
A BILL FOR AN ACT

RELATING TO ADULT PROTECTION.

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, is
12 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~~] state who are [~~elder and~~



1 ~~mentally or physically impaired]~~ vulnerable to abuse constitute a
2 significant and identifiable segment of the population and are
3 particularly subject to risks of abuse, neglect, and
4 exploitation.

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

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

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

22



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, financial~~
7 ~~exploitation, negligent treatment, or maltreatment] any of the
8 following, separately or in combination:~~

- 9 (1) Physical abuse;
- 10 (2) Psychological abuse;
- 11 (3) Sexual abuse;
- 12 (4) Financial exploitation;
- 13 (5) Caregiver neglect; or
- 14 (6) Self-neglect;

15 each as further defined in this chapter[~~r~~] Abuse does not
16 include, and a determination of abuse shall not be based solely
17 on, physical, psychological, or financial conditions that result
18 when a vulnerable adult seeks, or when a caregiver provides or
19 permits to be provided, treatment with the express consent of the
20 vulnerable adult or in accordance with the vulnerable adult's
21 religious or spiritual practices.

22 [~~Abuse occurs where:~~



- 1 ~~(1) Any dependent adult exhibits evidence of:~~
- 2 ~~(A) Substantial or multiple skin bruising or any other~~
- 3 ~~internal bleeding;~~
- 4 ~~(B) Any injury to skin causing substantial bleeding;~~
- 5 ~~(C) Malnutrition;~~
- 6 ~~(D) A burn or burns;~~
- 7 ~~(E) Poisoning;~~
- 8 ~~(F) The fracture of any bone;~~
- 9 ~~(G) A subdural hematoma;~~
- 10 ~~(H) Soft tissue swelling;~~
- 11 ~~(I) Extreme physical pain; or~~
- 12 ~~(J) Extreme mental distress which includes a~~
- 13 ~~consistent pattern of actions or verbalizations~~
- 14 ~~including threats, insults, or harassment, that~~
- 15 ~~humiliates, provokes, intimidates, confuses, and~~
- 16 ~~frightens the dependent adult;~~
- 17 ~~and the injury is not justifiably explained, or where~~
- 18 ~~the history given is at variance with the degree or~~
- 19 ~~type of injury, or circumstances indicate that the~~
- 20 ~~injury is not the product of an accidental occurrence;~~



- 1 ~~(2) Any dependent adult has been the victim of~~
- 2 ~~nonconsensual sexual contact or conduct, including but~~
- 3 ~~not limited to:~~
- 4 ~~(A) Sexual assault, molestation, sexual fondling,~~
- 5 ~~incest, prostitution;~~
- 6 ~~(B) Obscene or pornographic photographing, filming, or~~
- 7 ~~depiction; or~~
- 8 ~~(C) Other similar forms of sexual exploitation;~~
- 9 ~~(3) Any dependent adult is not provided in a timely manner~~
- 10 ~~with adequate food, clothing, shelter, psychological~~
- 11 ~~care, physical care, medical care, or supervision;~~
- 12 ~~(4) Any dependent adult is provided with dangerous,~~
- 13 ~~harmful, or detrimental drugs as defined by section~~
- 14 ~~712-1240; however, this paragraph shall not apply when~~
- 15 ~~such drugs are provided to the dependent adult pursuant~~
- 16 ~~to the direction or prescription of a practitioner, as~~
- 17 ~~defined in section 712-1240;~~
- 18 ~~(5) There has been a failure to exercise that degree of~~
- 19 ~~care toward a dependent adult which a reasonable person~~
- 20 ~~with the responsibility of a caregiver would exercise,~~
- 21 ~~including, but not limited to, failure to:~~
- 22 ~~(A) Assist in personal hygiene;~~



- 1 ~~(B) Provide necessary food, shelter, and clothing;~~
- 2 ~~(C) Provide necessary health care, access to health~~
3 ~~care, or prescribed medication;~~
- 4 ~~(D) Protect a dependent adult from health and safety~~
5 ~~hazards; or~~
- 6 ~~(E) Protect against acts of abuse by third parties;~~
- 7 ~~(6) Any dependent adult appears to lack sufficient~~
8 ~~understanding or capacity to make or communicate~~
9 ~~responsible decisions concerning the dependent adult's~~
10 ~~person, and appears to be exposed to a situation or~~
11 ~~condition which poses an imminent risk of death or risk~~
12 ~~of serious physical harm; or~~
- 13 ~~(7) There is financial and economic exploitation. For the~~
14 ~~purpose of this part, "financial and economic~~
15 ~~exploitation" means the wrongful or negligent taking,~~
16 ~~withholding, misappropriation, or use of a dependent~~
17 ~~adult's money, real property, or personal property.~~
- 18 ~~"Financial and economic exploitation" can include but~~
19 ~~is not limited to:~~
- 20 ~~(A) Breaches of fiduciary relationships such as the~~
21 ~~misuse of a power of attorney or the abuse of~~
22 ~~guardianship privileges, resulting in the~~



