H.B. NO. 3127

A BILL FOR AN ACT

RELATING TO ADULT PROTECTIVE SERVICES.

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

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

"[~~I~~]**PART X.**[~~I~~] **[~~DEPENDENT~~] ADULT PROTECTIVE SERVICES**

[~~I~~]**§346-221**[~~I~~] **Purpose; construction.** The legislature recognizes that citizens of the State who are elder and mentally or physically impaired 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 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~~] may become subjects of abuse and neglect. 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.

In taking this action, the legislature intends to 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.

[~~[~~]**§346-222**[~~]~~] **Definitions.**

"Abuse" means [~~actual or imminent~~] physical injury, psychological abuse [~~or neglect~~], sexual abuse, financial exploitation, [~~negligent treatment, or maltreatment~~] caregiver neglect, or self-neglect or poor self care as further defined in this chapter.

[~~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 nonconsensual 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.~~

1 ~~The exploitations may involve coercion, manipulation,~~
2 ~~threats, intimidation, misrepresentation, or exertion~~
3 ~~of undue influence.~~]
4 "Capacity" means the ability to understand and appreciate
5 the nature and consequences of making decisions concerning one's
6 person or to communicate such decisions.
7 "Caregiver" means any person who has undertaken the care,
8 custody, or physical control of, or who has a legal or
9 contractual duty to care for the health, safety, and welfare of a
10 vulnerable adult.
11 "Caregiver neglect" means the failure to exercise that
12 degree of care toward a vulnerable adult that a reasonable
13 person with the responsibility of a caregiver would exercise,
14 including but not limited to, failure to:
15 (1) Assist in personal hygiene;
16 (2) Protect the vulnerable adult from abandonment;
17 (3) Provide in a timely manner necessary food, shelter,
18 and clothing;
19 (4) Provide in a timely manner necessary health care,
20 access to health care, prescribed medication,
21 psychological care, physical care, or supervision;

(5) Protect the vulnerable adult from the provision of dangerous, harmful, or detrimental drugs as defined by section 712-1240except that this paragraph shall not apply when such drugs 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 against acts of 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.~~]

"Emergency medical treatment" means those services 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 or negligent taking, withholding, misappropriation, or use of a vulnerable adult's money, real property, or personal property, including but not limited to:

(1) 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;

(2) The unauthorized taking of personal assets;

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

(4) The intentional or negligent failure to effectively use a vulnerable 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.

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

1 "Party" means those persons, care organizations, or care
2 facilities entitled to notice of proceedings under sections 346-
3 237 and 346-238, including any state department or agency that
4 is providing services and treatment to a [~~dependent~~] vulnerable
5 adult in accordance with a protective services plan.
6 "Physical abuse" means the non-accidental infliction of
7 physical or bodily injury, pain or impairment, including but not
8 limited to, being slapped, burned, cut, bruised, poisoned,
9 improperly physically restrained, or suffering injuries that are
10 not justifiably explained or where the history given is at
11 variance with the degree or type of injury.
12 "Protective services plan" means a specific written plan,
13 prepared by the department, setting forth the specific services
14 and treatment to be provided to a [~~dependent~~] vulnerable adult.
15 "Psychological abuse" means the infliction of mental or
16 emotional distress by use of threats, insults or harassment that
17 humiliates, provokes, intimidates, confuses, or frightens the
18 vulnerable adult.
19 "Self-neglect" or "poor self care" means a vulnerable
20 adult's inability, due to physical or mental impairments to
21 perform tasks essential to caring for oneself, including but not
22 limited to, providing essential food, clothing, shelter, and

1 medical care, obtaining goods and services necessary to maintain
2 physical health, mental health, emotional well-being and general
3 safety, or managing financial affairs. The vulnerable adult
4 shall appear to lack sufficient understanding or capacity to
5 make or communicate responsible decisions concerning the
6 vulnerable adult's person, and appear to be exposed to a
7 situation or condition that poses an immediate risk of death or
8 risk of serious physical harm.
9 "Sexual abuse" means non-consensual sexual contact or
10 conduct, including but not limited to:
11 (1) Sexual assault, molestation, sexual fondling, incest,
12 prostitution;
13 (2) Obscene or pornographic photographing, filming, or
14 depiction; or
15 (3) Other similar forms of sexual exploitation.
16 "Vulnerable adult" means any adult who, because of mental
17 or physical impairment, is unable to make reasonable decisions
18 to manage one's own resources, to carry out or arrange for
19 essential activities of daily living, or to protect oneself from
20 abuse, neglect, or financial exploitation without assistance
21 from others.

