

JAN 19 2007

A BILL FOR AN ACT

RELATING TO ADULT PROTECTION.

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

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

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

4 SECTION 2. Section 346-221, Hawaii Revised Statutes, is
5 amended to read as follows:

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

12 [~~The legislature also recognizes that it is a person's~~
13 ~~dependency status, not age, which is often encountered in cases~~
14 ~~of abuse, neglect, and exploitation.] While advanced age, or
15 mental or physical disability, alone is not sufficient reason to
16 intervene in a person's life, the legislature finds that many
17 [~~elders~~] of these citizens have become [~~subjects~~] victims of
18 abuse [~~and~~], neglect [~~-~~], and exploitation. Substantial public~~



1 interest exists to ensure that this segment of the population
2 receives [~~protection.~~] protective services.

3 The legislature declares that the State shall develop and
4 promote community services for the economic, social, and
5 personal well-being and protection of [~~its elder citizens who~~
6 ~~are mentally or physically impaired.~~] this segment of the
7 population.

8 In taking this action, the legislature intends to place the
9 fewest possible restrictions on personal liberty and to permit
10 the exercise of constitutional rights by adults consistent with
11 protection from abuse, neglect, and exploitation."

12 SECTION 3. Section 346-222, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~§~~§346-222 [~~§~~] **Definitions.** For the purposes of this
15 part:

16 "Abuse" means actual or imminent physical injury,
17 psychological abuse or neglect, sexual abuse, financial and
18 economic exploitation, negligent treatment, or maltreatment [~~as~~
19 ~~further defined in this chapter].~~

20 Abuse occurs where:

21 (1) [~~Any dependent~~] An elder or a vulnerable adult
22 exhibits evidence of:



- 1 (A) Substantial or multiple skin bruising or any
 - 2 other internal bleeding;
 - 3 (B) Any injury to skin causing substantial bleeding;
 - 4 (C) Malnutrition;
 - 5 (D) A burn or burns;
 - 6 (E) Poisoning;
 - 7 (F) The fracture of any bone;
 - 8 (G) A subdural hematoma;
 - 9 (H) Soft tissue swelling;
 - 10 (I) Extreme physical pain; or
 - 11 (J) Extreme mental distress [~~which~~] that includes a
 - 12 consistent pattern of actions or verbalizations
 - 13 including threats, insults, or harassment, that
 - 14 humiliates, provokes, intimidates, confuses, and
 - 15 frightens the [~~dependent~~] elder or the vulnerable
 - 16 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]~~ An elder or a vulnerable adult has
2 been the victim of nonconsensual sexual contact or
3 conduct, including ~~[but not limited to]~~:
4 (A) Sexual assault, molestation, sexual fondling,
5 incest, prostitution;
6 (B) Obscene or pornographic photographing, filming,
7 or depiction; or
8 (C) Other similar forms of sexual exploitation;
9 (3) ~~[Any dependent]~~ An elder or a vulnerable adult is not
10 provided in a timely manner with adequate food,
11 clothing, shelter, psychological care, physical care,
12 medical care, or supervision;
13 (4) ~~[Any dependent]~~ An elder or a vulnerable adult is
14 provided with a dangerous, harmful, or detrimental
15 ~~[drugs]~~ drug as defined by section 712-1240;
16 ~~[however,]~~ provided that this paragraph shall not
17 apply ~~[when such]~~ to drugs that are provided to ~~[the~~
18 ~~dependent]~~ an elder or a vulnerable adult pursuant to
19 the direction or prescription of a practitioner~~[7]~~ as
20 defined in section 712-1240;
21 (5) There has been a failure to exercise that degree of
22 care toward ~~[a dependent]~~ an elder or a vulnerable