1 ~~unauthorized appropriation, sale, or transfer of~~
2 ~~property;~~

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

4 ~~(C) The misappropriation, misuse, or transfer of~~
5 ~~moneys belonging to the dependent adult from a~~
6 ~~personal or joint account; or~~

7 ~~(D) The intentional or negligent failure to~~
8 ~~effectively use a dependent adult's income and~~
9 ~~assets for the necessities required for the~~
10 ~~person's support and maintenance.~~

11 ~~The exploitations may involve coercion, manipulation,~~
12 ~~threats, intimidation, misrepresentation, or exertion~~
13 ~~of undue influence.]~~

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

17 "Caregiver" means any person who has knowingly and willingly
18 assumed, on a part-time or full-time basis, the care,
19 supervision, or physical control of, or who has a legal or
20 contractual duty to care for the health, safety, and welfare of a
21 vulnerable adult.

1 "Caregiver neglect" means the failure of a caregiver to
2 exercise that degree of care for a vulnerable adult that a
3 reasonable person with the responsibility of a caregiver would
4 exercise within the scope of the caregiver's assumed, legal or
5 contractual duties, including but not limited to the failure to:

6 (1) Assist with personal hygiene;

7 (2) Protect the vulnerable adult from abandonment;

8 (3) Provide, in a timely manner, necessary food, shelter,
9 or clothing;

10 (4) Provide, in a timely manner, necessary health care,
11 access to health care, prescribed medication,
12 psychological care, physical care, or supervision;

13 (5) Protect the vulnerable adult from dangerous, harmful,
14 or detrimental drugs, as defined in section 712-1240;
15 provided that this paragraph shall not apply to drugs
16 that are provided to the vulnerable adult pursuant to
17 the direction or prescription of a practitioner, as
18 defined in section 712-1240;

19 (6) Protect the vulnerable adult from health and safety
20 hazards; or

21 (7) Protect the vulnerable adult from abuse by third
22 parties.



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

3 "Department" means the department of human services and its
4 authorized representatives.

5 [~~"Dependent adult" means any adult who, because of mental or~~
6 ~~physical impairment is dependent upon another person, a care~~
7 ~~organization, or a care facility for personal health, safety, or~~
8 ~~welfare.~~]

9 "Director" means the director of human services.

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

14 "Financial exploitation" means the wrongful taking,
15 withholding, appropriation, or use of a vulnerable adult's money,
16 real property, or personal property, including but not limited
17 to:

18 (1) Breaches of fiduciary relationships, such as the misuse
19 of a power of attorney or the misuse of guardianship
20 privileges, resulting in the unauthorized
21 appropriation, sale, or transfer of property;

22 (2) The unauthorized taking of personal assets;



1 (3) The misappropriation, misuse, or unauthorized transfer
2 of moneys belonging to the vulnerable adult from a
3 personal or joint account; or

4 (4) The failure to effectively use a vulnerable adult's
5 income and assets for the necessities required for the
6 vulnerable adult's support and maintenance, by a person
7 with a duty to expend income and assets on behalf of
8 the vulnerable adult for such purposes.

9 Financial exploitation may be accomplished through coercion,
10 manipulation, threats, intimidation, misrepresentation, or
11 exertion of undue influence.

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

15 "Party" means those persons, care organizations, or care
16 facilities entitled to notice of proceedings under sections
17 346-237 and 346-238, including any state department or agency
18 that is providing services and treatment to a ~~[dependent]~~
19 vulnerable adult in accordance with a protective services plan.

20 "Physical abuse" means:

21 (1) The nonaccidental infliction of physical or bodily
22 injury, pain, or impairment, including but not limited



1 to hitting, slapping, causing burns or bruises,
2 poisoning, or improper physical restraint; or
3 (2) Causing physical injuries that are not justifiably
4 explained or where the history given for an injury is
5 at variance with the degree or type of injury.