1 [~~[~~]**§346-223**[~~]~~] **Jurisdiction; venue.** The family court
2 shall have jurisdiction in protective proceedings under this
3 part concerning any [~~dependent~~] vulnerable adult who was or is
4 found within the circuit at the time such facts and
5 circumstances occurred, were discovered, or were reported to the
6 department, which constitute the basis for a finding that the
7 person has been abused [~~and is threatened with imminent abuse;~~]
8 or is in danger of being abused if immediate action is not
9 taken; provided that the protective proceedings under this part
10 are not exclusive and shall not preclude the use of any other
11 criminal, civil, or administrative remedy. The protective
12 proceedings under this part shall be held in the judicial
13 circuit in which the [~~dependent~~] vulnerable adult resides at the
14 time of the filing of the petition or in which the [~~dependent~~]
15 vulnerable adult has assets.
16 [~~[~~]**§346-224**[~~]~~] **Reports.** (a) The following persons who,
17 in the performance of their professional or official duties,
18 know or have reason to believe that a [~~dependent~~] vulnerable
19 adult has been abused [~~and is threatened with imminent abuse~~] or
20 is in danger of being abused if immediate action is not taken
21 shall promptly report the matter orally to the department of
22 human services:

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

(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 a police department is the initiating agency, a written report shall not be required unless the police department has declined to take further action and the department informs the police department that it intends to pursue the matter of the orally reported incident of abuse. All written reports shall contain the name and address of the [~~dependent~~] vulnerable adult and the person who or care organization or care facility which is alleged to have committed or been responsible for the [~~dependent~~] vulnerable adult abuse, if known; the nature and extent of the [~~dependent~~] vulnerable adult's injury or harm; and any other information the reporter believes might be helpful in establishing the cause of the [~~dependent~~] vulnerable adult abuse.

(c) This section shall not prohibit any of the persons enumerated in subsection (a) from reporting incidents which those persons have reason to believe involve abuse which came to their attention in any private or nonprofessional capacity.

(d) Any other person who has reason to believe that a [~~dependent~~] vulnerable adult has been abused or is [~~threatened with imminent abuse~~] in danger of being abused 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.

[~~[~~]**§346-225**[~~]~~] **Confidentiality of reports.** All reports made pursuant to this part, including the identity of the reporting person, as well as all records of such reports, are 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.

[~~[~~]**§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 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~~] vulnerable 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).

[~~(~~]**§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. The department shall not be required to investigate a report that fails to allege that abuse of a vulnerable adult has occurred or is in danger of occurring if immediate action is not taken.

[~~(~~]**§346-228**[~~)~~] **Action upon investigation.** Upon investigation the department shall take action toward preventing abuse from occurring or preventing further 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.

[~~[~~]**§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.

§346-230 Termination of services. The department shall act only with the consent of the victim, 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.

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.

[~~[~~]**§346-231**[~~]~~] **Order for immediate protection.** (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~~] or is in danger of being abused unless immediate

action is 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.

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

(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~~] or is in danger of being abused unless immediate action is 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 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 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 those 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 behalf;

(10) Engaging in any other specified act which, based upon the facts alleged, would constitute harm or present a threat 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.

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

[~~[~~]**§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,~~] or is in danger of being abused 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.

[~~[~~]**§346-233**[~~]~~] **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 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.

[~~[~~]**§346-234**[~~]~~] **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 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.

§346-235 Consolidation with guardianship proceedings. A proceeding for the appointment of a guardian or conservator under article V of chapter 560 may be consolidated with the proceedings under this part as the applicable circuit court and the family court, in the exercise of their discretion, shall permit.

[~~[~~]**§346-236**[~~]~~] **Permanent changes.** Permanent changes in the living situation of an abused [~~dependent~~] vulnerable adult 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.

§346-237 Notice of proceedings. 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~~] vulnerable adult resides or is a patient;

(3) The spouse and adult children of the [~~dependent~~] vulnerable adult;

(4) The parents of the [~~dependent~~] vulnerable adult, unless waived by the court for good cause;

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

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

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.

