

ACT 154

S.B. NO. 2150

A Bill for an Act Relating to Adult Protection.

Be It Enacted by the Legislature of the State of Hawaii:

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

“~~[PART X.] DEPENDENT~~ ADULT PROTECTIVE SERVICES”

SECTION 2. Section 346-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall maintain records of all adult protective proceedings under this chapter. All court documents and records pertaining to the action or proceeding shall be subject to inspection only by the ~~[dependent]~~ vulnerable adult, and ~~[his or her]~~ the vulnerable adult's guardian, conservator, their respective attorneys, the guardian ad litem of the ~~[dependent]~~ vulnerable adult, and the other parties and their respective attorneys or guardians ad litem.”

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

“[H]§346-221[H] Purpose; construction. The legislature recognizes that citizens of the State who are [~~elder and mentally or physically impaired~~] vulnerable to abuse constitute a significant and identifiable segment of the population and are particularly subject to risks of abuse, neglect, and exploitation.

The legislature [~~also~~] recognizes that it is a person’s [~~dependency status,~~] vulnerability, not necessarily age, which is often encountered in cases of abuse, neglect, and exploitation. While advanced age alone is not sufficient reason to intervene in a person’s life, the legislature finds that many elders have become subjects of abuse [~~and~~], neglect[~~-~~], and exploitation. Substantial public interest exists to ensure that this segment of the population receives protection.

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

In taking this action, the legislature intends to protect vulnerable adults and place the fewest possible restrictions on personal liberty and to permit the exercise of constitutional rights by adults consistent with protection from abuse[~~, neglect, and exploitation~~].”

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

“[H]§346-222[H] Definitions. For the purposes of this part:

“Abuse” means [~~actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment~~] any of the following, separately or in combination:

- (1) Physical abuse;
- (2) Psychological abuse;
- (3) Sexual abuse;
- (4) Financial exploitation;
- (5) Caregiver neglect; or
- (6) Self-neglect;

each as further defined in this chapter. Abuse does not include, and a determination of abuse shall not be based solely on, physical, psychological, or financial conditions that result when a vulnerable adult seeks, or when a caregiver provides or permits to be provided, treatment with the express consent of the vulnerable adult or in accordance with the vulnerable adult’s religious or spiritual practices.

[~~Abuse occurs where:~~

- (1) ~~Any dependent adult exhibits evidence of:~~
 - (A) ~~Substantial or multiple skin bruising or any other internal bleeding;~~
 - (B) ~~Any injury to skin causing substantial bleeding;~~
 - (C) ~~Malnutrition;~~
 - (D) ~~A burn or burns;~~
 - (E) ~~Poisoning;~~
 - (F) ~~The fracture of any bone;~~
 - (G) ~~A subdural hematoma;~~
 - (H) ~~Soft tissue swelling;~~
 - (I) ~~Extreme physical pain; or~~
 - (J) ~~Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult;~~

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

- (2) Any dependent adult has been the victim of noneconsensual sexual contact or conduct, including but not limited to:
 - (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
 - (B) Obscene or pornographic photographing, filming, or depiction; or
 - (C) Other similar forms of sexual exploitation;
- (3) Any dependent adult is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
- (4) Any dependent adult is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (5) There has been a failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise, including, but not limited to, failure to:
 - (A) Assist in personal hygiene;
 - (B) Provide necessary food, shelter, and clothing;
 - (C) Provide necessary health care, access to health care, or prescribed medication;
 - (D) Protect a dependent adult from health and safety hazards; or
 - (E) Protect against acts of abuse by third parties;
- (6) Any dependent adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent adult's person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or
- (7) There is financial and economic exploitation. For the purpose of this part, "financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. "Financial and economic exploitation" can include but is not limited to:
 - (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
 - (B) The unauthorized taking of personal assets;
 - (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
 - (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance.

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

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

"Caregiver" means any person who has knowingly and willingly assumed, on a part-time or full-time basis, the care, supervision, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a vulnerable adult.