6 "Protective services plan" means a specific written plan,
7 prepared by the department, [~~setting~~] that sets forth the
8 specific services and treatment to be provided to a [~~dependent~~]
9 vulnerable adult.

10 "Psychological abuse" means the infliction of mental or
11 emotional distress by use of threats, insults, harassment,
12 humiliation, provocation, intimidation, or other means that
13 profoundly confuse or frighten a vulnerable adult.

14 "Self-neglect" means:

15 (1) A vulnerable adult's inability or failure, due to
16 physical or mental impairment, or both, to perform
17 tasks essential to caring for oneself, including but
18 not limited to:

19 (A) Obtaining essential food, clothing, shelter, and
20 medical care;

21 (B) Obtaining goods and services reasonably necessary
22 to maintain minimum standards of physical health,



1 mental health, emotional well-being, and general
2 safety; or

3 (C) Management of one's financial assets and
4 obligations to accomplish the activities in
5 subparagraphs (A) and (B);

6 and

7 (2) The vulnerable adult appears to lack sufficient
8 understanding or capacity to make or communicate
9 responsible decisions concerning the vulnerable adult's
10 well-being, and appears to be exposed to a situation or
11 condition that poses an immediate risk of death or
12 serious physical harm.

13 "Sexual abuse" means nonconsensual sexual contact or conduct
14 caused by another person, including but not limited to:

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

17 (2) Pornographic photographing, filming, or depiction.

18 "Vulnerable adult" means a person eighteen years of age or
19 older who, because of mental, developmental, or physical
20 impairment, is unable to:

21 (1) Communicate or make responsible decisions to manage the
22 person's own care or resources;



- 1 (2) Carry out or arrange for essential activities of daily
2 living; or
3 (3) Protect oneself from abuse, as defined in this part."

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

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



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

3 "[~~f~~]~~§346-224~~[~~g~~] **Reports.** (a) The following persons who,
4 in the performance of their professional or official duties, know
5 or have reason to believe that a [~~dependent~~] vulnerable adult has
6 [~~been abused and~~] incurred abuse or is [~~threatened with imminent~~
7 ~~abuse~~] in danger of abuse if immediate action is not taken shall
8 promptly report the matter orally to the department [~~of human~~
9 ~~services~~]:

10 (1) Any licensed or registered professional of the healing
11 arts and any health-related occupation who examines,
12 treats, or provides other professional or specialized
13 services to [~~dependent adults,~~] a vulnerable adult,
14 including [~~but not limited to,~~] physicians, physicians
15 in training, psychologists, dentists, nurses,
16 osteopathic physicians and surgeons, optometrists,
17 chiropractors, podiatrists, pharmacists, and other
18 health-related professionals;

19 (2) Employees or officers of any public or private agency
20 or institution providing social, medical, hospital, or
21 mental health services, including financial assistance;



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

5 (4) Employees or officers of any adult residential care
6 home, adult day care center, or similar institution;
7 ~~[and]~~

8 (5) Medical examiners or coroners~~[.];~~ and

9 (6) Social workers licensed pursuant to chapter 467E and
10 non-licensed persons employed in a social worker
11 position pursuant to chapter 467E-6(2).

12 (b) The initial oral report required by subsection (a)
13 shall be followed as soon as possible by a written report to the
14 department; provided that ~~[where]~~ if a police department is the
15 initiating agency, a written report shall not be required unless
16 the police department ~~[has declined]~~ declines to take further
17 action and the department informs the police department that ~~[it]~~
18 the department intends to ~~[pursue the matter of the orally~~
19 ~~reported incident]~~ investigate the oral report of abuse. ~~[All~~
20 ~~written reports]~~ A written report shall contain ~~[the]~~:

21 (1) The name and address of the [dependent] vulnerable
22 adult [and], if known;



1 (2) The name and address of the [~~person who or care~~
2 ~~organization or care facility which~~] party who is
3 alleged to have committed or been responsible for the
4 [~~dependent adult~~] abuse, if known; [~~the~~]

5 (3) The nature and extent of the [~~dependent~~] vulnerable
6 adult's injury or harm; and [~~any~~]

7 (4) Any other information the reporter believes [~~might~~] may
8 be helpful in establishing the cause of the [~~dependent~~
9 adult] abuse.

10 (c) This section shall not prohibit any [~~of the persons~~
11 ~~enumerated in subsection (a)~~] person from reporting [~~incidents~~
12 ~~which these persons have~~] an incident that the person has reason
13 to believe [~~involve~~] involves abuse [~~which~~] that came to [~~their~~]
14 the person's attention in [~~any~~] a private or nonprofessional
15 capacity.

