
A BILL FOR AN ACT

RELATING TO ADULT PROTECTION.

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

1 SECTION 1. Section 329-121, Hawaii Revised Statutes, is
2 amended by amending the definition of "primary caregiver" to
3 read as follows:

4 "Primary caregiver" means a person, other than the
5 qualifying patient and [~~the qualifying patient's physician,~~]
6 another patient registered under part IX who is eighteen years
7 of age or older who has not been convicted under any federal or
8 state law relating to any controlled substance and who has
9 agreed to undertake responsibility for managing the well-being
10 of the qualifying patient with respect to the medical use of
11 marijuana. In the case of a minor or an adult lacking legal
12 capacity, the primary caregiver shall be a parent, guardian, or
13 person having legal custody."

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

16 " [~~+~~] **PART X. [~~-~~] ~~DEPENDENT~~ ADULT PROTECTIVE SERVICES** "

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



1 "~~{}~~§346-221~~{}~~ Purpose; construction. The legislature
2 recognizes that citizens of the State who are elder ~~[and]~~, or
3 mentally or physically ~~[impaired]~~ disabled, constitute a
4 significant and identifiable segment of the population and are
5 particularly subject to risks of abuse, neglect, and
6 exploitation.

7 ~~[The legislature also recognizes that it is a person's~~
8 ~~dependency status, not age, which is often encountered in cases~~
9 ~~of abuse, neglect, and exploitation.]~~ While advanced age, or
10 mental or physical disability, alone is not sufficient reason to
11 intervene in a person's life, the legislature finds that many
12 ~~[elders]~~ of these citizens have become ~~[subjects]~~ victims of
13 abuse ~~[and]~~, neglect, and exploitation. Substantial public
14 interest exists to ensure that this segment of the population
15 receives ~~[protection.]~~ protective services.

16 The legislature declares that the State shall develop and
17 promote community services for the economic, social, and
18 personal well-being and protection of ~~[its elder citizens who~~
19 ~~are mentally or physically impaired.]~~ this segment of the
20 population.

21 In taking this action, the legislature intends to place the
22 fewest possible restrictions on personal liberty and to permit



1 the exercise of constitutional rights by adults consistent with
2 protection from abuse, neglect, and exploitation."

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

5 "[~~+~~§346-222[~~-~~] **Definitions.** For the purposes of this
6 part:

7 "Abuse" means actual or imminent physical injury,
8 psychological abuse or neglect, sexual abuse, financial and
9 economic exploitation, negligent treatment, or maltreatment [~~as~~
10 ~~further defined in this chapter~~].

11 Abuse occurs where:

12 (1) [~~Any dependent~~] A vulnerable adult exhibits evidence

13 of:

14 (A) Substantial or multiple skin bruising or any

15 other internal bleeding;

16 (B) Any injury to skin causing substantial bleeding;

17 (C) Malnutrition;

18 (D) A burn or burns;

19 (E) Poisoning;

20 (F) The fracture of any bone;

21 (G) A subdural hematoma;

22 (H) Soft tissue swelling;



- 1 (I) Extreme physical pain; or
- 2 (J) Extreme mental distress [~~which~~] that includes a
- 3 consistent pattern of actions or verbalizations
- 4 including threats, insults, or harassment, that
- 5 humiliates, provokes, intimidates, confuses, and
- 6 frightens the [~~dependent~~] vulnerable adult;
- 7 and the injury is not justifiably explained, or where
- 8 the history given is at variance with the degree or
- 9 type of injury, or circumstances indicate that the
- 10 injury is not the product of an accidental occurrence;
- 11 (2) [~~Any dependent~~] A vulnerable adult has been the victim
- 12 of nonconsensual sexual contact or conduct, including
- 13 [~~but not limited to~~]:
- 14 (A) Sexual assault, molestation, sexual fondling,
- 15 incest, prostitution;
- 16 (B) Obscene or pornographic photographing, filming,
- 17 or depiction; or
- 18 (C) Other similar forms of sexual exploitation;
- 19 (3) [~~Any dependent~~] A vulnerable adult is not provided in
- 20 a timely manner with adequate food, clothing, shelter,
- 21 psychological care, physical care, medical care, or
- 22 supervision;



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



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

6 (7) There is financial and economic exploitation. [~~For~~
7 ~~the purpose of this part, "financial and economic~~
8 ~~exploitation" means the wrongful or negligent taking,~~
9 ~~withholding, misappropriation, or use of a dependent~~
10 ~~adult's money, real property, or personal property.~~
11 ~~"Financial and economic exploitation" can include but~~
12 ~~is not limited to:~~

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

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

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



1 ~~(D) The intentional or negligent failure to~~
2 ~~effectively use a dependent adult's income and~~
3 ~~assets for the necessities required for the~~
4 ~~person's support and maintenance.]~~

5 The ~~[exploitations]~~ financial and economic
6 exploitation may involve coercion, manipulation,
7 threats, intimidation, misrepresentation, or exertion
8 of undue influence.

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

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

14 "Department" means the department of human services and its
15 authorized representatives.

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

20 "Director" means the director of human services.

21 "Emergency medical treatment" means ~~[those services]~~ any
22 service necessary to maintain a person's physical health and



1 without which there is a reasonable belief that the person will
2 suffer irreparable harm or death.

3 "Financial and economic exploitation" means the wrongful or
4 negligent taking, withholding, appropriation, or use of an
5 elder's or a vulnerable adult's money, real property, or
6 personal property, including:

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

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



1 "Party" means [~~those persons, care organizations, or care~~
 2 ~~faeilities~~] a person, caregiver, or care facility entitled to
 3 notice of proceedings under [~~sections~~] section 346-237 [~~and~~
 4 ~~346-238~~], including any state department or agency that is
 5 providing services and treatment to [~~a dependent adult in~~
 6 ~~accordance with~~] a vulnerable adult pursuant to a protective
 7 services plan.

