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# 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 guardian, conservator, their respective  
8 attorneys, the guardian ad litem of the [~~dependent~~] vulnerable  
9 adult, and the other parties and their respective attorneys or  
10 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 recognizes that Hawaii has a history of  
6 protecting its kupuna starting with the first law proclaimed by  
7 Kamehameha the Great, *ke kanawai mamalahoe*, or the law of the  
8 splintered paddle, now embodied in the state constitution. The  
9 legislature [~~also~~] further recognizes that it is a person's  
10 [~~dependency status,~~] vulnerability, not necessarily age, which  
11 is often encountered in cases of abuse, neglect, and  
12 exploitation. While advanced age alone is not sufficient reason  
13 to intervene in a person's life, the legislature finds that many  
14 elders have become subjects of abuse [~~and~~], neglect[-], and  
15 exploitation. Substantial public interest exists to ensure that  
16 this segment of the population receives [~~protection.~~] protective  
17 services.

18 The legislature declares that the State shall develop and  
19 promote protective and community services for the economic,  
20 social, and personal well-being and protection of its elder  
21 citizens who [~~are mentally or physically impaired.~~] may be  
22 vulnerable to abuse, neglect, and exploitation.



1 In taking this action, the legislature intends to protect  
2 elder and vulnerable adults and place the fewest possible  
3 restrictions on personal liberty and to permit the exercise of  
4 constitutional rights by adults consistent with protection from  
5 abuse, neglect, and exploitation."

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

8 "[+]§346-222[+] **Definitions.** For the purposes of this  
9 part:

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

19 Abuse occurs where:

20 (1) [~~Any dependent~~] A vulnerable adult exhibits evidence  
21 of:



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



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



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



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

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

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

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

14 The [~~exploitations~~] financial and economic  
15 exploitation may involve coercion, manipulation,  
16 threats, intimidation, misrepresentation, or exertion  
17 of undue influence.

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

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



1 "Department" means the department of human services and its  
2 authorized representatives.

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

7 "Director" means the director of human services.

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

12 "Financial and economic exploitation" means the wrongful or  
13 negligent taking, withholding, appropriation, or use of a  
14 vulnerable adult's money, real property, or personal property,  
15 including:

16 (1) A breach of fiduciary responsibility such as the  
17 misuse of a power of attorney or the abuse of  
18 guardianship privileges resulting in the unauthorized  
19 appropriation, sale, or transfer of property;

20 (2) The unauthorized taking of personal assets;



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

4        (4) The negligent failure to effectively use a vulnerable  
5                    adult's income and assets for the necessities required  
6                    for the vulnerable adult's support and maintenance.

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

10           "Party" means [~~those persons, care organizations, or care~~  
11        ~~facilities~~] a person, caregiver, or care facility entitled to  
12        notice of proceedings under [~~sections~~] section 346-237 [~~and~~  
13        ~~346-238~~], including any state department or agency that is  
14        providing services and treatment to a [~~dependent~~] vulnerable  
15        adult [~~in accordance with~~] pursuant to a protective services  
16        plan.

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

21           "Vulnerable adult" means a person eighteen-years-of-age or  
22        older whose ability to meet essential requirements for mental or



1 physical health or safety, or to protect the person's self from  
2 abuse, neglect, or exploitation is substantially impaired  
3 because of a physical, mental, or other disability, or  
4 incapacity."

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

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



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

3 "~~[f]~~ **§346-224** ~~[f]~~ **Reports.** (a) The following persons who,  
4 in the performance of their professional or official duties,  
5 know or have reason to believe that a ~~[dependent]~~ vulnerable  
6 adult has been abused ~~[and]~~ or is threatened with imminent abuse  
7 shall promptly report the matter orally to the department ~~[of~~  
8 ~~human services]~~:

- 9 (1) Any licensed or registered professional of the healing  
10 arts and any health-related occupation who examines,  
11 treats, or provides other professional or specialized  
12 services to ~~[dependent adults,]~~ a vulnerable adult,  
13 including ~~[but not limited to,]~~ physicians, physicians  
14 in training, psychologists, dentists, nurses,  
15 osteopathic physicians and surgeons, optometrists,  
16 chiropractors, podiatrists, pharmacists, and other  
17 health-related professionals;
- 18 (2) Employees or officers of any public or private agency  
19 or institution providing social, medical, hospital, or  
20 mental health services, including financial  
21 assistance;



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

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

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

9 (6) Social workers.

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

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

21 (2) The name and address of the ~~[person who or care~~  
22 ~~organization or care facility which]~~ party who is



1           alleged to have committed or been responsible for the  
2           ~~[dependent adult]~~ abuse, if known; ~~[the]~~

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

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

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

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

18           (e) Any person who knowingly fails to report as required  
19           by this section or who wilfully prevents another person from  
20           reporting pursuant to this section shall be guilty of a petty  
21           misdemeanor.