16 (d) Any [~~other~~] person not enumerated in subsection (a) who
17 has reason to believe that a [~~dependent~~] vulnerable adult [~~has~~
18 ~~been abused~~] has incurred abuse or is [~~threatened with imminent~~
19 ~~abuse~~] in danger of abuse if immediate action is not taken may
20 report the matter orally to the department.

21 (e) Any person who knowingly fails to report as required by
22 this section or who wilfully prevents another person from



1 reporting pursuant to this section shall be guilty of a petty
2 misdemeanor.

3 (f) The department shall maintain a central registry of
4 reported cases.

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

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

10 "[~~+~~]**S346-225**[~~-~~] **Confidentiality of reports.** [~~All reports~~]
11 A report made pursuant to this part, including the identity of
12 the reporting person[~~, as well as~~] and all records of [~~such~~
13 ~~reports, are~~] the report, shall be confidential and any person
14 who makes an unauthorized disclosure of a report or records of a
15 report [~~under this part~~] shall be guilty of a misdemeanor. The
16 director [~~of human services~~] may adopt, amend, or repeal rules,
17 pursuant to chapter 91, to provide for the confidentiality of
18 reports and records, and for the authorized disclosure of reports
19 and records."

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



1 "~~[+]§346-226[+]~~ **Access to records.** Records of a
2 ~~[dependent]~~ vulnerable adult shall be obtained by the department
3 or the ~~[dependent]~~ vulnerable adult's court-appointed guardian ad
4 litem with the written consent of the ~~[dependent]~~ vulnerable
5 adult or ~~[that person's]~~ the vulnerable adult's representative,
6 or by court order. Any person who reports to the department
7 under section 346-224, upon demand of the department, shall
8 provide all information related to the alleged incident of
9 ~~[dependent adult]~~ abuse ~~[or neglect]~~, including~~[, but not limited~~
10 ~~to,~~] financial records and medical reports, which were not
11 included in the written report submitted pursuant to section
12 346-224(b)."

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

15 "~~[+]§346-227[+]~~ **Investigation.** Upon receiving a report
16 that abuse of a ~~[dependent]~~ vulnerable adult has occurred ~~[and is~~
17 ~~imminent,~~] or is in danger of occurring if immediate action is
18 not taken, the department shall cause an investigation to be
19 commenced in accordance with this part as the department deems
20 appropriate."

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



1 "[+]§346-228[+] **Action upon investigation.** Upon
2 investigation the department shall take action [~~toward preventing~~
3 ~~further~~] to prevent abuse and shall have the authority to do any
4 or all of the following:

- 5 (1) Resolve the matter in an informal fashion as is
- 6 appropriate under the circumstances;
- 7 (2) Exercise its right of entry under section 346-229;
- 8 (3) Seek an order for immediate protection;
- 9 (4) Seek a temporary restraining order;
- 10 (5) File a petition with the court under this part; and
- 11 (6) Seek any protective or remedial actions authorized by
- 12 law."

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

15 "[+]§346-229[+] **Right of entry.** (a) An employee of the
16 department engaged in an investigation under this part shall be
17 authorized to visit and communicate with the [~~dependent~~]
18 vulnerable adult who is the subject of the report. Any person
19 intentionally or knowingly obstructing or interfering with the
20 department's access to or communication with the [~~dependent~~]
21 vulnerable adult shall be guilty of a misdemeanor.



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

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

12 "**§346-230 Termination of services.** (a) The department
13 shall act only with the consent of the [~~victim~~] vulnerable adult,
14 unless the department obtains court authorization to provide
15 necessary services, as provided in section 346-231.

16 Investigation and services provided under this part shall be
17 immediately terminated if:

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

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



1 (3) The court so orders.

2 (b) Upon the department's determination that protective
3 services are no longer needed, the [~~dependent~~] vulnerable adult
4 shall be referred to the agency responsible for follow-up
5 services. For the mentally ill, mentally retarded, or
6 developmentally disabled adult, the state agency designated to
7 provide services shall be the department of health."

