~written reports~~] A written report shall contain [~~the~~]:

- 7 (1) The name and address of the [~~dependent~~] vulnerable
8 adult [~~and the person or care organization or care~~
9 ~~facility which~~], if known;
- 10 (2) The name and address of the party who is alleged to
11 have committed or been responsible for the [~~dependent~~
12 ~~adult~~] abuse, if known; [~~the~~]
- 13 (3) The nature and extent of the [~~dependent~~] vulnerable
14 adult's injury or harm; and [~~any~~]
- 15 (4) Any other information the reporter believes [~~might~~]
16 may be helpful in establishing the cause of the
17 [~~dependent adult~~] abuse.

18 (c) This section shall not prohibit any [~~of the persons~~
19 ~~enumerated in subsection (a)~~] person from reporting [~~incidents~~
20 ~~which those persons have~~] an incident that the person has reason
21 to believe [~~involve~~] involves abuse [~~which~~] that came to [~~their~~]



1 the person's attention in [~~any~~] a private or nonprofessional
2 capacity.

3 (d) Any [~~other~~] person who has reason to believe that a
4 [~~dependent~~] vulnerable adult has been abused or is [~~threatened~~
5 ~~with imminent abuse~~] in danger of being abused if immediate
6 action is not taken may report the matter orally to the
7 department.

8 (e) Any person who knowingly fails to report as required
9 by this section or who wilfully prevents another person from
10 reporting pursuant to this section shall be guilty of a petty
11 misdemeanor.

12 (f) The department shall maintain a central registry of
13 reported cases.

14 (g) Nothing in this section shall require a member of the
15 clergy to report communications that are protected under rule
16 506 of chapter 626."

17 SECTION 7. Section 346-225, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~+~~]**\$346-225**[~~+~~] **Confidentiality of reports.** [~~All reports~~]
20 A report made pursuant to this part, including the identity of
21 the reporting person[~~, as well as~~] and all records of [~~such~~
22 ~~reports, are~~] the report, shall be confidential and any person



1 who makes an unauthorized disclosure of a report or records of a
2 report [~~under this part~~] shall be guilty of a misdemeanor. The
3 director [~~of human services~~] may adopt, amend, or repeal rules,
4 pursuant to chapter 91, to provide for the confidentiality of
5 reports and records, and for the authorized disclosure of
6 reports and records."

7 SECTION 8. Section 346-226, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]**S346-226**[~~]~~ **Access to records.** Records of a
10 [~~dependent~~] vulnerable adult shall be obtained by the department
11 or the [~~dependent~~] vulnerable adult's court-appointed guardian
12 ad litem with the written consent of the [~~dependent~~] vulnerable
13 adult or [~~that person's~~] the vulnerable adult's representative,
14 or by court order. Any person who reports to the department
15 under section 346-224, upon demand of the department, shall
16 provide all information related to the alleged incident of
17 [~~dependent adult~~] abuse or neglect, including [~~, but not limited~~
18 ~~to,~~] financial records and medical reports, which were not
19 included in the written report submitted pursuant to section
20 346-224(b)."

21 SECTION 9. Section 346-227, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[+]§346-227[+] **Investigation.** Upon receiving a report
2 that abuse of a [~~dependent~~] vulnerable adult has occurred [~~and~~
3 ~~is imminent,~~] or is in danger of occurring if immediate action
4 is not taken, the department shall cause an investigation to be
5 commenced in accordance with this part as the department deems
6 appropriate."

7 SECTION 10. Section 346-228, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§346-228[+] **Action upon investigation.** Upon
10 investigation the department shall take action toward preventing
11 abuse from occurring or preventing further abuse and shall have
12 the authority to do any or all of the following:

- 13 (1) Resolve the matter in an informal fashion as is
14 appropriate under the circumstances;
15 (2) Exercise its right of entry under section 346-229;
16 (3) Seek an order for immediate protection;
17 (4) Seek a temporary restraining order;
18 (5) File a petition with the court under this part; and
19 (6) Seek any protective or remedial actions authorized by
20 law."

21 SECTION 11. Section 346-229, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~§~~346-229~~§~~ **Right of entry.** (a) An employee of the
2 department engaged in an investigation under this part shall be
3 authorized to visit and communicate with the ~~[dependent]~~
4 vulnerable adult who is the subject of the report. Any person
5 intentionally or knowingly obstructing or interfering with the
6 department's access to or communication with the ~~[dependent]~~
7 vulnerable adult shall be guilty of a misdemeanor.