[~~(~~]**§346-238**[~~)~~] **Service.** (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.

(b) Service shall be effected at least forty-eight hours prior to the time fixed in the notice for hearing when held pursuant to section 346-232(a), or at least fifteen days prior to the time fixed in the notice for an adjudicatory, disposition, or review hearing, unless the party otherwise was ordered by the court to appear at those hearings.

[~~[~~]**§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.

[~~[~~]**§346-240**[~~]~~] **Adjudicatory hearing.** (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,~~] or is in danger of being abused if immediate action is not taken, based upon a preponderance of the evidence. Evidence which is contained in a written report, study, or examination shall be admissible, provided that the maker of the written report, study, or examination 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~~

1 ~~abuse~~] or is in danger of being abused if immediate action is
2 not taken and shall state the grounds for the finding. The
3 court shall also make a finding concerning the capacity of the
4 [~~dependent~~] vulnerable adult to effectively make decisions
5 concerning personal needs or property or both. If the capacity
6 of the [~~dependent~~] vulnerable adult is at issue, the court shall
7 require that the [~~dependent~~] vulnerable adult be examined by a
8 psychiatrist or other physician who is skilled in evaluating the
9 particular area in which the [~~dependent~~] vulnerable adult is
10 alleged to lack capacity before making any finding that the
11 [~~dependent~~] vulnerable adult lacks capacity. If there is no
12 finding that the [~~dependent~~] vulnerable adult lacks capacity to
13 make such decisions and if the [~~dependent~~] vulnerable adult does
14 not give consent, the court shall not have authority to proceed
15 further and the court shall dismiss the case.
16 (d) Upon the completion of the adjudicatory hearing, the
17 disposition hearing may commence immediately after the required
18 findings are made, provided the requirements of section 346-
19 241(a) have been met, or the court may set the disposition
20 hearing for such time as it deems appropriate.

(e) If facts sufficient to sustain the petition under this part are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(f) If the court sustains the petition and does not commence immediately to the disposition hearing, it shall determine, based upon the facts adduced during the adjudicatory hearing and any additional facts presented to it, whether any temporary orders should be issued pending final disposition.

§346-241 Disposition. (a) The department shall prepare a proposed protective order and a written protective services plan and submit copies to the court and each of the parties or their counsel at least seven days prior to the disposition hearing.

(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.

1 (e) The court shall conduct a disposition hearing
2 concerning the terms and conditions set forth in the proposed
3 protective order and proposed protective services plan unless
4 each of the appropriate parties accepts the order and plan, in
5 which event, the court may approve the order and plan without a
6 hearing.
7 **§346-242 Review hearings.** Except for good cause shown,
8 the court shall set each case for a review hearing not later
9 than six months after the date that a protective order and
10 protective services plan are ordered by the court. Thereafter,
11 the court shall review the matter at intervals of not longer
12 than six months until the court's jurisdiction has been
13 terminated. The department and the guardian ad litem, if any,
14 shall submit a written report, with copies to the parties or
15 their counsel, at least fifteen days prior to the date set for
16 each review. The report shall evaluate whether the parties have
17 complied with the terms and conditions of the protective order
18 and protective services plan; shall recommend any modification
19 to the order or plan; and shall recommend whether the court
20 shall retain jurisdiction or terminate the case. At each
21 review, the court shall determine whether the parties have
22 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.

[~~[~~]**§346-243**[~~]~~] **Appeal.** Any party aggrieved by an order or decree of the court may appeal as provided by section 571-54.

§346-244 Admissibility of evidence. The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report pursuant to this part.

[~~[~~]**§346-245**[~~]~~] **Hearings.** The protective proceedings shall be heard without a jury. The hearing may be adjourned from time to time. The general public shall be excluded, and only such persons as are found by the court to have a direct interest in the case shall be admitted.

[~~[~~]**§346-246**[~~]~~] **Failure to comply with court orders.** The court may apply contempt of court provisions and all other provisions available under the law if a party fails to comply

with the terms and conditions of any order issued under this part.

[~~[~~]**§346-247**[~~]~~] **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~~] vulnerable person, 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.

[~~[~~]**§346-248**[~~]~~] **Fiscal and service responsibility.** The department or other authorized agencies shall provide only the care, service, treatment, support, or payment authorized by law. The department or authorized agencies shall have the authority to establish priorities and limitations of services based on their resources.