“Caregiver neglect” means the failure of a caregiver to exercise that degree of care for a vulnerable adult that a reasonable person with the responsibility of a caregiver would exercise within the scope of the caregiver’s assumed, legal or contractual duties, including but not limited to the failure to:

- (1) Assist with personal hygiene;
- (2) Protect the vulnerable adult from abandonment;
- (3) Provide, in a timely manner, necessary food, shelter, or clothing;
- (4) Provide, in a timely manner, necessary health care, access to health care, prescribed medication, psychological care, physical care, or supervision;
- (5) Protect the vulnerable adult from dangerous, harmful, or detrimental drugs, as defined in section 712-1240; provided that this paragraph shall not apply to drugs that are provided to the vulnerable adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (6) Protect the vulnerable adult from health and safety hazards; or
- (7) Protect the vulnerable adult from abuse by third parties.

“Court” means the family court [having jurisdiction over a matter under this part].

“Department” means the department of human services and its authorized representatives.

[“Dependent adult” means any adult who, because of mental or physical impairment is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.]

“Director” means the director of human services.

“Emergency medical treatment” means [those services] any service necessary to maintain a person’s physical health and without which there is a reasonable belief that the person will suffer irreparable harm or death.

“Financial exploitation” means the wrongful taking, withholding, appropriation, or use of a vulnerable adult’s money, real property, or personal property, including but not limited to:

- (1) The breach of a fiduciary duty, such as the misuse of a power of attorney or the misuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation or misuse of moneys belonging to the vulnerable adult from a personal or joint account; or
- (4) The failure to effectively use a vulnerable adult’s income and assets for the necessities required for the vulnerable adult’s support and maintenance, by a person with a duty to expend income and assets on behalf of the vulnerable adult for such purposes.

Financial exploitation may be accomplished through coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

[“Imminent abuse” means that there exists reasonable cause to believe that abuse will occur or recur within the next ninety days.]

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

“Physical abuse” means:

- (1) The nonaccidental infliction of physical or bodily injury, pain, or impairment, including but not limited to hitting, slapping, causing burns or bruises, poisoning, or improper physical restraint; or

- (2) Causing physical injuries that are not justifiably explained or where the history given for an injury is at variance with the degree or type of injury.

“Protective services plan” means a specific written plan, prepared by the department, [setting] that sets forth the specific services and treatment to be provided to a [dependent] vulnerable adult.

“Psychological abuse” means the infliction of mental or emotional distress by use of threats, insults, harassment, humiliation, provocation, intimidation, or other means that profoundly confuse or frighten a vulnerable adult.

“Self-neglect” means:

- (1) A vulnerable adult’s inability or failure, due to physical or mental impairment, or both, to perform tasks essential to caring for oneself, including but not limited to:
 - (A) Obtaining essential food, clothing, shelter, and medical care;
 - (B) Obtaining goods and services reasonably necessary to maintain minimum standards of physical health, mental health, emotional well-being, and general safety; or
 - (C) Management of one’s financial assets and obligations to accomplish the activities in subparagraphs (A) and (B);
- and
- (2) The vulnerable adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions and appears to be exposed to a situation or condition that poses an immediate risk of death or serious physical harm.

“Sexual abuse” means nonconsensual sexual contact or conduct caused by another person, including but not limited to:

- (1) Sexual assault, molestation, sexual fondling, incest, or prostitution; or
- (2) Pornographic photographing, filming, or depiction.

“Vulnerable adult” means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

- (1) Communicate or make responsible decisions to manage the person’s own care or resources;
- (2) Carry out or arrange for essential activities of daily living; or
- (3) Protect oneself from abuse, as defined in this part.”