8 (b) Any employee of the department engaged in an
9 investigation under this part, having probable cause to believe
10 that a ~~[dependent]~~ vulnerable adult will be physically injured
11 through abuse before a court order for entry can be obtained,
12 without a warrant, may enter upon the premises where the
13 ~~[dependent]~~ vulnerable adult may be found for the purpose of
14 ascertaining that person's welfare. Where a warrantless entry
15 is authorized under this section, the employee of the department
16 may request the assistance of a police officer to gain
17 entrance."

18 SECTION 12. Section 346-230, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§346-230 Termination of services.** (a) The department
21 shall act only with the consent of the victim, unless the
22 department obtains court authorization to provide necessary



1 services, as provided in section 346-231. Investigation and
2 services provided under this part shall be immediately
3 terminated if:

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

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

9 (3) The court so orders.

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

16 SECTION 13. Section 346-231, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending subsection (a) to read:

19 "(a) If the department believes that a person is a
20 [~~dependent~~] vulnerable adult and it appears probable that the
21 [~~dependent~~] vulnerable adult has been abused [~~and~~] or is
22 [~~threatened with imminent abuse unless~~] in danger of being



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

8 2. By amending subsections (c), (d), and (e) to read:

9 "(c) Upon finding that the person is a [~~dependent~~]
 10 vulnerable adult and that there is probable cause to believe
 11 that the [~~dependent~~] vulnerable adult has been abused [~~and~~] or
 12 is [~~threatened with imminent abuse unless~~] in danger of being
 13 abused if immediate action is not taken; and the [~~dependent~~]
 14 vulnerable adult consents, or if the [~~dependent~~] vulnerable
 15 adult does not consent and there is probable cause to believe
 16 that the [~~dependent~~] vulnerable adult lacks the capacity to make
 17 decisions concerning the [~~dependent~~] vulnerable adult's person,
 18 the court shall issue an order for immediate protection. This
 19 order may include[~~, but is not limited to~~]:

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

22 (2) An authorization for medical examinations;



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

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

4 (d) The court may also make orders as may be appropriate
5 to third persons, including temporary restraining orders,
6 enjoining them from:

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

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

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

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

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

16 (6) Withdrawing those funds from any bank, savings and
17 loan association, credit union, or other financial
18 institution, or from a stock account in which the
19 [~~dependent~~] vulnerable adult has an interest;

20 (7) Negotiating any instruments payable to the [~~dependent~~]
21 vulnerable adult;



- 1 (8) Selling, mortgaging, or otherwise encumbering any
2 interest that the [~~dependent~~] vulnerable adult has in
3 real property;
- 4 (9) Exercising any powers on behalf of the [~~dependent~~]
5 vulnerable adult by representatives of the department,
6 any court-appointed guardian or guardian ad litem, or
7 any official acting on [~~their~~] the vulnerable adult's
8 behalf; and
- 9 (10) Engaging in any other specified act [~~which,~~] that,
10 based upon the facts alleged, would constitute harm or
11 present a [~~threat~~] danger of [~~imminent~~] immediate harm
12 to the [~~dependent~~] vulnerable adult or would cause the
13 loss of the [~~dependent~~] vulnerable adult's property.
- 14 (e) Court orders under section 346-232 and this section
15 may be obtained upon oral or written application by the
16 department, without notice and without a hearing. Any oral
17 application shall be reduced to writing within twenty-four
18 hours. The court may issue its order orally[~~r~~]; provided that
19 it shall reduce the order to writing as soon as possible
20 thereafter and in any case not later than twenty-four hours
21 after the court received the written application. Certified
22 copies of the application and order shall be personally served



1 upon the [~~dependent~~] vulnerable adult and any other person or
2 entity affected by the order together with the notice of the
3 order to show cause hearing in section 346-232."

4 SECTION 14. Section 346-232, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~†~~]**§346-232**[~~†~~] **Order to show cause hearing.** (a) When a
7 written order for immediate protection is issued, the court
8 shall hold a hearing on the application for immediate
9 protection, no later than seventy-two hours after issuance of
10 the written order excluding any Saturday or Sunday, requiring
11 cause to be shown why the order or orders should not continue.
12 The department shall make arrangements to have the [~~dependent~~]
13 vulnerable adult attend the hearing or show cause why the
14 [~~dependent~~] vulnerable adult cannot attend.