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

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

11 "(a) If the department believes that a person is a
12 [~~dependent~~] vulnerable adult and it appears probable that the
13 [~~dependent~~] vulnerable adult has [~~been abused and~~] incurred abuse
14 or is [~~threatened with imminent abuse unless~~] in danger of abuse
15 if immediate action is not taken[+] and the [~~dependent~~]
16 vulnerable adult consents, or if the [~~dependent~~] vulnerable adult
17 does not consent and there is probable cause to believe that the
18 [~~dependent~~] vulnerable adult lacks the capacity to make decisions
19 concerning the [~~dependent~~] vulnerable adult's person, the
20 department shall seek an order for immediate protection in
21 accordance with this section."

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



1 "(c) Upon finding that the person is a [~~dependent~~]
2 vulnerable adult and that there is probable cause to believe that
3 the [~~dependent~~] vulnerable adult has [~~been abused and~~] incurred
4 abuse or is [~~threatened with imminent abuse unless~~] in danger of
5 abuse if immediate action is not taken[+] and the [~~dependent~~]
6 vulnerable adult consents, or if the [~~dependent~~] vulnerable adult
7 does not consent and there is probable cause to believe that the
8 [~~dependent~~] vulnerable adult lacks the capacity to make decisions
9 concerning the [~~dependent~~] vulnerable adult's person, the court
10 shall issue an order for immediate protection. This order may
11 include[~~, but is not limited to~~]:

- 12 (1) An authorization for the department to transport the
13 person to an appropriate medical or care facility;
14 (2) An authorization for medical examinations;
15 (3) An authorization for emergency medical treatment; and
16 (4) [~~Such~~] Any other matters as may prevent [~~imminent~~]
17 immediate abuse, pending a hearing under section
18 346-232.

19 (d) The court may also make orders as may be appropriate to
20 third persons, including temporary restraining orders, enjoining
21 them from:



- 1 (1) Removing the [~~dependent~~] vulnerable adult from the care
2 or custody of another;
- 3 (2) [~~Abusing~~] Actions that would result in abuse of the
4 [~~dependent~~] vulnerable adult;
- 5 (3) Living at the [~~dependent~~] vulnerable adult's residence;
- 6 (4) Contacting the [~~dependent~~] vulnerable adult in person
7 or by telephone;
- 8 (5) Selling, removing, or otherwise disposing of the
9 [~~dependent~~] vulnerable adult's personal property;
- 10 (6) Withdrawing [~~these~~] funds from any bank, savings and
11 loan association, credit union, or other financial
12 institution, or from a stock account in which the
13 [~~dependent~~] vulnerable adult has an interest;
- 14 (7) Negotiating any instruments payable to the [~~dependent~~]
15 vulnerable adult;
- 16 (8) Selling, mortgaging, or otherwise encumbering any
17 interest that the [~~dependent~~] vulnerable adult has in
18 real property;
- 19 (9) Exercising any powers on behalf of the [~~dependent~~]
20 vulnerable adult by representatives of the department,
21 any court-appointed guardian or guardian ad litem, or



1 any official acting on ~~[their]~~ the vulnerable adult's
2 behalf; and

3 (10) Engaging in any other specified act ~~[which]~~ that,
4 based upon the facts alleged, would constitute harm or
5 present a ~~[threat]~~ danger of ~~[imminent]~~ immediate harm
6 to the ~~[dependent]~~ vulnerable adult or would cause the
7 loss of the ~~[dependent]~~ vulnerable adult's property.

8 (e) Court orders under section 346-232 and this section may
9 be obtained upon oral or written application by the department,
10 without notice and without a hearing. Any oral application shall
11 be reduced to writing within twenty-four hours. The court may
12 issue its order orally~~[r]~~; provided that it shall reduce the
13 order to writing as soon as possible thereafter and in any case
14 not later than twenty-four hours after the court received the
15 written application. Certified copies of the application and
16 order shall be personally served upon the ~~[dependent]~~ vulnerable
17 adult and any other person or entity affected by the order
18 together with the notice of the order to show cause hearing in
19 section 346-232."

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



1 "[+]§346-232[+] Order to show cause hearing. (a) When a
2 written order for immediate protection is issued, the court shall
3 hold a hearing on the application for immediate protection, no
4 later than seventy-two hours after issuance of the written order,
5 excluding any Saturday or Sunday, requiring cause to be shown why
6 the order or orders should not continue. The department shall
7 make arrangements to have the [dependent] vulnerable adult attend
8 the hearing or show cause why the [dependent] vulnerable adult
9 cannot attend.