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

“~~[(H)§346-223(H)]~~ **Jurisdiction; venue.** The family court shall have jurisdiction ~~[in]~~ over protective proceedings under this part ~~[concerning any dependent]~~ that concern a vulnerable adult who was or is found within the judicial circuit at the time ~~[such]~~ the facts and circumstances occurred, were discovered, or were reported to the department, which constitute the basis for a finding that the ~~[person has been abused and]~~ vulnerable adult has incurred abuse or is ~~[threatened with imminent abuse;]~~ in danger of abuse if immediate action is not taken; provided that the protective proceedings under this part ~~[are]~~ shall not be considered exclusive and shall not preclude ~~[the use of]~~ any other criminal, civil, or administrative remedy. The protective proceedings under this part shall be held in the judicial circuit in which the ~~[dependent]~~ vulnerable adult resides at the time of the filing of the petition or in which the ~~[dependent]~~ vulnerable adult has assets.”

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

“[§346-224] Reports. (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a [dependent] vulnerable adult has [been abused and is threatened with imminent abuse] incurred abuse or is in danger of abuse if immediate action is not taken shall promptly report the matter orally to the department [of human services]:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to [dependent adults,] a vulnerable adult, including [but not limited to,] physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (3) Employees or officers of any law enforcement agency, including [, but not limited to,] the courts, police departments, correctional institutions, and parole or probation offices;
- (4) Employees or officers of any adult residential care home, adult day care center, or similar institution; [and]
- (5) Medical examiners or coroners [-]; and
- (6) Social workers licensed pursuant to chapter 467E and non-licensed persons employed in a social worker position pursuant to section 467E-6(2).

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

- (1) The name and address of the [dependent] vulnerable adult [and], if known;
- (2) The name and address of the [person who or care organization or care facility which] party who is alleged to have committed or been responsible for the [dependent adult] abuse, if known; [the]
- (3) The nature and extent of the [dependent] vulnerable adult's injury or harm; and [any]
- (4) Any other information the reporter believes [might] may be helpful in establishing the cause of the [dependent adult] abuse.

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

(d) Any [either] person not enumerated in subsection (a) who has reason to believe that a [dependent] vulnerable adult [has been abused] has incurred abuse or is [threatened with imminent abuse] in danger of abuse if immediate action is not taken may report the matter orally to the department.

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

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

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

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

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

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

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

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

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

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

“~~[[§346-228]]~~ **Action upon investigation.** Upon investigation the department shall take action ~~[toward preventing further]~~ to prevent abuse and shall have the authority to do any or all of the following:

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

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

“~~[[§346-229]]~~ **Right of entry.** (a) An employee of the department engaged in an investigation under this part shall be authorized to visit and communicate with the ~~[dependent]~~ vulnerable adult who is the subject of the report. Any person intentionally or knowingly obstructing or interfering with the department’s

access to or communication with the [dependent] vulnerable adult shall be guilty of a misdemeanor.

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

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

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

- (1) The [dependent] vulnerable adult has the capacity to consent and either does not consent or withdraws consent to the receipt of protective services; ~~or~~
- (2) The department determines that protection is no longer needed under this part; or
- (3) The court so orders.

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

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

1. By amending subsection (a) to read:

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

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

"(c) Upon finding that the person is a [dependent] vulnerable adult and that there is probable cause to believe that the [dependent] vulnerable adult has ~~been abused and is threatened with imminent abuse unless~~ incurred abuse or is in danger of abuse if immediate action is not taken[;] and the [dependent] vulnerable adult consents, or if the [dependent] vulnerable adult does not consent and there is probable cause to believe that the [dependent] vulnerable adult lacks the capacity to make decisions concerning the [dependent] vulnerable adult's person, the court shall issue an order for immediate protection. This order may include ~~-, but is not limited to~~:

- (1) An authorization for the department to transport the person to an appropriate medical or care facility;
- (2) An authorization for medical examinations;
- (3) An authorization for emergency medical treatment; and