15 (b) When the court finds that there is probable cause to
16 believe that a [~~dependent~~] vulnerable adult has been abused
17 [~~and~~] or is [threatened with imminent abuse,] in danger of being
18 abused if immediate action is not taken, and the [~~dependent~~]
19 vulnerable adult consents, or if the [~~dependent~~] vulnerable
20 adult does not consent and the court finds that there is
21 probable cause to believe that the [~~dependent~~] vulnerable adult
22 lacks the capacity to make decisions concerning the [~~dependent~~]



1 vulnerable adult's person, the court may continue or modify any
2 order pending an adjudicatory hearing on the petition. These
3 orders may include orders for the [~~dependent~~] vulnerable adult's
4 temporary placement and ordinary medical care.

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

10 SECTION 15. Section 346-233, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~+~~]**\$346-233**[~~+~~] **Petition.** (a) A petition invoking the
13 jurisdiction of the court under this part shall be entitled "In
14 the matter of the protection of _____," and shall
15 be verified.

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

17 (1) Reasons the person is considered to be a [~~dependent~~]
18 vulnerable adult;

19 (2) Facts [~~which~~] that bring the [~~dependent~~] vulnerable
20 adult within this part;

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



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

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

6 SECTION 16. Section 346-234, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~f~~]**S346-234**[~~]~~ **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~~] the costs and fees. The court may also
22 order the appropriate parties to pay or reimburse reasonable



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

3 SECTION 17. Section 346-236, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~+~~]**§346-236**[~~+~~] **Permanent changes.** Permanent changes in
6 the living situation of an abused [~~dependent~~] vulnerable adult
7 shall not ordinarily be made under authority of this part. If
8 permanent changes in the living situation or nonemergency
9 medical treatment are necessary, the appropriate guardianship,
10 or civil commitment action shall be initiated pursuant to
11 applicable state law."

12 SECTION 18. Section 346-237, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§346-237 Notice of proceedings.** (a) After a petition
15 has been filed, the matter shall be set for hearing and a notice
16 of hearing shall be issued to all parties to the proceeding.
17 The parties to the proceeding shall include:

- 18 (1) The [~~dependent~~] vulnerable adult;
19 (2) Any caregiver or facility in which the [~~dependent~~]
20 vulnerable adult resides or is a patient;
21 (3) The spouse and adult children of the [~~dependent~~]
22 vulnerable adult;



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

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

12 SECTION 19. Section 346-238, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

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



1 SECTION 20. Section 346-239, Hawaii Revised Statutes, is
2 amended to read as follows:

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

16 SECTION 21. Section 346-240, Hawaii Revised Statutes, is
17 amended by amending subsections (a) to (c) to read as follows:

18 "(a) When a petition has been filed, the court shall set a
19 return date hearing to be held within thirty days of the filing
20 of the petition. On the return date, the parties personally or
21 through counsel may stipulate to the entry or continuance of the
22 orders as the court deems to be in the best interests of the



1 ~~[dependent]~~ vulnerable adult, and the court shall set the case
2 for an adjudicatory hearing as soon as is practical.

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

16 (c) If facts sufficient to sustain the petition are
17 established in court, or are stipulated to by all parties, the
18 court shall enter an order finding that the ~~[dependent]~~
19 vulnerable adult has been abused ~~[and]~~ or [threatened with
20 imminent abuse] is in danger of being abused if immediate action
21 is not taken and shall state the grounds for the finding. The
22 court shall also make a finding concerning the capacity of the



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

14 SECTION 22. Section 346-241, Hawaii Revised Statutes, is
15 amended by amending subsections (b) to (d) to read as follows:

16 "(b) The proposed protective order may include any of the
17 provisions set forth in section 346-231, and, in addition may
18 include an order that:

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



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

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

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

6 (c) The proposed protective services plan shall set forth
7 the following:

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

11 (2) Specific responsibilities that the parties shall
12 assume;

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

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

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

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

20 (d) In preparing such a proposed protective order, the
21 department shall seek to impose the least restrictive limitation
22 on the freedom and liberties of the [~~dependent~~] vulnerable



1 adult. To the greatest extent possible, the [~~dependent~~]
2 vulnerable adult should be permitted to participate in decisions
3 concerning the [~~dependent~~] vulnerable adult's person, or
4 property, or both."