10 (b) When the court finds that there is probable cause to
11 believe that a [dependent] vulnerable adult has [~~been abused and~~
12 incurred abuse or is [threatened with imminent abuse,] in danger
13 of abuse if immediate action is not taken, and the [dependent]
14 vulnerable adult consents, or if the [dependent] vulnerable adult
15 does not consent and the court finds that there is probable cause
16 to believe that the [dependent] vulnerable adult lacks the
17 capacity to make decisions concerning the [dependent] vulnerable
18 adult's person, the court may continue or modify any order
19 pending an adjudicatory hearing on the petition. These orders
20 may include orders for the [dependent] vulnerable adult's
21 temporary placement and ordinary medical care.



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

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

8 "[~~f~~]**S346-233**[~~g~~] **Petition.** (a) A petition invoking the
9 jurisdiction of the court under this part shall be entitled "In
10 the matter of the protection of _____," and shall
11 be verified.

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

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

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

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

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

21 and



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

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

5 "[~~§~~346-234[~~§~~] **Guardian ad litem; counsel.** (a) In any
6 case where the court has reason to believe that a [~~dependent~~]
7 vulnerable adult or any other party lacks the capacity to
8 effectively make decisions concerning the party's person, it may
9 appoint a guardian ad litem to represent the interests of that
10 party throughout the pendency of proceedings under this part.
11 The court shall appoint counsel for the [~~dependent~~] vulnerable
12 adult at any time where it finds that the [~~dependent~~] vulnerable
13 adult requires a separate legal advocate and is unable to afford
14 private counsel.

15 (b) The court may order reasonable costs and fees of the
16 guardian ad litem to be paid by the party for whom the guardian
17 ad litem is appointed, if that party has sufficient financial
18 resources to pay [~~such~~] the costs and fees. The court may also
19 order the appropriate parties to pay or reimburse reasonable
20 costs and fees of the guardian ad litem and counsel appointed for
21 the [~~dependent~~] vulnerable adult."



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

3 "[+]§346-236[+] **Permanent changes.** Permanent changes in
4 the living situation of [~~an abused dependent~~] a vulnerable adult
5 who has incurred abuse shall not ordinarily be made under
6 authority of this part. If permanent changes in the living
7 situation or nonemergency medical treatment are necessary, the
8 appropriate guardianship, or civil commitment action shall be
9 initiated pursuant to applicable state law."

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

12 "**§346-237 Notice of proceedings.** (a) After a petition has
13 been filed, the matter shall be set for hearing and a notice of
14 hearing shall be issued to all parties to the proceeding. The
15 parties to the proceeding shall include:

- 16 (1) The [~~dependent~~] vulnerable adult;
- 17 (2) Any caregiver [~~or facility in which the dependent adult~~
18 ~~resides or is a patient~~] of the vulnerable adult;
- 19 (3) A representative of the facility in which the
20 vulnerable adult resides or is a patient;
- 21 [~~(3)~~] (4) The spouse and adult children of the [~~dependent~~]
22 vulnerable adult;



1 [~~(4)~~] (5) The parents of the [~~dependent~~] vulnerable adult,
2 unless waived by the court for good cause;

3 [~~(5)~~] (6) Any guardian or conservator who may have been
4 appointed; and

5 [~~(6)~~] (7) Any other person or entity affected by the order
6 for 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, the
20 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 "[+]§346-239[+] **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~~] vulnerable
10 adult to postpone the proceedings until service can be made.
11 Whenever a hearing is delayed or postponed under this section,
12 the court shall enter a finding that it will not be detrimental
13 to the [~~dependent~~] vulnerable adult and shall also specify what
14 additional measures shall be undertaken to effect service."

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

17 "(a) When a petition has been filed, the court shall set a
18 return date hearing to be held within thirty days of the filing
19 of the petition. On the return date, the parties personally or
20 through counsel may stipulate to the entry or continuance of the
21 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 whether
5 the ~~[dependent]~~ vulnerable adult has ~~[been abused and]~~ incurred
6 abuse or is [threatened with imminent abuse,] in danger of abuse
7 if immediate action is not taken, based upon a preponderance of
8 the evidence. Evidence ~~[which]~~ that is contained in a written
9 report, study, or examination shall be admissible~~[7]~~; provided
10 that the maker of the written report, study, or examination be
11 subject to direct and cross-examination upon demand when the
12 maker is reasonably available. A social worker employed by the
13 department in the area of adult protective services shall be
14 presumed to be qualified to testify as an expert in the field of
15 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 threatened with imminent~~
20 ~~abuse]~~ incurred abuse or is in danger of abuse if immediate
21 action is not taken and shall state the grounds for the finding.
22 The court shall also make a finding concerning the capacity of



