

JAN 17 2008

---

---

# 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,  
12 is amended by amending the title to read as follows:

13           " [{}] PART X. [{}~~DEPENDENT~~] ADULT PROTECTIVE SERVICES "

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

16           " [{}] §346-221 [{}] **Purpose; construction.** The legislature  
17 recognizes that citizens of the State who are [~~elder and~~



1 ~~mentally or physically impaired or~~ vulnerable 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  
7 is often encountered in cases of abuse, neglect, and  
8 exploitation. While advanced age alone is not sufficient reason  
9 to intervene in a person's life, the legislature finds that many  
10 elders have become subjects of abuse [~~and~~], neglect [~~-~~], and  
11 exploitation. Substantial public interest exists to ensure that  
12 this segment of the population receives protection.

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

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



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

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

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

15 ~~[Abuse occurs where:~~

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



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



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



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

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

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

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

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

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

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



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

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

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

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

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

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



1       (4) Provide, in a timely manner, necessary health care,  
2       access to healthcare, prescribed medication,  
3       psychological care, physical care, or supervision;

4       (5) Protect the vulnerable adult from the provision of  
5       dangerous, harmful, or detrimental drugs, as defined  
6       in section 712-1240; provided that this paragraph  
7       shall not apply when such drugs are provided to the  
8       vulnerable adult pursuant to the direction or  
9       prescription of a practitioner, as defined in section  
10       712-1240;

11       (6) Protect the vulnerable adult from health and safety  
12       hazards; or

13       (7) Protect the vulnerable adult from acts of abuse by  
14       third parties.

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

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

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





1        "Director" means the director of human services.

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

6        "Financial exploitation" means the wrongful or negligent  
7 taking, withholding, misappropriation, or use of a vulnerable  
8 adult's money, real property, or personal property, including  
9 but not limited to:

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



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

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

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

11 "Physical abuse" means:

12 (1) The non-accidental infliction of physical or bodily  
13 injury, pain, or impairment, including but not limited  
14 to, being slapped, burned, cut, bruised, poisoned, or  
15 improperly physically restrained; or

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

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



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

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

6       (1) A vulnerable adult's inability, due to physical or  
7 mental impairments, or both, to perform tasks  
8 essential to caring for oneself, including but not  
9 limited to:

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

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

15       (C) Managing financial affairs; and

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



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

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

5       (2) Obscene or pornographic photographing, filming, or  
6 depiction; or

7       (3) Other similar forms of sexual exploitation.

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

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

13       (2) Carry out or arrange for essential activities of daily  
14 living; or

15       (3) Protect oneself from abuse, neglect, or financial  
16 exploitation from others."

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

19       "~~§~~346-223 ~~§~~ Jurisdiction; venue. The family court  
20 shall have jurisdiction ~~in~~ over protective proceedings under  
21 this part ~~[concerning any dependent]~~ that concern a vulnerable  
22 adult who was or is found within the judicial circuit at the



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

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

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



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



1 (b) The initial oral report required by subsection (a)  
2 shall be followed as soon as possible by a written report to the  
3 department; provided that ~~[where]~~ if a police department is the  
4 initiating agency, a written report shall not be required unless  
5 the police department ~~[has declined]~~ declines to take further  
6 action and the department informs the police department that  
7 ~~[it]~~ the department intends to ~~[pursue the matter of the orally~~  
8 ~~reported incident]~~ investigate the oral report of abuse. ~~[All~~  
9 ~~written reports]~~ A written report shall contain ~~[the]~~:

10 (1) The name and address of the ~~[dependent]~~ vulnerable  
11 adult ~~[and]~~, if known;

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

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

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

21 (c) This section shall not prohibit any ~~[of the persons~~  
22 ~~enumerated in subsection (a)]~~ person from reporting ~~[incidents~~



1 ~~which those persons have]~~ an incident that the person has reason  
2 to believe [~~involve]~~ involves abuse [~~which]~~ that came to [~~their]~~  
3 the person's attention in [any] a private or nonprofessional  
4 capacity.

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

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

14 (f) The department shall maintain a central registry of  
15 reported cases.

16 (g) Nothing in this section shall require a member of the  
17 clergy to report communications that are protected under rule  
18 506 of chapter 626."