5 SECTION 23. Section 346-242, Hawaii Revised Statutes, is
6 amended to read as follows:

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

8 SECTION 24. Section 346-247, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~+~~]**§346-247**[~~+~~] **Payment for service or treatment provided**
11 **to a party.** Whenever service, treatment, care, or support of a
12 [~~dependent~~] vulnerable adult is provided under this part, the
13 persons or legal entities who may be legally obligated to pay
14 for the service, treatment, care, or support of the [~~dependent~~
15 ~~person,~~] vulnerable adult, may be ordered by the court to pay
16 the cost of the service, care, support, or treatment provided to
17 the [~~dependent~~] vulnerable adult in whole or in part, after
18 notice and hearing."

19 SECTION 25. Section 346-249, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[~~+~~]**§346-249**[~~+~~] **Cooperation.** Every public official or
22 department shall render all assistance and cooperation within



1 the official's or department's power and [~~which~~] that may
2 further the purpose and objectives of this part. The department
3 and the court may seek the cooperation of organizations whose
4 objectives are to protect or aid [~~dependent~~] vulnerable adults."

5 SECTION 26. Section 626:1-505.5, Hawaii Revised Statutes,
6 is amended by amending subsection (d) to read as follows:

7 "(d) Exceptions. There is no privilege under this rule:

8 (1) Perjured testimony by victim. If the victim counselor
9 reasonably believes that the victim has given perjured
10 testimony and a party to the proceeding has made an
11 offer of proof that perjury may have been committed.

12 (2) Physical appearance and condition of victim. In
13 matters of proof concerning the physical appearance
14 and condition of the victim at the time of the alleged
15 crime.

16 (3) Breach of duty by victim counselor or victim
17 counseling program. As to a communication relevant to
18 an issue of breach of duty by the victim counselor or
19 victim counseling program to the victim.

20 (4) Mandatory reporting. To relieve victim counselors of
21 any duty to refuse to report child abuse or neglect
22 under chapter 350, domestic abuse under chapter 586,



1 or abuse of a [~~dependent~~] vulnerable adult under part
2 X of chapter 346, and to refuse to provide evidence in
3 child abuse proceedings under chapter 587.

4 (5) Proceedings for hospitalization. For communications
5 relevant to an issue in proceedings to hospitalize the
6 victim for mental illness or substance abuse, or in
7 proceedings for the discharge or release of a victim
8 previously hospitalized for mental illness or
9 substance abuse.

10 (6) Examination by order of court. If the court orders an
11 examination of the physical, mental, or emotional
12 condition of a victim, whether a party or a witness,
13 communications made in the course thereof are not
14 privileged under this rule with respect to the
15 particular purpose of which the examination is ordered
16 unless the court orders otherwise.

17 (7) Condition an element of claim or defense. As to a
18 communication relevant to the physical, mental, or
19 emotional condition of the victim in any proceeding in
20 which the victim relies upon the condition as an
21 element of the victim's claim or defense or, after the
22 victim's death, in any proceeding in which any party



1 relies upon the condition as an element of the party's
2 claim or defense.

3 (8) Proceedings against the victim counselor. In any
4 administrative or judicial proceeding in which the
5 competency or practice of the victim counselor or of
6 the victim counseling program is at issue[~~r~~]; provided
7 that the identifying data of the victims whose records
8 are admitted into evidence shall be kept confidential
9 unless waived by the victim. The administrative
10 agency, board; or commission shall close to the public
11 any portion of a proceeding, as necessary to protect
12 the confidentiality of the victim."

13 SECTION 27. The department of human services may work with
14 interested stakeholders to develop a plan to build the capacity
15 of community-based services to help with the provision of
16 services under this Act.

17 SECTION 28. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2008-2009 for
20 the department of human services to:

21 (1) Hire additional staff, including social workers,
22 nurses, and support staff to carry out this Act; and



1 (2) Contract for services pursuant to chapter 103F, Hawaii
2 Revised Statutes, and provide direct services, as may
3 be necessary, to carry out this Act.

4 The sums appropriated shall be expended by the department
5 of human services for the purposes of this Act.

6 SECTION 29. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 30. This Act shall take effect on January 1, 2009;
9 provided that section 28 shall take effect on July 1, 2008.



Report Title:

Adult Protective Services; Appropriation

Description:

Expands the adult protective services law by extending protections to vulnerable adults. Appropriates funds to the Department of Human Services. (HB3127 HD1)