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



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

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

6 "§346-242 **Review hearings.** Except for good cause shown,
7 the court shall set each case for a review hearing not later than
8 six months after the date that a protective order and protective
9 services plan are ordered by the court. Thereafter, the court
10 shall review the matter at intervals of not longer than six
11 months until the court's jurisdiction has been terminated. The
12 department and the guardian ad litem, if any, shall submit a
13 written report, with copies to the parties or their counsel, at
14 least fifteen days prior to the date set for each review. The
15 report shall evaluate whether the parties have complied with the
16 terms and conditions of the protective order and protective
17 services plan; shall recommend any modification to the order or
18 plan; and shall recommend whether the court shall retain
19 jurisdiction or terminate the case. At each review, the court
20 shall determine whether the parties have complied with the terms
21 and conditions of the order and plan; enforce [~~such~~] sanctions
22 for noncompliance as may be appropriate; and order [~~such~~]



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

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

8 "[~~+~~]**\$346-247**[~~-~~] **Payment for service or treatment provided**
9 **to a party.** Whenever service, treatment, care, or support of a
10 [~~dependent~~] vulnerable adult is provided under this part, the
11 persons or legal entities who may be legally obligated to pay for
12 the service, treatment, care, or support of the [~~dependent~~
13 ~~person,~~] vulnerable adult, may be ordered by the court to pay the
14 cost of the service, care, support, or treatment provided to the
15 [~~dependent~~] vulnerable adult in whole or in part, after notice
16 and hearing."

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

19 "[~~+~~]**\$346-249**[~~-~~] **Cooperation.** Every public official or
20 department shall render all assistance and cooperation within the
21 official's or department's power and [~~which~~] that may further the
22 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 SECTION 26. Section 571-14, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Except as provided in sections 603-21.5 and 604-8, the
6 court shall have exclusive original jurisdiction:

7 (1) To try any offense committed against a child by the
8 child's parent or guardian or by any other person
9 having the child's legal or physical custody, and any
10 violation of section 707-726, 707-727, 709-902, 709-
11 903, 709-903.5, 709-904, 709-905, 709-906, or 302A-
12 1135, whether or not included in other provisions of
13 this paragraph or paragraph (2);

14 (2) To try any adult charged with:

15 (A) Deserting, abandoning, or failing to provide
16 support for any person in violation of law;

17 (B) An offense, other than a felony, against the
18 person of the defendant's husband or wife;

19 (C) Any violation of an order issued pursuant to
20 chapter 586; or

21 (D) Any violation of an order issued by a family court
22 judge.



1 In any case within paragraph (1) or (2), the court, in its
2 discretion, may waive its jurisdiction over the offense
3 charged;

4 (3) In all proceedings under chapter 580, and in all
5 proceedings under chapter 584;

6 (4) In proceedings under chapter 575, the Uniform Desertion
7 and Nonsupport Act, and under chapter 576B, the Uniform
8 Interstate Family Support Act;

9 (5) For commitment of an adult alleged to be mentally
10 defective or mentally ill;

11 (6) In all proceedings for support between parent and child
12 or between husband and wife;

13 (7) In all proceedings for pre-trial detention or waiver of
14 jurisdiction over an adult who was a child at the time
15 of an alleged criminal act as provided in section 571-
16 13 or 571-22;

17 (8) In all proceedings under chapter 586, Domestic Abuse
18 Protective Orders; and

19 (9) For the protection of [~~dependent~~] vulnerable adults
20 under chapter 346, part X.

21 In any case within paragraph (3), (4), or (6), the attorney
22 general, through the child support enforcement agency, may



1 exercise concurrent jurisdiction as provided in chapter
2 576E."

3 SECTION 27. Section 626:1-505.5, Hawaii Revised Statutes,
4 is amended by amending subsection (d) to read as follows:

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

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

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

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

18 (4) Mandatory reporting. To relieve victim counselors of
19 any duty to refuse to report child abuse or neglect
20 under chapter 350, domestic abuse under chapter 586, or
21 abuse of a [~~dependent~~] vulnerable adult under part X of



1 chapter 346, and to refuse to provide evidence in child
2 abuse proceedings under chapter 587.