1 (f) The department shall maintain a central registry of  
2 reported cases.

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

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

8 "[~~+~~]**§346-225**[~~+~~] **Confidentiality of reports.** [~~All reports~~]  
9 A report made pursuant to this part, including the identity of  
10 the reporting person[~~, as well as~~] and all records of [~~such~~  
11 ~~reports, are~~] the report, is confidential and any person who  
12 makes an unauthorized disclosure of a report or records of a  
13 report [~~under this part~~] shall be guilty of a misdemeanor. The  
14 director [~~of human services~~] may adopt, amend, or repeal rules,  
15 pursuant to chapter 91, to provide for the confidentiality of  
16 reports and records, and for the authorized disclosure of  
17 reports and records."

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

20 "[~~+~~]**§346-226**[~~+~~] **Access to records.** Records of a  
21 [~~dependent~~] vulnerable adult shall be obtained by the department  
22 or the [~~dependent~~] vulnerable adult's court-appointed guardian



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

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

12 "[~~+~~]**§346-227**[~~+~~] **Investigation.** Upon receiving a report  
13 that abuse of a [~~dependent~~] vulnerable adult has occurred [~~and~~]  
14 or is imminent, the department shall cause an investigation to  
15 be commenced in accordance with this part as the department  
16 deems appropriate."

17 SECTION 10. Section 346-229, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~+~~]**§346-229**[~~+~~] **Right of entry.** (a) An employee of the  
20 department engaged in an investigation under this part shall be  
21 authorized to visit and communicate with the [~~dependent~~]  
22 vulnerable adult who is the subject of the report. Any person



1 intentionally or knowingly obstructing or interfering with the  
2 department's access to or communication with the [~~dependent~~]  
3 vulnerable adult shall be guilty of a misdemeanor.

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

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

16 "**§346-230 Termination of services.** (a) The department  
17 shall act only with the consent of the victim, unless the  
18 department obtains court authorization to provide necessary  
19 services, as provided in section 346-231. Investigation and  
20 services provided under this part shall be immediately  
21 terminated if:



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

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

6 (3) The court so orders.

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

13 SECTION 12. Section 346-231, Hawaii Revised Statutes, is  
14 amended as follows:

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

16 "(a) If the department believes that a person is a  
17 [~~dependent~~] vulnerable adult and it appears probable that the  
18 [~~dependent~~] vulnerable adult has been abused [~~and~~] or is  
19 threatened with imminent abuse unless immediate action is taken;  
20 and the [~~dependent~~] vulnerable adult consents, or if the  
21 [~~dependent~~] vulnerable adult does not consent and there is  
22 probable cause to believe that the [~~dependent~~] vulnerable adult



1 lacks the capacity to make decisions concerning the [~~dependent~~]  
2 vulnerable adult's person, the department shall seek an order  
3 for immediate protection in accordance with this section."

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

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

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



1 (d) The court may also make orders as may be appropriate  
2 to third persons, including temporary restraining orders,  
3 enjoining them from:

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

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

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

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

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

13 (6) Withdrawing those funds from any bank, savings and  
14 loan association, credit union, or other financial  
15 institution, or from a stock account in which the  
16 [~~dependent~~] vulnerable adult has an interest;

17 (7) Negotiating any instruments payable to the [~~dependent~~]  
18 vulnerable adult;

19 (8) Selling, mortgaging, or otherwise encumbering any  
20 interest that the [~~dependent~~] vulnerable adult has in  
21 real property;



1           (9) Exercising any powers on behalf of the [~~dependent~~]  
2           vulnerable adult by representatives of the department,  
3           any court-appointed guardian or guardian ad litem, or  
4           any official acting on [~~their~~] the vulnerable adult's  
5           behalf; and

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

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



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

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

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



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

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

8 "[~~§~~ **§346-233** [~~§~~] **Petition.** (a) A petition invoking the  
9 jurisdiction of the court under this part shall be entitled "In  
10 the matter of the protection of \_\_\_\_\_," and shall  
11 be verified.

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

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

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

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

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

21 and



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

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

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

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



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

3 "[~~f~~]**S346-236**[~~]~~ **Permanent changes.** Permanent changes in  
4 the living situation of an abused [~~dependent~~] vulnerable adult  
5 shall not ordinarily be made under authority of this part. If  
6 permanent changes in the living situation or nonemergency  
7 medical treatment are necessary, the appropriate guardianship,  
8 or civil commitment action shall be initiated pursuant to  
9 applicable state law."

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

12 "**S346-237 Notice of proceedings.** (a) After a petition  
13 has been filed, the matter shall be set for hearing and a notice  
14 of hearing shall be issued to all parties to the proceeding.