- (4) [Such] Any other matters as may prevent [imminent] immediate abuse, pending a hearing under section 346-232.
- (d) The court may also make orders as may be appropriate to third persons, including temporary restraining orders, enjoining them from:
- (1) Removing the [dependent] vulnerable adult from the care or custody of another;
 - (2) [Abusing] Actions that would result in abuse of the [dependent] vulnerable adult;
 - (3) Living at the [dependent] vulnerable adult's residence;
 - (4) Contacting the [dependent] vulnerable adult in person or by telephone;
 - (5) Selling, removing, or otherwise disposing of the [dependent] vulnerable adult's personal property;
 - (6) Withdrawing [these] funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the [dependent] vulnerable adult has an interest;
 - (7) Negotiating any instruments payable to the [dependent] vulnerable adult;
 - (8) Selling, mortgaging, or otherwise encumbering any interest that the [dependent] vulnerable adult has in real property;
 - (9) Exercising any powers on behalf of the [dependent] vulnerable adult by representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on [their] the vulnerable adult's behalf; and
 - (10) Engaging in any other specified act [~~which,~~] that, based upon the facts alleged, would constitute harm or present a [~~threat~~] danger of [imminent] immediate harm to the [dependent] vulnerable adult or would cause the loss of the [dependent] vulnerable adult's property.
- (e) Court orders under section 346-232 and this section may be obtained upon oral or written application by the department, without notice and without a hearing. Any oral application shall be reduced to writing within twenty-four hours. The court may issue its order orally[;]; provided that it shall reduce the order to writing as soon as possible thereafter and in any case not later than twenty-four hours after the court received the written application. Certified copies of the application and order shall be personally served upon the [dependent] vulnerable adult and any other person or entity affected by the order together with the notice of the order to show cause hearing in section 346-232."

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

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

(b) When the court finds that there is probable cause to believe that a [dependent] vulnerable adult has [~~been abused and is threatened with imminent abuse,~~] incurred abuse or is in danger of abuse if immediate action is not taken, and the [dependent] vulnerable adult consents, or if the [dependent] vulnerable adult does not consent and the court finds that there is probable cause to believe that the [dependent] vulnerable adult lacks the capacity to make decisions concerning the [dependent] vulnerable adult's person, the court may continue or modify any order pending an

adjudicatory hearing on the petition. These orders may include orders for the [dependent] vulnerable adult's temporary placement and ordinary medical care.

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

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

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

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

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

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

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

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

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

"[H]§346-236[H] **Permanent changes.** Permanent changes in the living situation of [~~an abused dependent~~] a vulnerable adult who has incurred abuse shall not ordinarily be made under authority of this part. If permanent changes in the living situation or nonemergency medical treatment are necessary, the appropriate guardianship, or civil commitment action shall be initiated pursuant to applicable state law."

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

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

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

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

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

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

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

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

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

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

(b) In an adjudicatory hearing, the court shall determine whether the person is a [dependent] vulnerable adult, and whether the [dependent] vulnerable adult has ~~[been abused and is threatened with imminent abuse,]~~ incurred abuse or is in danger of abuse if immediate action is not taken, based upon a preponderance of the evidence. Evidence ~~[which]~~ that is contained in a written report, study, or examination shall be admissible~~;~~; provided that the maker of the written report, study, or ex-

amination be subject to direct and cross-examination upon demand when the maker is reasonably available. A social worker employed by the department in the area of adult protective services shall be presumed to be qualified to testify as an expert in the field of protective services.

(c) If facts sufficient to sustain the petition are established in court, or are stipulated to by all parties, the court shall enter an order finding that the [dependent] vulnerable adult has ~~[been abused and threatened with imminent abuse]~~ incurred abuse or is in danger of abuse if immediate action is not taken and shall state the grounds for the finding. The court shall also make a finding concerning the capacity of the [dependent] vulnerable adult to effectively make decisions concerning personal needs or property ~~[or both]~~. If the capacity of the [dependent] vulnerable adult is at issue, the court shall require that the [dependent] vulnerable adult be examined by a psychiatrist or other physician who is skilled in evaluating the particular area in which the [dependent] vulnerable adult is alleged to lack capacity before making any finding that the [dependent] vulnerable adult lacks capacity. If there is no finding that the [dependent] vulnerable adult lacks capacity to make ~~[such]~~ decisions regarding personal needs or property and if the [dependent] vulnerable adult does not give consent, the court shall not have authority to proceed further and the court shall dismiss the case.”