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

21 "[+] §346-225 [{}] **Confidentiality of reports.** [~~All reports]~~

22 A report made pursuant to this part, including the identity of





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

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

11 "[+]§346-226[+] **Access to records.** Records of a  
12 [~~dependent~~] vulnerable adult shall be obtained by the department  
13 or the [~~dependent~~] vulnerable adult's court-appointed guardian  
14 ad litem with the written consent of the [~~dependent~~] vulnerable  
15 adult or [~~that person's~~] the vulnerable adult's representative,  
16 or by court order. Any person who reports to the department  
17 under section 346-224, upon demand of the department, shall  
18 provide all information related to the alleged incident of  
19 [~~dependent adult~~] abuse or neglect, including[~~, but not limited~~  
20 ~~to,~~] financial records and medical reports, which were not  
21 included in the written report submitted pursuant to section  
22 346-224(b)."



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

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

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

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

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



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

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

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

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



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

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

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

12           (3) The court so orders.

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

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

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



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

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

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



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

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

5 (2) An authorization for medical examinations;

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

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

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

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

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

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

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

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

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



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



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

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

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

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





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

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

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

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

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

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



- 1 (2) Facts [~~which~~] that bring the [~~dependent~~] vulnerable
- 2 adult within this part;
- 3 (3) Name, birth date, sex, and residence address of the
- 4 [~~dependent~~] vulnerable adult;
- 5 (4) Names and addresses of any living persons, or entities
- 6 required to be notified pursuant to section 346-237;
- 7 and
- 8 (5) If appropriate, allegations describing any lack of
- 9 capacity of the [~~dependent~~] vulnerable adult."

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

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



1 (b) The court may order reasonable costs and fees of the  
 2 guardian ad litem to be paid by the party for whom the guardian  
 3 ad litem is appointed, if that party has sufficient financial  
 4 resources to pay [~~such~~] the costs and fees. The court may also  
 5 order the appropriate parties to pay or reimburse reasonable  
 6 costs and fees of the guardian ad litem and counsel appointed  
 7 for the [~~dependent~~] vulnerable adult."

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

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

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

19 "**§346-237 Notice of proceedings.** (a) After a petition  
 20 has been filed, the matter shall be set for hearing and a notice  
 21 of hearing shall be issued to all parties to the proceeding.  
 22 The parties to the proceeding shall include:



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

12 (b) Where the name or whereabouts of a potential party is  
 13 unknown, the court may require the petitioner to set forth the  
 14 reasonable efforts the petitioner made to ascertain the party's  
 15 name or whereabouts and why the petitioner has been unable to  
 16 determine those facts."

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

19 "(a) Service of the notice shall be made by delivery of a  
 20 copy thereof together with a certified copy of the petition to  
 21 each person or entity to be given notice either by personal  
 22 service, by certified mail, return receipt requested and



1 addressed to the last known address, by publication, or by other  
2 means authorized by the court. Upon a showing of good cause,  
3 the court may waive notice to any party except the [dependent]  
4 vulnerable adult."

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

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

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



1           "(a) When a petition has been filed, the court shall set a  
2 return date hearing to be held within thirty days of the filing  
3 of the petition. On the return date, the parties personally or  
4 through counsel may stipulate to the entry or continuance of the  
5 orders as the court deems to be in the best interests of the  
6 [~~dependent~~] vulnerable adult, and the court shall set the case  
7 for an adjudicatory hearing as soon as is practical.

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

21           (c) If facts sufficient to sustain the petition are  
22 established in court, or are stipulated to by all parties, the



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

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



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

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

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

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

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

12          (c) The proposed protective services plan shall set forth  
13 the following:

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

17          (2) Specific responsibilities that the parties shall  
18          assume;

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

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





1           (5) Specific consequences that may be reasonably  
2           anticipated to result from a party's failure to comply  
3           with any terms and conditions of the plan; and  
4           (6) Steps that shall be necessary to terminate the court's  
5           jurisdiction.  
6           (d) In preparing such a proposed protective order, the  
7           department shall seek to impose the least restrictive limitation  
8           on the freedom and liberties of the [~~dependent~~] vulnerable  
9           adult. To the greatest extent possible, the [~~dependent~~]  
10          vulnerable adult should be permitted to participate in decisions  
11          concerning the [~~dependent~~] vulnerable adult's person, or  
12          property, or both."