- 1 adult ~~[which]~~ that a reasonable person with the
2 responsibility of a caregiver would exercise,
3 including ~~[, but not limited to,]~~ the failure to:
- 4 (A) Assist ~~[in]~~ with personal hygiene;
 - 5 (B) Provide necessary food, shelter, ~~[and]~~ or
6 clothing;
 - 7 (C) Provide necessary health care, access to health
8 care, or prescribed medication;
 - 9 (D) Protect ~~[a dependent adult]~~ from health and
10 safety hazards; or
 - 11 (E) Protect against acts of abuse by third parties;
- 12 (6) ~~[Any dependent]~~ An elder or a vulnerable adult appears
13 to lack ~~[sufficient understanding or]~~ capacity ~~[to~~
14 ~~make or communicate responsible decisions concerning~~
15 ~~the dependent adult's person,]~~ and appears to be
16 exposed to a situation or condition ~~[which]~~ that poses
17 an imminent risk of death or risk of serious physical
18 harm; or
- 19 (7) There is financial and economic exploitation. ~~[For~~
20 ~~the purpose of this part, "financial and economic~~
21 ~~exploitation" means the wrongful or negligent taking,~~
22 ~~withholding, misappropriation, or use of a dependent~~



1 ~~adult's money, real property, or personal property.~~

2 ~~"Financial and economic exploitation" can include but~~
3 ~~is not limited to:~~

4 ~~(A) Breaches of fiduciary relationships such as the~~
5 ~~misuse of a power of attorney or the abuse of~~
6 ~~guardianship privileges, resulting in the~~
7 ~~unauthorized appropriation, sale, or transfer of~~
8 ~~property;~~

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

10 ~~(C) The misappropriation, misuse, or transfer of~~
11 ~~moneys belonging to the dependent adult from a~~
12 ~~personal or joint account; or~~

13 ~~(D) The intentional or negligent failure to~~
14 ~~effectively use a dependent adult's income and~~
15 ~~assets for the necessities required for the~~
16 ~~person's support and maintenance.]~~

17 The [exploitations] financial and economic
18 exploitation may involve coercion, manipulation,
19 threats, intimidation, misrepresentation, or exertion
20 of undue influence.



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

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

6 "Department" means the department of human services and its
7 authorized representatives.

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

12 "Director" means the director of human services.

13 "Elder" means a person age seventy-five or older.

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

18 "Financial and economic exploitation" means the wrongful or
19 negligent taking, withholding, appropriation, or use of an
20 elder's or a vulnerable adult's money, real property, or
21 personal property, including:



1 (A) A breach of fiduciary responsibility such as the
2 misuse of a power of attorney or the abuse of
3 guardianship privileges resulting in the
4 unauthorized appropriation, sale, or transfer of
5 property;

6 (B) The unauthorized taking of personal assets;

7 (C) The misappropriation, misuse, or transfer of
8 moneys belonging to the elder or the vulnerable
9 adult from a personal or joint account; or

10 (D) The negligent failure to effectively use an
11 elder's or a vulnerable adult's income and assets
12 for the necessities required for the elder's or
13 vulnerable adult's support and maintenance.

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

17 "Party" means [~~those persons, care organizations, or care~~
18 ~~facilities~~] a person, caregiver, or care facility entitled to
19 notice of proceedings under [~~sections~~] section 346-237 [~~and~~
20 ~~346-238~~], including any state department or agency that is
21 providing services and treatment to [~~a dependent~~] an elder or a



1 vulnerable adult [~~in accordance with~~] pursuant to a protective
2 services plan.

3 "Protective services plan" means a specific written plan,
4 prepared by the department, [~~setting~~] that sets forth the
5 specific services and treatment to be provided to [~~a dependent~~]
6 an elder or to a vulnerable adult.

7 "Vulnerable adult" means a person between the ages of
8 eighteen and seventy-four years whose ability to meet essential
9 requirements for mental or physical health or safety, or to
10 protect the person's self from abuse, neglect, or exploitation
11 is substantially impaired because of a physical, mental, or
12 other disability, or incapacity."

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

15 "[~~§~~346-223[~~]~~] **Jurisdiction; venue.** The family court
16 shall have jurisdiction [~~in~~] over protective proceedings under
17 this part [~~concerning any dependent~~] that concern an elder or a
18 vulnerable adult who was or is found within the judicial circuit
19 at the time [~~such~~] the facts and circumstances occurred, were
20 discovered, or were reported to the department, which constitute
21 the basis for a finding that the [~~person has been~~] elder or the
22 vulnerable adult was abused [~~and~~] or is threatened with imminent



1 abuse; provided that the protective proceedings under this part
 2 [~~are~~] shall not be considered exclusive and shall not preclude
 3 [~~the use of~~] any other criminal, civil, or administrative
 4 remedy. The protective proceedings under this part shall be
 5 held in the judicial circuit in which the [~~dependent~~] elder or
 6 the vulnerable adult resides at the time of the filing of the
 7 petition or in which the [~~dependent~~] elder or the vulnerable
 8 adult has assets."