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

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

- (1) The person inflicting abuse on the [dependent] vulnerable adult participate in counseling or therapy as the court deems appropriate;
 - (2) Any party report to the department any violation of the protective order or protective services plan;
 - (3) The department make periodic home visits to the [dependent] vulnerable adult; and
 - (4) The department monitor compliance with the order.
- (c) The proposed protective services plan shall set forth the following:
- (1) Specific services or treatment to be provided to the [dependent] vulnerable adult and the specific actions the parties shall take;
 - (2) Specific responsibilities that the parties shall assume;
 - (3) Period during which the services shall be provided;
 - (4) Dates by which the actions shall be completed;
 - (5) Specific consequences that may be reasonably anticipated to result from a party’s failure to comply with any terms and conditions of the plan; and
 - (6) Steps that shall be necessary to terminate the court’s jurisdiction.

(d) In preparing such a proposed protective order, the department shall seek to impose the least restrictive limitation on the freedom and liberties of the [dependent] vulnerable adult. To the greatest extent possible, the [dependent] vulnerable adult should be permitted to participate in decisions concerning the [dependent] vulnerable adult’s person, or property, or both.”

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

“**§346-242 Review hearings.** Except for good cause shown, the court shall set each case for a review hearing not later than six months after the date that a protective order and protective services plan are ordered by the court. Thereafter, the court shall review the matter at intervals of not longer than six months until the

court’s jurisdiction has been terminated. The department and the guardian ad litem, if any, shall submit a written report, with copies to the parties or their counsel, at least fifteen days prior to the date set for each review. The report shall evaluate whether the parties have complied with the terms and conditions of the protective order and protective services plan; shall recommend any modification to the order or plan; and shall recommend whether the court shall retain jurisdiction or terminate the case. At each review, the court shall determine whether the parties have complied with the terms and conditions of the order and plan; enforce [such] sanctions for noncompliance as may be appropriate; and order [such] revisions to the existing order or plan as are in the best interests of the [dependent] vulnerable adult. At each review, the court shall make an express finding as to whether it shall retain jurisdiction or terminate the case, and, in each instance, shall state the basis for its action.”

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

“[H]§346-247[H] Payment for service or treatment provided to a party. Whenever service, treatment, care, or support of a [dependent] vulnerable adult is provided under this part, the persons or legal entities who may be legally obligated to pay for the service, treatment, care, or support of the [~~dependent person;~~] vulnerable adult, may be ordered by the court to pay the cost of the service, care, support, or treatment provided to the [dependent] vulnerable adult in whole or in part, after notice and hearing.”

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

“[H]§346-249[H] Cooperation. Every public official or department shall render all assistance and cooperation within the official’s or department’s power and [~~which~~] that may further the purpose and objectives of this part. The department and the court may seek the cooperation of organizations whose objectives are to protect or aid [dependent] vulnerable adults.”

SECTION 26. Section 571-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2);
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged;

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584;

- (4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576B, the Uniform Interstate Family Support Act;
- (5) For commitment of an adult alleged to be mentally defective or mentally ill;
- (6) In all proceedings for support between parent and child or between husband and wife;
- (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22;
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders; and
- (9) For the protection of [~~dependent~~] vulnerable adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.”

SECTION 27. Section 626:1-505.5¹, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.
- (2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.
- (3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.
- (4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a [~~dependent~~] vulnerable adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587.
- (5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.
- (6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.
- (7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim’s claim or defense or, after the victim’s death, in any proceeding in which any party relies upon the condition as an element of the party’s claim or defense.
- (8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that

the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim.”

SECTION 28. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care [~~homes,~~] home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors

- in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
 - (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
 - (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
 - (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
 - (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, ~~[dependent]~~ vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
 - (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
 - (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
 - (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
 - (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97; and
 - (24) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 29. The department of human services may work with interested stakeholders to develop a plan to build the capacity of community-based services to help with the provision of services under this Act.

SECTION 30. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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SECTION 31. This Act shall take effect on July 1, 2009.
(Approved June 9, 2008.)

Note

1. So in original.