[~~[~~]**§346-249**[~~]~~] **Cooperation.** Every public official or department shall render all assistance and cooperation within the official's or department's power and which may further the purpose and objectives of this part. The department and the

1 court may seek the cooperation of organizations whose objectives
2 are to protect or aid [~~dependent~~] vulnerable adults.
3 [~~[~~]**§346-250**[~~]~~] **Immunity from liability.** (a) Anyone
4 participating in good faith in the making of a report pursuant
5 to this part shall have immunity from any liability, civil or
6 criminal, that might be otherwise incurred or imposed by or as a
7 result of the making of such a report. Any participant shall
8 have the same immunity with respect to participation in any
9 judicial proceeding resulting from that report.
10 (b) Any individual who assumes a duty or responsibility
11 pursuant to this part shall have immunity from civil liability
12 for acts or omissions performed within the scope of the
13 individual's duty or responsibility. Nothing in this part shall
14 limit the liability of the department, any other state agency,
15 or any private organization for the conduct of individuals
16 acting within the scope of their duties provided immunity under
17 this section.
18 [~~[~~]**§346-251**[~~]~~] **Presumption of capacity.** An individual
19 shall be presumed capable of making decisions concerning the
20 individual's person. A determination that an individual lacks
21 capacity under this part shall not be construed as a finding
22 that the individual lacks capacity for any other purpose.

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

[~~[~~]**§346-253**[~~]~~] **Rules.** The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this part."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

Report Title:
Social Services; Adult Protective Services

Description:
Expands authority to investigate allegations of abuse, neglect, and financial exploitation of vulnerable adults.

HB 3127

JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO ADULT PROTECTIVE SERVICES.

PURPOSE: To amend provisions of chapter 346, Part X, Hawaii Revised Statutes, by: (1) amending the title to read "Adult Protective Services"; (2) amending the definition section by deleting definitions of "dependent adult" and "imminent abuse"; amending the definition of "abuse"; adding new definitions of "caregiver", "caregiver neglect", "financial exploitation", "physical abuse", "psychological abuse", "self-neglect or poor self care", "sexual abuse", and "vulnerable adult"; (3) enabling the Department of Human Services (DHS) to investigate and the court to have jurisdiction when reason exists to believe that a vulnerable adult has been abused or is in danger of being abused if immediate action is not taken; and (4) making conforming amendments for consistency and clarity.

MEANS: Amend chapter 346, Part X, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The changes will expand DHS authority to investigate allegations of vulnerable adult abuse, neglect and financial exploitation when there is reason to believe a vulnerable adult has been abused or is in danger of being abused if immediate action is not taken.

By substituting the phrase "vulnerable adult" for the current phrase "dependent adult", DHS will be able to intervene in situations of abuse, neglect, or exploitation for a broader population who may warrant protection. The proposed amendments also provide clarity as to what

HB 3127

constitutes vulnerable adult abuse, neglect, or exploitation. In addition, the proposed amendments clearly delineate the criteria by which DHS can initiate adult protective services (APS) investigations.

These clarifications are also needed to eliminate confusion on the part of the community in terms of what to report to DHS via its APS Hotline and what DHS are to investigate.

Impact on the public: The changes will allow governmental intervention in the form of APS investigations in response to reports from the community regarding alleged abuse of vulnerable adults that has already occurred or is likely to occur if immediate action is not taken.

Impact on the department and other agencies: The department will be responsible for an increased number of APS investigations statewide, thereby necessitating an increase in the number of staff to be designated as APS social work investigators. An increase in the number of registered nurses and social services assistants to aid the APS social workers in investigating the reported cases will also be needed. Due to plans for internal reorganization, DHS does not anticipate requesting additional staff positions.

Increased need for court intervention to stop vulnerable adult abuse from occurring or re-occurring may necessitate increased staffing for the Judiciary. DHS will also need additional legal support from the Department of the Attorney General to represent DHS in the court proceedings, including but not limited to orders for immediate protection and guardianship hearings.

GENERAL FUND: None.

HB 3127

OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HMS 601
OTHER AFFECTED AGENCIES:	The Judiciary and the Department of the Attorney General
EFFECTIVE DATE:	July 1, 2008