9 SECTION 5. Section 346-224, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "~~{~~§346-224~~}~~ **Reports.** (a) The following persons who,
 12 in the performance of their professional or official duties,
 13 know or have reason to believe that [~~a dependent~~] an elder or a
 14 vulnerable adult has been abused [~~and~~] or is threatened with
 15 imminent abuse shall promptly report the matter orally to the
 16 department [~~of human services~~]:

17 (1) Any licensed or registered professional of the healing
 18 arts and any health-related occupation who examines,
 19 treats, or provides other professional or specialized
 20 services to [~~dependent adults,~~] an elder or a
 21 vulnerable adult, including [~~but not limited to,~~]
 22 physicians, physicians in training, psychologists,



- 1 dentists, nurses, osteopathic physicians and surgeons,
2 optometrists, chiropractors, podiatrists, pharmacists,
3 and other health-related professionals;
- 4 (2) Employees or officers of any public or private agency
5 or institution providing social, medical, hospital or
6 mental health services, including financial
7 assistance;
- 8 (3) Employees or officers of any law enforcement agency
9 including [~~but not limited to,~~] the courts, police
10 departments, correctional institutions, and parole or
11 probation offices;
- 12 (4) Employees or officers of any adult residential care
13 home, adult day care center, or similar institution;
14 [and]
- 15 (5) Medical examiners or coroners [~~-~~]; and
- 16 (6) Social workers.
- 17 (b) The initial oral report required by subsection (a)
18 shall be followed as soon as possible by a written report to the
19 department; provided that [~~where~~] if a police department is the
20 initiating agency, a written report shall not be required unless
21 the police department [~~has declined~~] declines to take further
22 action and the department informs the police department that



1 [it] the department intends to [~~pursue the matter of the orally~~
2 ~~reported incident~~] investigate the oral report of abuse. [All
3 ~~written reports~~] A written report shall contain [the]:

4 (1) The name and address of the [dependent] elder or the
5 vulnerable adult [and], if known;

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

10 (3) The nature and extent of the [dependent] elder's or
11 the vulnerable adult's injury or harm; and [any]

12 (4) Any other information the reporter believes [might]
13 may be helpful in establishing the cause of the
14 [dependent adult] abuse.

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

21 (d) Any [~~other~~] person who has reason to believe that [a
22 ~~dependent~~] an elder or a vulnerable adult has been abused or is



1 threatened with imminent abuse may report the matter orally to
2 the department.

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

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

9 SECTION 6. Section 346-225, Hawaii Revised Statutes, is
10 amended to read as follows:

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

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

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

13 SECTION 8. 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~~] an elder or a vulnerable adult has
17 occurred [~~and~~] or is imminent, the department shall cause an
18 investigation to be commenced in accordance with this part as
19 the department deems appropriate."

20 SECTION 9. Section 346-229, Hawaii Revised Statutes, is
21 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]~~ elder
4 or the vulnerable adult who is the subject of the report. Any
5 person intentionally or knowingly obstructing or interfering
6 with the department's access to or communication with the
7 ~~[dependent]~~ elder or the vulnerable adult shall be guilty of a
8 misdemeanor.

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

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

21 "**§346-230 Termination of services.** (a) The department
22 shall act only with the consent of the victim, unless the

1 department obtains court authorization to provide necessary
2 services, as provided in section 346-231. Investigation and
3 services provided under this part shall be immediately
4 terminated if:

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

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

11 (3) The court so orders.

