
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]~~ 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 community services for the economic, social, and
15 personal well-being and protection of its [~~elder~~] citizens who
16 [~~are mentally or physically impaired.~~] may be vulnerable to
17 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 abuse, psychological abuse [or neglect], sexual abuse, financial
7 exploitation, [negligent treatment, or maltreatment] caregiver
8 neglect, self-neglect, or poor self care, as further defined in
9 this chapter. Abuse does not include and shall not be based
10 solely on physical, psychological, or financial conditions that
11 result when a vulnerable adult seeks, or when a caregiver
12 provides or permits to be provided, treatment with the express
13 consent or in accordance with the religious or spiritual
14 practice of the vulnerable adult.

15 ~~[Abuse occurs where:~~

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

17 ~~(A) Substantial or multiple skin bruising or any~~
18 ~~other internal bleeding;~~

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

20 ~~(C) Malnutrition;~~

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

22 ~~(E) Poisoning;~~



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



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



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

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

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

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

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

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

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



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

3 ~~The exploitations may involve coercion, manipulation,~~
4 ~~threats, intimidation, misrepresentation, or exertion~~
5 ~~of undue 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 knowingly and
10 willingly assumed, on a part-time or full-time basis, the care,
11 custody, or physical control of, or who has a legal or
12 contractual duty to care for the health, safety, and welfare of
13 a vulnerable adult.

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

- 18 (1) Assist with personal hygiene;
19 (2) Protect the vulnerable adult from abandonment;
20 (3) Provide, in a timely manner, necessary food, shelter,
21 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 dangerous, harmful,
5 or detrimental drugs, as defined in section 712-1240;
6 provided that this paragraph shall not apply to drugs
7 that are provided to the vulnerable adult pursuant to
8 the direction or prescription of a practitioner, as
9 defined in section 712-1240;

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

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

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

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

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

22 "Director" means the director of human services.



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

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

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



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

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

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

11 "Physical abuse" means:

12 (1) The nonaccidental 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 for an injury is at variance with
18 the degree or 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 a
4 vulnerable adult.

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

6 (1) A vulnerable adult's inability or failure, due to
7 physical or mental impairment, or both, to perform
8 tasks essential to caring for oneself, including but
9 not 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 nonconsensual 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 by 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 not enumerated in subsection (a)
6 who has reason to believe that a [~~dependent]~~ vulnerable adult
7 has been abused or is [~~threatened with imminent abuse]~~ in danger
8 of being abused if immediate action is not taken may report the
9 matter orally to the 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 "[~~f~~]**\$346-229**[~~t~~] **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 immediate abuse, pending a hearing under section
9 346-232.

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

- 13 (1) Removing the [~~dependent~~] vulnerable adult from the
14 care or custody of another;
15 (2) Abusing the [~~dependent~~] vulnerable adult;
16 (3) Living at the [~~dependent~~] vulnerable adult's
17 residence;
18 (4) Contacting the [~~dependent~~] vulnerable adult in person
19 or by telephone;
20 (5) Selling, removing, or otherwise disposing of the
21 [~~dependent~~] vulnerable adult's personal property;



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



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

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

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

21 (b) When the court finds that there is probable cause to
22 believe that a ~~[dependent]~~ vulnerable adult has been abused



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

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

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

18 "[+]§346-233[+] **Petition.** (a) A petition invoking the
19 jurisdiction of the court under this part shall be entitled "In
20 the matter of the protection of _____," and shall
21 be verified.

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



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

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

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



1 adult requires a separate legal advocate and is unable to afford
2 private counsel.

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

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

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

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

21 "**\$346-237 Notice of proceedings.** (a) After a petition
22 has been filed, the matter shall be set for hearing and a notice



1 of hearing shall be issued to all parties to the proceeding.

2 The parties to the proceeding shall include:

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

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

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

21 "(a) Service of the notice shall be made by delivery of a
22 copy thereof together with a certified copy of the petition to



1 each person or entity to be given notice either by personal
2 service, by certified mail, return receipt requested and
3 addressed to the last known address, by publication, or by other
4 means authorized by the court. Upon a showing of good cause,
5 the court may waive notice to any party except the [~~dependent~~]
6 vulnerable adult."

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

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



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

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

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



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

21 SECTION 22. Section 346-241, Hawaii Revised Statutes, is
22 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 "[~~+~~]**S346-249**[~~+~~] **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.



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. (SB2150 SD2)