15 The parties to the proceeding shall include:

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



1 (5) Any guardian or conservator who may have been  
2 appointed; and

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

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

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

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

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



1           " ~~[†]~~ §346-239 ~~[†]~~ **Required findings concerning postponed**  
2 **hearings.** Except as otherwise provided, no hearing shall be  
3 delayed upon the grounds that a party other than the ~~[dependent]~~  
4 vulnerable adult is not present at the hearing or has not been  
5 served with a copy of the order for immediate protection or the  
6 petition, where reasonable efforts have been made to effect  
7 service and it would be detrimental to the ~~[dependent]~~  
8 vulnerable adult to postpone the proceedings until service can  
9 be made. Whenever a hearing is delayed or postponed under this  
10 section, the court shall enter a finding that it will not be  
11 detrimental to the ~~[dependent]~~ vulnerable adult and shall also  
12 specify what additional measures shall be undertaken to effect  
13 service."

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

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



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

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



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

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

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

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



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

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

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

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

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

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

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

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



1 SECTION 22. Section 346-242, Hawaii Revised Statutes, is  
2 amended to read as follows:

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



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

4 SECTION 23. Section 346-247, Hawaii Revised Statutes, is  
5 amended to read as follows:

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

15 SECTION 24. Section 346-249, Hawaii Revised Statutes, is  
16 amended to read as follows:

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



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

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

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

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

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

16 (4) Mandatory reporting. To relieve victim counselors of  
17 any duty to refuse to report child abuse or neglect  
18 under chapter 350, domestic abuse under chapter 586,  
19 or abuse of a [~~dependent~~] vulnerable adult under part  
20 X of chapter 346, and to refuse to provide evidence in  
21 child abuse proceedings under chapter 587.

- 1           (5) Proceedings for hospitalization. For communications  
2           relevant to an issue in proceedings to hospitalize the  
3           victim for mental illness or substance abuse, or in  
4           proceedings for the discharge or release of a victim  
5           previously hospitalized for mental illness or  
6           substance abuse.
- 7           (6) Examination by order of court. If the court orders an  
8           examination of the physical, mental, or emotional  
9           condition of a victim, whether a party or a witness,  
10          communications made in the course thereof are not  
11          privileged under this rule with respect to the  
12          particular purpose of which the examination is ordered  
13          unless the court orders otherwise.
- 14          (7) Condition an element of claim or defense. As to a  
15          communication relevant to the physical, mental, or  
16          emotional condition of the victim in any proceeding in  
17          which the victim relies upon the condition as an  
18          element of the victim's claim or defense or, after the  
19          victim's death, in any proceeding in which any party  
20          relies upon the condition as an element of the party's  
21          claim or defense.



1           (8) Proceedings against the victim counselor. In any  
2           administrative or judicial proceeding in which the  
3           competency or practice of the victim counselor or of  
4           the victim counseling program is at issue, provided  
5           that the identifying data of the victims whose records  
6           are admitted into evidence shall be kept confidential  
7           unless waived by the victim. The administrative  
8           agency, board or commission shall close to the public  
9           any portion of a proceeding, as necessary to protect  
10          the confidentiality of the victim."

11          SECTION 26. Section 346-252, Hawaii Revised Statutes, is  
12          repealed.

13          ["~~§346-252~~ ~~Advanced age.~~ An individual shall not be  
14          involuntarily subjected to the provisions of this part solely  
15          based on advanced age."]

16          SECTION 27. The department of human services shall:

- 17          (1) Work with interested stakeholders to develop a plan to  
18          build the capacity of community-based services to help  
19          with the provision of services under this Act;
- 20          (2) Examine the child welfare services model and research  
21          best practices regarding elder abuse to develop a risk  
22          matrix;



- 1           (3) Expand its current data collection, including the  
2           collection of data regarding:
- 3           (A) Who is being served under the current law and how  
4           they are being served;
  - 5           (B) Who is applying for services but are being turned  
6           away under the current law;
  - 7           (C) Who is being served after this Act takes effect  
8           on July 1, 2112, and how they are being served;
  - 9           (D) Who is applying for services but are being turned  
10          away after this Act takes effect on July 1, 2112;
  - 11          (E) The list of community services used by the  
12          department of human services and those under  
13          contract with the department before and after  
14          this Act takes effect; and
  - 15          (F) The number of cases per worker before and after  
16          this Act takes effect;
- 17          and
- 18          (4) Submit an interim report to the legislature no later  
19          than twenty days prior to the convening of the regular  
20          session of 2008, and submit a report to the  
21          legislature no later than twenty days prior to the  
22          convening of each regular session thereafter.



1 SECTION 28. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$ , or so  
3 much thereof as may be necessary for fiscal year 2007-2008, and  
4 the same sum, or so much thereof as may be necessary for fiscal  
5 year 2008-2009, for the department of human services to:

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

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

13 SECTION 29. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 30. This Act shall take effect on July 1, 2112.



**Report Title:**

Adult Protective Services; Vulnerable Adults

**Description:**

Expands the adult protective services law by extending protections to vulnerable adults. Effective July 1, 2112.  
(SB1184 HD3)