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

18 SECTION 11. Section 346-231, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§346-231[+] Order for immediate protection. (a) If
21 the department believes that a person is [~~a dependent~~] an elder
22 or a vulnerable adult and it appears probable that the



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

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

15 (c) Upon finding that the person is ~~[a dependent]~~ an elder
16 or a vulnerable adult and that there is probable cause to
17 believe that the ~~[dependent]~~ elder or the vulnerable adult has
18 been abused ~~[and]~~ or is threatened with imminent abuse unless
19 immediate action is taken; and the ~~[dependent]~~ elder or the
20 vulnerable adult consents, or if the ~~[dependent]~~ elder or the
21 vulnerable adult does not consent and there is probable cause to
22 believe that the ~~[dependent]~~ elder or the vulnerable adult lacks



1 the capacity to make decisions concerning the [~~dependent~~]
2 elder's or the vulnerable adult's person, the court shall issue
3 an order for immediate protection. This order may include [~~but~~
4 ~~is not limited to~~]:

- 5 (1) An authorization for the department to transport the
6 person to an appropriate medical or care facility;
- 7 (2) An authorization for medical examinations;
- 8 (3) An authorization for emergency medical treatment; and
- 9 (4) [~~Sueh~~] Any other matters as may prevent imminent
10 abuse, pending a hearing under section 346-232.

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

- 14 (1) Removing the [~~dependent~~] elder or the vulnerable adult
15 from the care or custody of another;
- 16 (2) Abusing the [~~dependent~~] elder or the vulnerable adult;
- 17 (3) Living at the [~~dependent~~] elder's or the vulnerable
18 adult's residence;
- 19 (4) Contacting the [~~dependent~~] elder or the vulnerable
20 adult in person or by telephone;



- 1 (5) Selling, removing, or otherwise disposing of the
2 ~~[dependent]~~ elder's or the vulnerable adult's personal
3 property;
- 4 (6) Withdrawing those funds from any bank, savings and
5 loan association, credit union, or other financial
6 institution, or from a stock account in which the
7 ~~[dependent]~~ elder or the vulnerable adult has an
8 interest;
- 9 (7) Negotiating any instruments payable to the ~~[dependent]~~
10 elder or the vulnerable adult;
- 11 (8) Selling, mortgaging, or otherwise encumbering any
12 interest that the ~~[dependent]~~ elder or the vulnerable
13 adult has in real property;
- 14 (9) Exercising any powers on behalf of the ~~[dependent]~~
15 elder or the vulnerable adult by representatives of
16 the department, any court-appointed guardian or
17 guardian ad litem or any official acting on ~~[their]~~
18 the elder's or the vulnerable adult's behalf;
- 19 (10) Engaging in any other specified act ~~[which]~~ that,
20 based upon the facts alleged, would constitute harm or
21 present a threat of imminent harm to the ~~[dependent]~~
22 elder or the vulnerable adult or would cause the loss

1 of the [~~dependent~~] elder's or the vulnerable adult's
2 property.

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

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

18 SECTION 12. Section 346-232, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~[+]§346-232[+]~~ **Order to show cause hearing.** (a) When a
21 written order for immediate protection is issued, the court
22 shall hold a hearing on the application for immediate

1 protection, no later than seventy-two hours after issuance of
2 the written order excluding any Saturday or Sunday, requiring
3 cause to be shown why the order or orders should not continue.
4 The department shall make arrangements to have the [dependent]
5 elder or the vulnerable adult attend the hearing or show cause
6 why the [dependent] elder or the vulnerable adult cannot attend.

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

20 (c) The parties personally or through counsel may
21 stipulate to the entry or continuance of such orders as the
22 court deems to be in the best interest of the [dependent] elder

1 or the vulnerable adult, and the court shall set the case for an
2 adjudicatory hearing as soon as it is practical."

3 SECTION 13. Section 346-233, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~346-233~~]~~ **Petition.** (a) A petition invoking the
6 jurisdiction of the court under this part shall be entitled "In
7 the matter of the protection of _____," and shall
8 be verified.

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

10 (1) Reasons the person is considered to be [~~a dependent~~]
11 an elder or a vulnerable adult;

12 (2) Facts [~~which~~] that bring the [~~dependent~~] elder or the
13 vulnerable adult within this part;

14 (3) Name, birth date, sex, and residence address of the
15 [~~dependent~~] elder or the vulnerable adult;

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

19 (5) If appropriate, allegations describing any lack of
20 capacity of the [~~dependent~~] elder or the vulnerable
21 adult."