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

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

16 (7) Condition an element of claim or defense. As to a
17 communication relevant to the physical, mental, or
18 emotional condition of the victim in any proceeding in
19 which the victim relies upon the condition as an
20 element of the victim's claim or defense or, after the
21 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, 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 28. Section 846-2.7, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Criminal history record checks may be conducted by:

16 (1) The department of health on operators of adult foster
17 homes or developmental disabilities domiciliary homes
18 and their employees, as provided by section 333F-22;

19 (2) The department of health on prospective employees,
20 persons seeking to serve as providers, or
21 subcontractors in positions that place them in direct
22 contact with clients when providing non-witnessed



1 direct mental health services as provided by section
2 321-171.5;

3 (3) The department of health on all applicants for
4 licensure for, operators for, and prospective
5 employees, and volunteers at one or more of the
6 following: skilled nursing facility, intermediate care
7 facility, adult residential care home, expanded adult
8 residential care homes, assisted living facility, home
9 health agency, hospice, adult day health center,
10 special treatment facility, therapeutic living program,
11 intermediate care facility for the mentally retarded,
12 hospital, rural health center and rehabilitation
13 agency, and, in the case of any of the above-related
14 facilities operating in a private residence, on any
15 adult living in the facility other than the client as
16 provided by section 321-15.2;

17 (4) The department of education on employees, prospective
18 employees, and teacher trainees in any public school in
19 positions that necessitate close proximity to children
20 as provided by section 302A-601.5;

21 (5) The counties on employees and prospective employees who
22 may be in positions that place them in close proximity



- 1 to children in recreation or child care programs and
2 services;
- 3 (6) The county liquor commissions on applicants for liquor
4 licenses as provided by section 281-53.5;
- 5 (7) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided by
8 section 346-17;
- 9 (8) The department of human services on prospective
10 adoptive parents as established under section 346-19.7;
- 11 (9) The department of human services on applicants to
12 operate child care facilities, prospective employees of
13 the applicant, and new employees of the provider after
14 registration or licensure as provided by section 346-
15 154;
- 16 (10) The department of human services on persons exempt
17 pursuant to section 346-152 to be eligible to provide
18 child care and receive child care subsidies as provided
19 by section 346-152.5;
- 20 (11) The department of human services on operators and
21 employees of home and community-based case management
22 agencies and operators and other adults, except for



1 adults in care, residing in foster family homes as
2 provided by section 346-335;

3 (12) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;

6 (13) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;

12 (14) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;

14 (15) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;

20 (16) The department of commerce and consumer affairs on
21 applicants for private detective or private guard
22 licensure as provided by section 463-9;



- 1 (17) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to children;
4 provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided as provided by section 302C-1;
- 8 (18) The public library system on employees and prospective
9 employees whose positions place them in close proximity
10 to children as provided by section 302A-601.5;
- 11 (19) The State or any of its branches, political
12 subdivisions, or agencies on applicants and employees
13 holding a position that has the same type of contact
14 with children, [~~dependent~~] vulnerable adults, or
15 persons committed to a correctional facility as other
16 public employees who hold positions that are authorized
17 by law to require criminal history record checks as a
18 condition of employment as provided by section 78-2.7;
- 19 (20) The department of human services on licensed adult day
20 care center operators, employees, new employees,
21 subcontracted service providers and their employees,
22 and adult volunteers as provided by section 346-97;



- 1 (21) The department of human services on purchase of service
2 contracted and subcontracted service providers and
3 their employees serving clients of the adult and
4 community care services branch, as provided by section
5 346-97;
- 6 (22) The department of human services on foster grandparent
7 program, senior companion program, and respite
8 companion program participants as provided by section
9 346-97;
- 10 (23) The department of human services on contracted and
11 subcontracted service providers and their current and
12 prospective employees that provide home and community-
13 based services under Section 1915(c) of the Social
14 Security Act (42 U.S.C. §1396n(c)), as provided by
15 section 346-97; and
- 16 (24) Any other organization, entity, or the State, its
17 branches, political subdivisions, or agencies as may be
18 authorized by state law."

19 SECTION 29. The department of human services may work with
20 interested stakeholders to develop a plan to build the capacity
21 of community-based services to help with the provision of
22 services under this Act.



1 SECTION 30. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2008-2009 for the
4 department of human services to:

- 5 (1) Hire additional staff, including social workers,
6 nurses, and support staff to carry out this Act; and
- 7 (2) Contract for services pursuant to chapter 103F, Hawaii
8 Revised Statutes, and provide direct services, as may
9 be necessary, to carry out this Act.

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

12 SECTION 31. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 32. This Act shall take effect on January 1, 2009;
15 provided that section 30 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. (SB2150 HD1)