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

15           "**§346-242 Review hearings.** Except for good cause shown,  
16          the court shall set each case for a review hearing not later  
17          than six months after the date that a protective order and  
18          protective services plan are ordered by the court. Thereafter,  
19          the court shall review the matter at intervals of not longer  
20          than six months until the court's jurisdiction has been  
21          terminated. The department and the guardian ad litem, if any,  
22          shall submit a written report, with copies to the parties or



1 their counsel, at least fifteen days prior to the date set for  
 2 each review. The report shall evaluate whether the parties have  
 3 complied with the terms and conditions of the protective order  
 4 and protective services plan; shall recommend any modification  
 5 to the order or plan; and shall recommend whether the court  
 6 shall retain jurisdiction or terminate the case. At each  
 7 review, the court shall determine whether the parties have  
 8 complied with the terms and conditions of the order and plan;  
 9 enforce [~~such~~] sanctions for noncompliance as may be  
 10 appropriate; and order [~~such~~] revisions to the existing order or  
 11 plan as are in the best interests of the [~~dependent~~] vulnerable  
 12 adult. At each review, the court shall make an express finding  
 13 as to whether it shall retain jurisdiction or terminate the  
 14 case, and, in each instance, shall state the basis for its  
 15 action."

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

18 "[+]§346-247[+] **Payment for service or treatment provided**  
 19 **to a party.** Whenever service, treatment, care, or support of a  
 20 [~~dependent~~] vulnerable adult is provided under this part, the  
 21 persons or legal entities who may be legally obligated to pay  
 22 for the service, treatment, care, or support of the [~~dependent~~



1 ~~person,~~ vulnerable adult, may be ordered by the court to pay  
2 the cost of the service, care, support, or treatment provided to  
3 the ~~dependent~~ vulnerable adult in whole or in part, after  
4 notice and hearing."

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

7 "[~~§~~§346-249 [~~§~~] **Cooperation.** Every public official or  
8 department shall render all assistance and cooperation within  
9 the official's or department's power and ~~which~~ that may  
10 further the purpose and objectives of this part. The department  
11 and the court may seek the cooperation of organizations whose  
12 objectives are to protect or aid ~~dependent~~ vulnerable adults."

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

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

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

20 (2) Physical appearance and condition of victim. In  
21 matters of proof concerning the physical appearance



1 and condition of the victim at the time of the alleged  
2 crime.

3 (3) Breach of duty by victim counselor or victim  
4 counseling program. As to a communication relevant to  
5 an issue of breach of duty by the victim counselor or  
6 victim counseling program to the victim.

7 (4) Mandatory reporting. To relieve victim counselors of  
8 any duty to refuse to report child abuse or neglect  
9 under chapter 350, domestic abuse under chapter 586,  
10 or abuse of a [~~dependent~~] vulnerable adult under part  
11 X of chapter 346, and to refuse to provide evidence in  
12 child abuse proceedings under chapter 587.

13 (5) Proceedings for hospitalization. For communications  
14 relevant to an issue in proceedings to hospitalize the  
15 victim for mental illness or substance abuse, or in  
16 proceedings for the discharge or release of a victim  
17 previously hospitalized for mental illness or  
18 substance abuse.

19 (6) Examination by order of court. If the court orders an  
20 examination of the physical, mental, or emotional  
21 condition of a victim, whether a party or a witness,  
22 communications made in the course thereof are not



1 privileged under this rule with respect to the  
2 particular purpose of which the examination is ordered  
3 unless the court orders otherwise.

4 (7) Condition an element of claim or defense. As to a  
5 communication relevant to the physical, mental, or  
6 emotional condition of the victim in any proceeding in  
7 which the victim relies upon the condition as an  
8 element of the victim's claim or defense or, after the  
9 victim's death, in any proceeding in which any party  
10 relies upon the condition as an element of the party's  
11 claim or defense.

12 (8) Proceedings against the victim counselor. In any  
13 administrative or judicial proceeding in which the  
14 competency or practice of the victim counselor or of  
15 the victim counseling program is at issue, provided  
16 that the identifying data of the victims whose records  
17 are admitted into evidence shall be kept confidential  
18 unless waived by the victim. The administrative  
19 agency, board or commission shall close to the public  
20 any portion of a proceeding, as necessary to protect  
21 the confidentiality of the victim."



1 SECTION 27. The department of human services may work with  
 2 interested stakeholders to develop a plan to build the capacity  
 3 of community-based services to help with the provision of  
 4 services under this Act.

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

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

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

16 SECTION 29. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

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

20

INTRODUCED BY: *Trizanne Chun Oakland*  
*Mr. [Signature]*  
*Rosalyn H. [Signature]*

**Report Title:**

Adult Protective Services; Appropriation; Kupuna Caucus

**Description:**

Expands the adult protective services law by extending protections to vulnerable adults. Appropriates funds to the department of human services.