1 SECTION 14. Section 346-234, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~§346-234~~§~~] Guardian ad litem; counsel. (a) In any
4 case where the court has reason to believe that [~~a dependent~~] an
5 elder or a vulnerable adult or any other party lacks the
6 capacity to effectively make decisions concerning the party's
7 person, it may appoint a guardian ad litem to represent the
8 interests of that party throughout the pendency of proceedings
9 under this part. The court shall appoint counsel for the
10 [~~dependent~~] elder or the vulnerable adult at any time where it
11 finds that the [~~dependent~~] elder or the vulnerable adult
12 requires a separate legal advocate and is unable to afford
13 private counsel.

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

21 SECTION 15. Section 346-236, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " ~~[§]~~346-236 ~~[§]~~ **Permanent changes.** Permanent changes in
2 the living situation of an abused ~~[dependent]~~ elder or an abused
3 vulnerable adult shall not ordinarily be made under authority of
4 this part. If permanent changes in the living situation or
5 nonemergency medical treatment are necessary, the appropriate
6 guardianship, or civil commitment action shall be initiated
7 pursuant to applicable state law."

8 SECTION 16. Section 346-237, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§346-237 Notice of proceedings.** (a) After a petition
11 has been filed, the matter shall be set for hearing and a notice
12 of hearing shall be issued to all parties to the proceeding.

13 The parties to the proceeding shall include:

- 14 (1) The ~~[dependent]~~ elder or the vulnerable adult;
15 (2) Any caregiver or facility in which the ~~[dependent]~~
16 elder or the vulnerable adult resides or is a patient;
17 (3) The spouse and adult children of the ~~[dependent]~~ elder
18 or the vulnerable adult;
19 (4) The parents of the ~~[dependent]~~ elder or the vulnerable
20 adult, unless waived by the court for good cause;
21 (5) Any guardian or conservator who may have been
22 appointed; and

1 (6) Any other person or entity affected by the order for
2 immediate protection.

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

8 SECTION 17. Section 346-238, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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

18 SECTION 18. Section 346-239, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~+~~§346-239~~+~~ Required findings concerning postponed
21 hearings. Except as otherwise provided, no hearing shall be
22 delayed upon the grounds that a party other than the [dependent]



1 elder or the vulnerable adult is not present at the hearing or
2 has not been served with a copy of the order for immediate
3 protection or the petition, where reasonable efforts have been
4 made to effect service and it would be detrimental to the
5 [~~dependent~~] elder or the vulnerable adult to postpone the
6 proceedings until service can be made. Whenever a hearing is
7 delayed or postponed under this section, the court shall enter a
8 finding that it will not be detrimental to the [~~dependent~~] elder
9 or the vulnerable adult and shall also specify what additional
10 measures shall be undertaken to effect service."

11 SECTION 19. Section 346-240, Hawaii Revised Statutes, is
12 amended by amending subsections (a) to (c) to read as follows:

13 "(a) When a petition has been filed, the court shall set a
14 return date hearing to be held within thirty days of the filing
15 of the petition. On the return date, the parties personally or
16 through counsel may stipulate to the entry or continuance of the
17 orders as the court deems to be in the best interests of the
18 [~~dependent~~] elder or the vulnerable adult, and the court shall
19 set the case for an adjudicatory hearing as soon as is
20 practical.

21 (b) In an adjudicatory hearing, the court shall determine
22 whether the person is [~~a dependent~~] an elder or a vulnerable



1 adult, and whether the [~~dependent~~] elder or the vulnerable adult
2 has been abused [~~and~~] or is threatened with imminent abuse,
3 based upon a preponderance of the evidence. Evidence [~~which~~]
4 that is contained in a written report, study, or examination
5 shall be admissible, provided that the maker of the written
6 report, study, or examination be subject to direct and cross-
7 examination upon demand when the maker is reasonably available.
8 A social worker employed by the department in the area of adult
9 protective services shall be presumed to be qualified to testify
10 as an expert in the field of protective services.