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

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

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

20 "[+] §346-223 [+] **Jurisdiction; venue.** The family court
 21 shall have jurisdiction [~~in~~] over protective proceedings under
 22 this part [~~concerning any dependent~~] that concern an elder or a

1 vulnerable adult who was or is found within the judicial circuit
2 at the time [~~such~~] the facts and circumstances occurred, were
3 discovered, or were reported to the department, which constitute
4 the basis for a finding that the [~~person has been~~] vulnerable
5 adult was abused [~~and~~] or is threatened with imminent abuse;
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~~] a vulnerable
18 adult has been abused [~~and~~] or is threatened with imminent abuse
19 shall promptly report the matter orally to the department [~~of~~
20 ~~human services~~]:

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



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

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

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

16 (4) Employees or officers of any adult residential care
17 home, adult day care center, or similar institution;
18 [~~and~~]

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

20 (6) Social workers.

21 (b) The initial oral report required by subsection (a)
22 shall be followed as soon as possible by a written report to the



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

7 ~~[All written reports]~~ A written report shall contain ~~[the]~~:

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

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

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

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

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



1 abuse that came to [~~their~~] the person's attention in [~~any~~] a
2 private or nonprofessional capacity.

3 (d) Any [~~other~~] person who has reason to believe that a
4 [~~dependent~~] vulnerable adult has been abused or is threatened
5 with imminent abuse may report the matter orally to the
6 department.

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

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

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

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



1 reports and records, and for the authorized disclosure of
2 reports and records."

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

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

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

18 "[+] §346-227 [+] Investigation. Upon receiving a report
19 that abuse of a [~~dependent~~] vulnerable adult has occurred [~~and~~]
20 or is imminent, the department shall cause an investigation to
21 be commenced in accordance with this part as the department
22 deems appropriate."

1 SECTION 10. 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 11. 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 12. Section 346-231, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**[+] §346-231 [+] Order for immediate protection.** (a) If
22 the department believes that a person is a [~~dependent~~]



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

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

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



1 vulnerable adult's person, the court shall issue an order for
2 immediate protection. This order may include[, ~~but is not~~
3 ~~limited to~~]:

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

6 (2) An authorization for medical examinations;

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

8 (4) [~~Such~~] Any other matters as may prevent imminent
9 abuse, pending a hearing under section 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;
- 15 (10) Engaging in any other specified act [~~which,~~] that,
16 based upon the facts alleged, would constitute harm or
17 present a threat of imminent harm to the [~~dependent~~]
18 vulnerable adult or would cause the loss of the
19 [~~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, provided that it
3 shall reduce the order to writing as soon as possible thereafter
4 and in any case not later than twenty-four hours after the court
5 received the written application. Certified copies of the
6 application and order shall be personally served upon the
7 [~~dependent~~] vulnerable adult and any other person or entity
8 affected by the order together with the notice of the order to
9 show cause hearing in section 346-232.

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

13 SECTION 13. Section 346-232, Hawaii Revised Statutes, is
14 amended to read as follows:

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



1 vulnerable adult attend the hearing or show cause why the
2 [~~dependent~~] vulnerable adult cannot attend.

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

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

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

21 "[~~+~~] §346-233 [~~+~~] **Petition.** (a) A petition invoking the
22 jurisdiction of the court under this part shall be entitled "In



1 the matter of the protection of _____," and shall be
2 verified.

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

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

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

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

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

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

15 SECTION 15. Section 346-234, Hawaii Revised Statutes, is
16 amended to read as follows:

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



1 The court shall appoint counsel for the [~~dependent~~] vulnerable
2 adult at any time where it finds that the [~~dependent~~] vulnerable
3 adult requires a separate legal advocate and is unable to afford
4 private counsel.

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

12 SECTION 16. Section 346-236, Hawaii Revised Statutes, is
13 amended to read as follows:

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

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



1 "§346-237 Notice of proceedings. (a) After a petition
2 has been filed, the matter shall be set for hearing and a notice
3 of hearing shall be issued to all parties to the proceeding.

4 The parties to the proceeding shall include:

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

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

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



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

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

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



1 specify what additional measures shall be undertaken to effect
2 service."

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

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

12 (b) In an adjudicatory hearing, the court shall determine
13 whether the person is a [~~dependent~~] vulnerable adult, and
14 whether the [~~dependent~~] vulnerable adult has been abused [~~and~~]
15 or is threatened with imminent abuse, based upon a preponderance
16 of the evidence. Evidence [~~which~~] that is contained in a
17 written report, study, or examination shall be admissible,
18 provided that the maker of the written report, study, or
19 examination be subject to direct and cross-examination upon
20 demand when the maker is reasonably available. A social worker
21 employed by the department in the area of adult protective



1 services shall be presumed to be qualified to testify as an
2 expert in the field of protective services.

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



1 SECTION 21. Section 346-241, Hawaii Revised Statutes, is
2 amended by amending subsections (b) to (d) to read as follows:

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

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

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

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

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

14 (c) The proposed protective services plan shall set forth
15 the following:

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

19 (2) Specific responsibilities that the parties shall
20 assume;

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

22 (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 22. 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 23. 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 24. 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 25. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 26. This Act shall take effect upon its approval.



Report Title:

Dependent Adult Protective Services; Vulnerable Elders

Description:

Amending and clarifying the adult protective services law to protect vulnerable elders from abuse, including financial and economic exploitation. (HB811 HD1)