11 (c) If facts sufficient to sustain the petition are
12 established in court, or are stipulated to by all parties, the
13 court shall enter an order finding that the [~~dependent~~] elder or
14 the vulnerable adult has been abused [~~and~~] or threatened with
15 imminent abuse and shall state the grounds for the finding. The
16 court shall also make a finding concerning the capacity of the
17 [~~dependent~~] elder or the vulnerable adult to effectively make
18 decisions concerning personal needs or property [~~or both~~]. If
19 the capacity of the [~~dependent~~] elder or the vulnerable adult is
20 at issue, the court shall require that the [~~dependent~~] elder or
21 the vulnerable adult be examined by a psychiatrist or other
22 physician who is skilled in evaluating the particular area in

1 which the [~~dependent~~] elder or the vulnerable adult is alleged
2 to lack capacity before making any finding that the [~~dependent~~]
3 elder or the vulnerable adult lacks capacity. If there is no
4 finding that the [~~dependent~~] elder or the vulnerable adult lacks
5 capacity to make [~~such~~] personal needs or property decisions and
6 if the [~~dependent~~] elder or the vulnerable adult does not give
7 consent, the court shall not have authority to proceed further
8 and the court shall dismiss the case."

9 SECTION 20. Section 346-241, Hawaii Revised Statutes, is
10 amended by amending subsections (b) to (d) to read as follows:

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

- 14 (1) The person inflicting abuse on the [~~dependent~~] elder
15 or the vulnerable adult participate in counseling or
16 therapy as the court deems appropriate;
- 17 (2) Any party report to the department any violation of
18 the protective order or protective services plan;
- 19 (3) The department make periodic home visits to the
20 [~~dependent~~] elder or the vulnerable adult; and
- 21 (4) The department monitor compliance with the order.

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

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

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

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

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

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

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

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

1 SECTION 21. Section 346-242, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§346-242 Review hearings. Except for good cause shown,
4 the court shall set each case for a review hearing not later
5 than six months after the date that a protective order and
6 protective services plan are ordered by the court. Thereafter,
7 the court shall review the matter at intervals of not longer
8 than six months until the court's jurisdiction has been
9 terminated. The department and the guardian ad litem, if any,
10 shall submit a written report, with copies to the parties or
11 their counsel, at least fifteen days prior to the date set for
12 each review. The report shall evaluate whether the parties have
13 complied with the terms and conditions of the protective order
14 and protective services plan; shall recommend any modification
15 to the order or plan; and shall recommend whether the court
16 shall retain jurisdiction or terminate the case. At each
17 review, the court shall determine whether the parties have
18 complied with the terms and conditions of the order and plan;
19 enforce [~~such~~] sanctions for noncompliance as may be
20 appropriate; and order [~~such~~] revisions to the existing order or
21 plan as are in the best interests of the [~~dependent~~] elder or
22 the vulnerable adult. At each review, the court shall make an

1 express finding as to whether it shall retain jurisdiction or
2 terminate the case, and, in each instance, shall state the basis
3 for its action."

4 SECTION 22. Section 346-247, Hawaii Revised Statutes, is
5 amended to read as follows:

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

15 SECTION 23. Section 346-249, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§346-249[+] Cooperation. Every public official or
18 department shall render all assistance and cooperation within
19 the official's or department's power and [~~which~~] that may
20 further the purpose and objectives of this part. The department
21 and the court may seek the cooperation of organizations whose



1 objectives are to protect or aid [~~dependent~~] elders or
2 vulnerable adults."

3 SECTION 24. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 25. This Act shall take effect upon its approval.
6

INTRODUCED BY: Erzanne Chun Oakland
Medhauz
Amaly Le Baker

Report Title:

Social Services; Dependent Adult Protective Services

Description:

Amends dependent adult protective services law by: (1) deleting definition of "dependent adult"; (2) extending protections to persons between 18 and 74 years of age if they meet the definition of "vulnerable adult"; (3) adding definition of "elder" to extend protections to persons 75 years or older; (4) enabling the department of human services to investigate and the court to have jurisdiction when reason exists to believe that an elder or vulnerable adult has been abused or is threatened with imminent abuse; and (5) making conforming amendments for style, consistency, and clarity.

